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Court : Allahabad

Decided On : Apr-29-1949

Reported in : AIR1950All277

Judge : Raghubar Dayal and ; Agarwala, JJ.

Acts : Arms Act, 1878 - Sections 19

Appeal No. : Criminal Revn. No. 174 of 1948

Appellant : Sughar Singh

Respondent : Rex

Advocate for Def. : Deputy Government Adv.

Advocate for Pet/Ap. : S.N. Misra, Adv.

Judgement :

Raghubar Dayal, J.

1. This is a revision by Sughar Singh against his conviction under Section 19(f), Arms Act, by a Magistrate, first class, Mainpuri, the appeal against the conviction having been dismissed by the Sessions Judge.

2. The facts leading to the applicant's conviction are that on the search of his house a single barrel country, made muzzle-loading pistol, wrapped in cloth, some

gun powder, an iron rod of pistol and three live percussion caps and hand-made lead shots weighing 21/2 tolas were recovered from a special hole inside the wall of a room inside the house. This hole was three feet deep and had an opening six inches square.

3. In this house lived Sughar Singh with his sons and his younger brother Pahunchi. Sughar Singh is aged 40 years and Pahunchi's age is 26.

4. Both these brothers were tried for the offence under Section 19 (f), Arms Act, and were convicted by the Magistrate. On appeal the learned Sessions Judge acquitted Pahunchi and maintained the conviction of Sughar Singh. He passed these orders as he was of opinion that in the absence of any evidence connecting Pahunchi with the possession of these articles his being one of the persons residing in the house was not sufficient to prove his conscious possession or effectual control over the articles, it being possible that the Manager of the family or some other member of the house-hold might have placed the articles there without his knowledge. He was further of opinion that Sughar Singh, as the head of the family, must be deemed to have effective control over these articles. He further observed:

'It is obvious that so many articles of such size could not have been there without the knowledge of the head of the family.'

5. The learned counsel for the applicant tried to throw doubt on the actual recovery of the various articles on the ground that the witnesses were not of the locality. We do not agree with the contention, and are satisfied that the search witnesses were of the locality, they being residents of a place at a distance of about a mile, and that they were respectable witnesses, they being zamindars and one of them being a Mukhia. There is nothing to show that they were not independent witnesses. We are, therefore, satisfied that the articles were recovered from the house in which resided the applicant with his sons and younger brother.

6. The second contention, and with which we agree, is that the mere fact that Sughar Singh applicant is the head of the family is not sufficient for a finding that Sughar Singh must have been in possession or control of these articles.

7. Section 19, Arms Act, is: 'Whoever commits any of the following offences, namely. .....

(f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of Section 14 or Section 15 .... . . shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.'

8. Before a person can be convicted of an offence under Section 19 (f), Arms Act, it has to be proved that he was either in possession of the arms or had them under his control in contravention of the provisions of Section 14 or Section 15 which permit a person to possess these things in certain conditions.

9. There has been difficulty in determining whether a certain person was in possession or in control of the arms recovered when the recovery was made from a place which was in the possession of more than one person. In some cases it was expressed that only that person was to be held to be in possession or control of the arms recovered who had exclusive possession or control over them. In some cases, it has been held that exclusive possession is not contemplated under Section 19 (f), Arms Act and that more than one person can be in possession of the same arms provided they know about the existence of those arms in the place occupied by them jointly. In cases of joint families, it has been expressed in some cases that the head of a family might be deemed to be in the possession of the arms recovered in the absence of any other evidence pointing to his specific possession and that no other member of the family can be held to be in possession unless it is proved that he had some knowledge or connection with that article. Actual cases in which the head of the family has been convicted have been really very few. We have been just referred to four such cases. We shall refer to the various cases in a chronological order subsequently and would like first to state what, in our opinion, should be the correct approach to this question.

