

Satdeo and anr. Vs. Rex

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Court : Allahabad

Decided On : Oct-11-1949

Reported in : AIR1950All284

Judge : Agarwala, J.

Acts : Arms Act, 1878 - Sections 19(1)

Appeal No. : Criminal Revn. No. 1083 of 1949

Appellant : Satdeo and anr.

Respondent : Rex

Advocate for Def. : Aqiq Hasan, Adv.

Advocate for Pet/Ap. : B.S. Darbari, Adv.

Disposition : Application allowed

Judgement :

ORDER

Agarwala, J.

1. This is an application in revision against an order passed in appeal by the Sessions Judge of Azamgarh dismissing the appeal of the applicants against their conviction by a Magistrate under Section 19 (f), Arms Act and a sentence of 6

months' rigorous imprisonment.

2. The prosecution alleged that a gun and a spear were recovered from the house of the applicants who were own brothers. The gun was lying concealed under a heap of bhusa and the spear was recovered from underneath a behri (a big earthen vessel for storing grain). The applicants admittedly had no licence to keep arms. The defence was that the alleged arms were not recovered from their house. The prosecution-story has been believed by both the Courts below and I see no reason to differ from their conclusions on the facts of the case.

3. The question, however, that has been raised before me is whether, assuming that the prosecution case was true, the two applicants could be convicted. It is admitted that the house belonged to the two accused. It is, however, contended that any one of them might have concealed the arms and the other may be innocent; and since it cannot be ascertained who actually concealed the arms, none can be convicted. I think this contention has force.

4. The law dealing with a case in which arms had been recovered from a house owned by more than one person was recently discussed by a Bench of this Court of which I was a member : vide criminal Revn. No. 174 of 1948 (Sughar Singh V. Rex : AIR1950 All277 . It was observed in that case :

' When articles are recovered from a place which is occupied by several 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.'

5. Now in the present case, the articles were recovered from places where possibly one of the applicants alone might have concealed them. The articles were not visible and no presumption could be raised that both the occupants of the house knew about their existence. And since it cannot be known which of the two

persons had concealed the articles, none of them can be said to have been 'in possession' of them. This is a sorry state of affairs. But the Courts are helpless. It is for the Legislature to step in and remedy the defect in the law. The applicants have to be acquitted.

6. I, therefore, allow this application, set aside the order of the Courts below and acquit the applicants. If they are on bail, they need not surrender.

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