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Court : Allahabad

Decided On : Jun-26-1940

Reported in : AIR1940All449

Appellant : Abdul Rahman

Respondent : Emperor

Judgement :
ORDER

Braund, J.

1. This is a revision case which has caused me a little trouble. It is a case under Section 19(f), Arms Act. It is important in such cases as these-and indeed in other cases-where an offence under statute is alleged to look first at the statute itself. Section 19, Arms Act, reads thus:

Whoever commits any of the following offences...(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.

2. It has to be observed that the offence is constituted by 'possession or control' of any arms, etc. There is a great temptation sometimes to read into a statute words which are not there and I point out that there is nothing in this section about

'exclusive' or 'sole' possession or 'exclusive' or 'sole' control. Moreover, the test provided by the section is not as to whom the arms belong but whether they are in the 'possession' or under the 'control' of the person charged. With those observations I come to the facts of this case. The facts are not disputed and indeed, in this revision, they could not, I think, be disputed. In March 1939 there was communal trouble in Allahabad. For good and sufficient reasons the District Magistrate had occasion to search the house of this applicant Abdul Rahman. The house itself is one which may be described as running from west to east. It is approached from the west and three entrance doors give on to a single room. At the back of this room are two further doors, the one on the left hand side leading to a series of rooms which were in the personal occupation of the applicant, Abdul Rahman, who lived there with his two adult sons. The doorway on the right after passing through a small passage leads to a courtyard and a room which at the material time were in the occupation of another man, who possibly may have been a relative of Abdul Rahman, called Pir Mohammad. The result is that the front room, that is to say, the most westerly room served as a kind of entrance lobby by which access was gained both to the applicant's rooms and to the room or rooms occupied by Pir Mohammad. Apart from this common entrance, the two sections of the house were quite separate. I ought however to mention that there was an upstairs floor, but it does not enter into this story in any way and it is not really necessary to mention it again. It has been found as a fact that Pir Mohammad was a tenant in respect of his portion of the house from the applicant, Abdul Rahman.

3. The District Magistrate when he made his search discovered in the front room near one of the doorways a number of lathis and a bamboo with a spear head fixed to it, in short a spear. And, in consequence of that discovery, the applicant Abdul Rahman was charged under the Section of the Arms Act which I have read with being in possession or in control of this spear. Now, there are certain other facts which have been found in the Court below. It has been found, as I have already indicated, that Abdul Rahman lived in his portion of the house with his two sons. One of the sons is aged 16 and the other one is aged 20. It has, moreover, been found as a fact that the whole house belongs to the applicant and that the front room in addition to forming the common entrance is also used by him as a place to keep his odds and ends in and as a room in which he receives his visitors.

I omitted to mention that, at the same time as the discovery of the lathis and spear, a chopper was discovered in another part of the house which Abdul Rahman admits is his. The applicant, however, disclaimed all knowledge of the spear.

4. The short point in this case is whether upon these facts Section 19(f), Arms Act, has been satisfied, in other words whether they show that the spear in question was in the 'possession' or under the 'control' of Abdul Rahman, I point out again that we are not considering whom the spear belonged to or may have belonged to in the sense of who was the owner of it. No doubt if one could trace the ownership of it to the applicant, it would be difficult for him in circumstances such as these to say that his was not the 'possession' and the 'control' also. The converse will not hold good and it is quite possible that a man may possess or control an article notwithstanding that it does not belong to him. And again, as I have already pointed out, it is not exclusive possession or exclusive control that is required by the Section, but merely possession or control. I have been referred to certain authorities of this Court and the first to a case, Kaul Ahir v. Emperor : AIR1933 All112 . I do not think that this case is of great assistance in determining the one before me. It was a case in which two cartridges were discovered cunningly concealed in a cornbin. The learned Judges who composed the Bench which decided this case held that it was impossible to find that the head of a family is responsible on principle for the presence of articles in his house of which he may be wholly unaware. The essential difference between that case and the one which is now before me is that in the former case the articles were hidden and obviously before the prosecution could even start to allege possession or control, it was faced with the difficulty of showing that the person who was alleged to have possession or to have control knew that the articles were there. It is obvious that you cannot have either possession or control over something which you do not know exists. In the case now before me it is not, I think, possible for the applicant to say that he did not know that this spear was there. He does not attempt to say that and if he did it would be quite obvious that he was not telling the truth. There it was standing in the common entrance hall for all the world to use it. Then again, in Queen-Empress v. Sangam Lal (1893) 15 All 129, it is observed that

it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession.

5. With great respect, I think that possibly that is importing words into the Section which are not there and that it might be better expressed by saying that it must be shown that they are in the actual possession and not in the constructive possession of the particular person charged. Looking at the Section fairly, I think and the authorities appear to me to support this view that it is actual and physical possession and control that the Act is speaking of and not merely a 'possession' or 'control' by construction of law. The offence, as it seems to me, is the offence of physically and actually possessing or controlling the arms in question. It is not a liability to be found in a merely constructive or presumed possession or control which the law might for other purposes import into the facts of the case. Now, applying these principles how do they affect this case? There are two possibilites. It is possible to say that Pir Mohammad, the tenant, might just as well be the actual possessor and controller of the spear as Abdul Rahman. It is said that he uses this common entrance lobby and that there is nothing to show that the spear is not his. In short, it suggests that the spear might have been left in the entrance room in much the same way as one leaves one's umbrella in the hall on entering the house. I am not attracted by this view. I think upon the evidence, the room has been shown to be in the exclusive possession of Abdul Rahman except that perforce the tenant Pir Mohammad gets access to his own room through it. There is no evidence of any kind on the record that Pir Mohammad ever used it otherwise than for the purpose of passage.

6. The other question, and to my mind a far more troublesome one, is whether it is possible to say upon these facts as proved that the possession and control of the spear belonged to Abdul Rahman rather than to either of his two adult children. That is the really difficult question to my mind. These two lads, one of them 16 and the other one 20, lived with their father, and used, no doubt, the living quarters of the house in common with him. No doubt they kept their own goods and chattels in the house just as members of every family do. And in the same way as an umbrella standing in the common umbrella-stand of a house might belong to any

inmate of it, so it seems to me that this spear might have belonged just as much to one of these two boys as to their father. Not that ownership is the test. The test is actual possession and actual control. Even if this spear belonged to one of his sons, would it be possible to say that Abdul Rahman had actual possession and actual control of it? I am doubtful; I do not think it would. It would not have been his to possess and it would not have been his to control and, as I have already pointed out, we are dealing with actual possession and actual control and not with constructive possession and constructive control. It seems to me for these reasons that the requirements of Section 19(f) have not been fully complied with and that the prosecution in this case has failed to show that Abdul Rahman was in possession or in control of this spear in the sense in which the terms 'possession' and 'control' are used in the Act. I accordingly allow this revision not without some hesitation-and set aside the sentence and conviction. The bail bond will be discharged.

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