10. There is no difficulty in cases where only one person occupies the place from which the recovery is made. Prima facie, such parson would be deemed to be in possession of the articles recovered. It will be for that person to show that there Was a possibility of the articles being planted there by some one. When an article

is recovered from a place over which that person has possession but over which others could also have access, it would be a matter for determination by the Court whether the circumstances of the recovery including the nature of the articles recovered are such as to indicate that those articles must have been placed there by that particular person. If there be a doubt about it, that person may not be held to be proved to be in possession of those articles which could possibly be placed there by others.

11. When articles are recovered from a place which is occupied by serveral people and to which people in general have no access, all the persons in occupation of that place cannot be held to be in possession of those articles on account of the mere fact that they occupy that place. It must be shown that they knew about the existence of those articles and could have dealt with them. It is not necessary that it should be shown that they use those articles. The mere fact that they know that in their common place such articles exist is sufficient to raise the presumption that they are in possession of them. The presumption can be rebutted by direct or circumstantial evidence. The section does not speak of exclusive possession and, therefore, there is no bar to the same article being in the possession of several persons. It is not unusual that several persons possess the same article. Apart from this consideration any other interpretation of this section would make this section practically in applicable to families consisting of several members and consequently a group of people would be in a far batter position to contravene the provisions of the Act than a single individual.

12. There seems to us no sound reason why in interpreting the criminal statute the head of a joint family be in a worse position. As the head of a joint Hindu family he has different types of responsibilities and liabilities which are of civil nature. So far as criminal conduct is Concerned, every individual in a family or society is responsible for his own conduct unless the law specifically provides that one individual would be held liable for a certain type of conduct by another individual. Mens rea is an essential element in criminal offences and, therefore, an individual cannot be ordinarily liable for the acts of another, whatever position in the group or family that individual occupies. We may in this connection refer to the observations of their Lordships of the Privy Council in the case of Sriniwas Mall v. Emperor,

1947 A. L. J. 497 at P. 501 : (A. I. R. (37) 1940 P. C 185) :

'They see no ground for saying that offences against those of the Defence of India Bales here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. See the judgment of Wright J. in Sherras v. De Rutzen, (1895) 1 Q B. 918 : (64 L. J. M. C. 218). Offences which are within that class are usually of a comparatively minor character, and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable 'with imprisonment for a term which may extend to three years' Their Lordships agree with the view which was recently expressed by the Lord Chief Justice of England, when he said : 'It is in my opinion of the utmost importance for the protection of the liberty of the subject that (he Court should always bear in m nd that, unless the statute either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a :guilty mind.'

13. Coming to the case law we start with the earliest case referred Queen Empress v. Sangam Lal, 15 ALL. 129 : (1893 A. W. N. 48) and the observations in which have been to some extent responsible for such expressions in later cases as to indicate that the head of a joint Hindu family must be deemed to be in possession of an article recovered from the house occupied by the joint family. In fact, this case did not lay down anything of the kind.

14. In this case, one Sangam Lal was convicted of an offence under Section 19 (f), Arms Act, for being in possession of two swords. It was contended for the accused that there was no evidence to show that he was in possession or control of the swords. It was found that Ram Chand, father of Sangam Lal, also lived in that house from which the swords were recovered. Knox and Blair JJ at p. 131 observed :

'There are strong indicia, of a certain amount of possession and control, but we are not disposed in the present case to depart from the well-known rule of law that where articles are found in a house in such place or places as several persona

living in the house may have access to, there is no presumption as to possession and control that those articles are in the possession and control of any other person than the house-master .... We do not lay it down as an invariable rule that where weapons are found in a house occupied by a Hindu family living jointly, possession is necessarily that of the managing member, and the managing member only; but we do lay down that in all such oases where it is sought to establish that possession and control are with some member of the family other than the managing member, there must be good and clear evidence of the fact before we can in an act of this kind arrive at such a conclusion. The act is one highly penal and one which must be strictly construed.'

15. We interpret these observations to lay down the following propositions : (1) In the case of a joint family no member, other than the head of the family, can be held to be in possession or control of the articles found in the house unless there be good and clear evidence about his actual possession of those articles. (2) There is no presumption that any member, other than the head of the family, is in possession or control of the article recovered. (3) There may be a presumption about possession and control of the head of the family, but it was not laid down that the possession was necessarily of the managing member. (4) That the possession of the articles need not be of the managing member only. It could be of several persons.

16. If these observations meant to lay down that the head of the family will be held to be in possession of the articles recovered from the house irrespective of any direct evidence about his possession or control over these articles, or even knowledge of the existence of those articles, we would respectfully differ and point out that the guilt of the head of the family was not a matter for consideration before the Judges in that case, and any such expression of opinion would be in the nature of obiter dicta.

17. The next case is reported in Emperor v. Budh Lal, 29 ALL. 598 : (6 Cr. L. J. 23). It was a case under Section 411, Penal Code. In this case a large quantity of stolen cloth was recovered from a room which was looked. The key of the lock was given by Budh Lal appellant. The house was in the occupation of Budh La),

his father and his son. Dillon J at p. 600 observed':

'The only argument which has been addressed to me in revision is that the mere fact that the petitioner; was the managing member of the family ought not to have led the Courts below to the conclusion at which they have arrived I should have been quite prepared to accept this contention if that were the only ground upon which this conclusion was based.'

18. This would show that the mere fact that the person is a managing member of the joint family is not sufficient to hold that that person is in possession of whatever is found in the house. The conviction of Budh Lal was, however, maintained as in addition to his being the managing member of the family, there were other considerations which established his knowledge of the existence of the stolen property and consequently his possession of them. Such considerations were that the large quantity of cloth could not have been got into the house surreptitiously and that the room was locked and the key was produced by him.

19. It was further observed :

'I may say that had I been trying this case as an appeal I should have arrived at the same conclusion. Knowledge of the presence in the house of the stolen property having been established against Budh Lal, he must, as house master, be presumed to have been in possession of it. Queen Empress v. Sangam Lal, 15 All. 129 : (1893 A W N 48), is an authority for this proposition.'

Once the knowledge of Budh Lal about the existence of the stolen articles from the house was established, he, according to our view, must have been held to be in possession of those articles irrespective of the fact whether he was a house master or just one of the members of the joint Hindu family.

20. In Emperor v. Sikhdar : AIR1932 All441 , a gun was found in a house occupied by a joint family of which Sikhdar was a member but not a managing member. Bennet J. pointed out the inaccuracy of the headnote of Queen Empress v. Sangam Lal, 15 ALL. 129 : (1893 A. w. N. 48) and observed:

'I do not consider that a Hindu is in any better position in this country than a Muhammedan or an Indian Christian and in no country in the World is it laid down that the criminal law should be interpreted by the canons of civil law. The evidence here shows that the accused is one of the persons who live in that house and the accused is one of the adult male members of the family. The finding of an unlicensed gun in the house would to my mind raise a presumption against all the adult male members that it was in their possession and control, and they might one and all be tried on that charge. Under these circumstances I consider it would be for these persons to show that they were not in possession of the gun in question.'

He rejected the reference maintaining the conviction of Sikhdar.

21. In the case of Kaul Ahir v. Emperor : AIR1933 All112 , two loaded cartridges were found in a corn bin in the house of Kaul among ghee, butter and other articles. Kaul and his son were prosecuted, but the son was acquitted and Haul was convicted on the ground that he was the head of the family and, therefore, be held responsible for the arms recovered from his house. Putlan and Thom-JJ. observed:

'There are many oases of this Court in which it has been laid down that it is Improper to convict each and every member of a Hindu joint family because some illicit article has been recovered from the house, and the principle that the head of the family is responsible where there are other adult male members who had equal facilities of access to the article in question has never been affirmed as far as we are aware by any High Court in India. We have been referred to a decision of a single Judge of this Court in the case of Emperor v. Sikhdar : AIR1932 All441 . In that case the learned Judge, held that all the adult male members of a Hindu joint family could be presumed to be in possession of an. unlicensed gun found in their house, and it was open to the police to prosecute one or all of them for the offence This is a view which we are not prepared to accept. We believe that in all such oases it is necessary to prove not only the presence of the article in the house but the possession of some particular person over that article in order to justify a conviction.'

We say with respect that we fully agree with these views. Kaul Ahir was acquitted and it was considered that it could not be said that the head of the house or any individual male member of his family was aware of the presence of these cartridges which could have been dropped by some sportsman, picked up by a child and ' handed over to the child's mother. Their Lordships further expressed themselves thus:

'We cannot accept the view that the head of the family is responsible for the presence of the articles,. and we do not consider that the conviction for an, offence under the Arms Act is legal.'

22. In the case of Ram Charan v. Emperor, 1933 A. L. J. 1338 : (A. I. R. (20) 1933 ALL. 437 : 34 Cr. L. J. 930), two silver ornaments were found in a corn bin containing dried Mahwa flowers in the house occupied by Ram Charan and his three grown up sons. Ram Charan's wife also lived in that house. Niamatullah J. remarked:

'It seems to me that the police and the Magistrate proceeded on the assumption that property found in a house occupied by several 'male and female members-residing therein should be considered to be in possession of the head of the family. This is a wholly unwarranted assumption and can have no place in cases in which possession and criminal intent form the essential elements of an offence. It is equally unwarranted to assume that every one residing in the house should be deemed to be in possession of an article recovered from it.

Possession implies dominion and consciousness in the mind of the person having dominion over an object that he has it and can exercise it. A person cannot be said to be in possession of a thing unless it is shown by evidence that he had dominion over it and knew that he had it. The mere fact that a thing is found in a house occupied by a person in common with others or at a place in the house which is as much accessible to others as to him is no proof that he was in possession of it.'

23. The next case is Jwala v. Emperor, 35 Cr. L. J. 428 : (A. I. R. (21) 1934 ALL. 648), A muzzle-loading pistol having 11 percussion caps inside the barrel was recovered under a heap of juar grain inside a vessel from the room occupied by

Jwala, his sons and their wives, Jwala was convicted. It was contended that it could not be safely inferred in the circumstances that Jwala was in possession and control of the pistol. Reliance was placed on the case of Kaul Ahir v. Emperor : AIR1933 All112 . Sulaiman C. J. and King J. distinguished that case on facts, being of the view that the pistol could not have been kept in the house by any other member of the family without informing the head of the family and that the head of the family could not have been unaware of the existence of an article of that size and description in the house. Besides, their Lordships took into consideration, that Jwala had been convicted of dacoity and had put up a false denial about the recovery of the pistol from inside the vessel in that room. Taking all these circumstances into consideration, their Lordships felt no doubt that Jwala must have been aware of the presence of the pistol in his house and held that he was in possession and control of it within the meaning of Section 19 (f) of the Arms Act. Their Lordships clearly noted that every case must be decided on its own facts and that they did not wish to lay down any general propositions of law. This case, therefore, in no way, affects the general proposition of law which was clearly laid down in the case of Kaul Ahir and against which nothing had been expressed in any earlier case. It is always open to a Court to give a conclusion on facts whether the accused, being the head of a family or an ordinary member of the family, was aware of the existence of the article recovered and consequently was in possession of it or not.

24. In the next case of Tulsi Ram v. Emperor : AIR1936 All650 , some counterfeit coins were found in a rack in one of the rooms occupied by Tulsi Ram and his brother Salig Ram. It was contended that Tulsi Ram was convicted merely because he was the head of the family. Allsop J. observed at p. 509 :

'I think it should be clearly understood what the law is on this subject of searches. It is certainly not intended that no person in possession of a house shall be convicted of being in possession of stolen property or counterfeit coin or anything of that kind if there happen to be other people living in the house and if it cannot be positively established that the person convicted had put the incriminating articles in the place where they were found. It must be shown in the first place that the incriminating articles were found in a place in the possession of the person to

be convicted. In the next place, it must be shown either by direct evidence or by circumstantial evidence from which a reasonable Inference can be drawn that the person to be convicted knew that these particular things were in the place where they were found.'

Allsop J. took into consideration the fact that the accused raised no protest at the time of the recovery to the effect that he had no knowledge of the existence of these articles and that he put up a false defence to the effect that he was not in possession of that room which had been allotted to his uncle on partition. We respectfully agree with the propositions of law laid down to determine whether a certain person was in possession of the article recovered and which imply that the mere fact that a person is the head of the family is not sufficient to hold that he was in possession of the articles recovered.

25. In the case of Maharaj Singh v. Emperor : AIR1945 All230 , a Batua, a gold bangle, some currency notes and cash were recovered from the house of Maharaj Singh and his brother Bhumjit Singh. The Sessions Judge found it established that Maharaj Singh had the guilty knowledge and was in possession of those articles- He was doubtful about the position of Bhumjit Singh. Waliullah J. observed at p. 125 :

'It seems to me, however, that there is no real divergence of judicial opinion with regard to the law applicable to the facts of a case like the present. It is settled law that the prosecution must establish not only that the stolen property was recovered from the house, or other place, in the occupation of the culprit but also that the incriminating article was in the house or other place and the culprit was fully aware of its presence there ..... As observed by their Lordships in Jwala v. Emperor : AIR1934 All548 every case must be decided on its own facts and it is not desirable to lay down any general propositions of law.'

Waliullah J. then considered the various circumstances of the case and in that connection observed :

'Lastly, it appears that the applicant is the elder of the two brothers who occupied the kotha in question and he has been described by the learned Sessions Judge

as the Manager of the joint family.'

He agreed with the finding of the Sessions Judge and accordingly confirmed the conviction. Taking into consideration that the applicant was the manager of the joint family does-not mean that his being the head of the joint family was considered as sufficient to hold that he was in possession of the articles recovered, from the house.

26. In the case of Hirdey Ram v, Emperor : AIR1946 All4 , Hirdey Ram, the appellant, had handed over a stick gun from a place inside his lemon grove. Harish Chandra took out a fountain pen, pistol and a revolver from a stack of wood in front of his house and by the side of the lemon grove. The places from which these articles were recovered were accessible to everybody and were open and public places. Harish Chandra and Hirdey Ram appellants were cousins. Sinha J. observed at page 531:

'The family of Ulfat Rai (uncle of Hirdey Ram and Harish Chandra) must in the absence of any evidence to the contrary, be deemed to be a, joint Hindu family. This, indeed, is the presumption of the Hindu law. It is true that the other members of the family have an interest by birth but this is only for certain limited purposes. So long as the head of the family is alive, the effective ownership and possession must be with the head That head, in this case, is Ulfat Rai. The possession must, therefore, be deemed to be the possession of Ulfat Rai .....

I shall take up the word 'control'. 'Control' means effective control. Effective control cannot be that of the junior members of the family, it must be with the head or the karta of the family .....

The articles were found, as I have said before, at a place not in the use or occupation of a particular individual. The lemon grove or bush or the place where the goods were found belonged to the whole family but possession must be deemed to be with the manager or the karta. No other member of the family could be said to have been in possession of the same.'

With respect we do not agree with the proposition that possession must be held to be of the head of the family. What we said in connection with the case of Queen Empress v. Sangam Lal, (15 ALL. 129: 1893 A. W. N. 48) applies. The case did not require any determination of the question whether the head of the family was in possession of the articles recovered as he was not an accused before the Court. Of course, we agree with respect with the conclusion that all members of the family could not be said to be in possession without any definite evidence of their particular possession over the articles and which was lacking in this case, the articles being recovered from places which were accessible to all people.

27. It would appear from the above that in none of the cases the head of the family was an accused, and was held to be in possession of the articles recovered on the mere ground that he was the head of the family. Of course it was expressed in cases in which other members of the family were accused that their possession cannot be inferred in the absence of evidence pointing to their knowledge of the existence of the articles recovered and that the possession would be deemed to be of the head of the family. Such an expression of opinion about the presumptive possession of the head of the family was in the nature of obiter dictum when the head of the family was not an accused and when the question of his possession was not before the Court.

28. In the case of Hangar Koiri v. Emperor, A. I. R. (23) 1936 pat. 512 : (38 Cr. L. J. 100), a Karabin, a small quantity of gunpowder and a few pieces of copper were found concealed under Bhusa in a loft in one of the rooms of the house which was occupied by Mangar Koiri, head of the family, and other accused Agarwala J. with whom Mad an J. agreed, after referring to the case reported in Empress v. Sangam Lal, 15 ALL. 129 : (1893 A. W. N. 48) observed:

'In the absence of proof in the present case that the room in which the weapon was kept was in the exclusive or particular possession of any member of the family, I am not prepared to hold that it can be inferred that the weapon was in the possession of any other person than the head of the family.'

We have already stated that the case reported in Empress v. Sangam Lal, 15 ALL. 129. (1893 A. W. N. 48) did not lay down that the bead of the family must in all

cases be held to be in possession of the articles recovered. No reason is given in this judgment for the view taken. With respect we are unable to agree with the view expressed in this case.

29. In the case of Emperor v. Mir Ahmad, A. I. R. (24) 1937 pesh. 73 : (38 Cr. L. J. 838), it was held, on a consideration of the above Patna case, Hangar Koiri v. Emperor (A. I. R. (23) 1936 pat. 512 : 38 Cr, L. J. 100) and its own unreported case:

'What the prosecution has to prove under Section 19 (f) of the Act is that the accused hag the arms in his possession or control. It appears to us that where several people occupy a house it should be presumed that the head of the family is in possession and control of everything in the house including unlicensed arms. It is of course open to him to rebut that presumption by any evidence which he can adduce.'

With respect we are unable to agree with this view. It does not appear to us that the head of the family must know about the existence of everything inside the house. In fact, in the nature of things, he is bound to be ignorant of many articles which may be in the house. It would be against the fundamental principle of criminal jurisprudence that a person be held to be in possession of an article merely on the ground of presumption as the head of the family without any evidence to show that he had any knowledge of its existence. It is, of course, not necessary that there should be direct evidence that he had such knowledge. Such direct evidence may be very difficult to obtain. But evidence there can be in the circumstances of the case from which the Court can be in a position to come to a conclusion on the question of the knowledge of the person concerned about the existence of those articles.

30. In the case of Harbans Singh v. Emperor A. I. R. (28) 1941 Nag. 296 : (13 Cr. L. J. 62), Gruer J. agreed with the Peshawar view (Emperor v. Mir Ahmad, A. I. R. (24) 1937 pesh. 73 : 38 Cr. L. J 838) and added that the weight to be attached to the presumption must vary according to the circumstances.

31. A similar view was expressed by Teja Singh J. in the case of Musa v. Emperor, A.I R. (31) 1944 Lah. 64 : (45 Cr L. J. 404).

32. A Fall Bench of the Lahore High Court considered the question in Emperor v. Santa, Singh, A. I. R. (31) 1944 Lah. 839 : (46 Cr. L. J. 1) and held that in cases where incriminating articles were recovered from a place in the occupation or possession of more persons than one and it is not possible to fix the liability on any particular individual, the Court is not bound to hold that such articles were in possession or under the control of the head of the family. Harries C J. with whom Din Mohammad and Sale JJ. concurred, observed at p. 343:

'In my judgment that is no presumption that a father or head of a family is in possession of everything contained in his house; neither can it be presumed that he is in control of anything so found. ... In my view, possession and control mean something more than mere constructive or legal possession and control. Can it be said for the purposes of the criminal law that a man in fact possesses or has under his control something, the existence of which he has no knowledge. It may be said that he possesses it but only on the assumption that a man possesses everything in the house which he possesses. In my view, however, possession and control required to constitute offences under the Explosive Substances Act and Arms Act, must mean conscious possession and actual control. A man must know of the existence of something before he can be said to control it or have it under his control. It must be remembered that under these sections of the Explosive Substances Act and Arms Act, mere possession of incriminating articles constitutes serious criminal offences and there must be in my view mens rea or guilty knowledge before a person can be convicted of such possession. If a father or house master is to be convicted merely because he is in possession of a house and therefore everything in it, then he can be held to be guilty where no mens rea exists and when he is entirely ignorant of the presence of an offending article ..... No presumption can be made that the head of a family or house master must know of everything which may be concealed in his house and unless such a presumption can be made, he cannot be convicted on mere evidence of recovery with nothing more.'

We may say with respect that we fully agree with these views.

33. A single Judge of the Patna High Court agreed with the view expressed in the Lahore Pull Bench case in Bkekha Ahir v. King Emperor, 48 Cr. L. J. 53 : (A. I. R. (34) 1947 pat. 236) and a Division Bench in the case of Sahenara Singh v. Emperor, A. I. R. (85) 1948 Pat. 222 : (49 Cr. L. J. 445). It may be mentioned that Nagpur High Court and Peshawar Judicial Commissioner's Court followed the earlier Patna case reported in Hangar Koiri v. Emperor, A. I. R. (23) 1936 Pat. 512 : (38 Cr. L. J. 100) and that this earlier Patna view has not been accepted in the later Patna case, (Sahendra Singh v. Emperor, A. I. R. (35) 1948 Pat. 222 : 49 Cr. L. J. 445).

34. The views similar to those expressed in the Lahore Pull Bench case were expressed by Walford J. in Chitter v. Emperor, 48 Cr. L. J. 17 : (A. I. R. (84) 1947 Oudh 114).

35. It would appear from the above that it is practically well settled that the mere fact that an accused is the head of the joint family is not sufficient to hold that he is in possession of the articles recovered from the house. It would depend on other circumstances whether his possession over the articles can be held to be proved or not. It is not possible to indicate what circumstances would suffice for a finding of his possession. Circumstances can be varied and they would be common with circumstances which can go to establish the possession of any other member of the house. Without being exhaustive, we may indicate that such circumstances can be the fact; that the articles, which were recovered, were in such quantity or of such a size that their presence in the house could not have been possible without its becoming known to the members of the household, including the head of the family. The article or articles any be lying openly in such a portion of the house where all members have free access. The article or articles might be in such use in the house as to force themselves to the notice of the members of the family.

36. There may be cases in which the head of the family knows of the existence of an article and yet he may not be in possession of it. Such will be the case when an article is proved to be in the exclusive possession of some other member of the family. A member of the family will be in exclusive possession of the article when

he keeps the article in such a manner that nobody else can have access to it. He may keep the article in a locked box or receptacle. In such a case it would be difficult to hold that the head of the family or any other member of the family was in possession of that article which apparently was in the exclusive possession of another member and to which the other members could not have had access ordinarily.

37. Coming to the facts of the present case, we find that the pistol and other ammunition were found concealed in a hole in the wall. The Opening of the hole was covered with bricks without the usual lime pointing between two bricks. It was this condition of the bricks which, according to the Sub-Inspector, raised doubts in his mind and led him to remove the bricks and thus to recover these articles. The articles could have been placed there by any member of the family. They are not of such a nature as to indicate that they could not have been kept in that hole without the fact coming to the notice of all the members of the family. The appellant expressed ignorance about the recovery of the articles stating that he was at the time ploughing his field. The prosecution evidence is, and we believe it, that the appellant was present at the time of the search. The fact that the accused does not directly admit the recovery of the articles from the hole in his house, and makes a wrong statement that he was at the time in the field, should not, in our opinion, be taken into .consideration in concluding that his wrong statement is a pointer to his guilt. An accused is tempted to make many wrong statements in order to avoid admitting incriminating circumstances. We are, therefore, of opinion that there is nothing on the record to indicate that Sughar Singh must have known the existence of those articles in that hole or that he himself concealed them there. It cannot, therefore, be held definitely that he was in possession of those arms which were recovered from his house.

38. The result, therefore, is that his conviction under Section 19 (f), Arms Act is bad. We accordingly allow this application, set aside the order of the Court below and acquit Sughar Singh of the offence under Section 19 (f), Arms Act. He is on bail and need not surrender.

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