

Ram Chander Vs. Rex

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Court : Allahabad

Decided On : Nov-07-1949

Reported in : AIR1950All386

Judge : Desai, J.

Acts : Arms Act, 1878 - Sections 13 and 20

Appeal No. : Criminal Appeal No. 532 of 1949

Appellant : Ram Chander

Respondent : Rex

Advocate for Def. : Rama, Addl. A.G.A.

Advocate for Pet/Ap. : E.V. David, Adv.

Judgement :

Desai, J.

1. This is an appeal from a judgment of the Sessions Judge of Agra convicting the appellant under Section 20, Arms Act and sentencing him to rigorous imprisonment for two years.

2. The appellant arrived at Agra Cantonment Railway Station by train on 26-6-1948 at about 3 P. M. Two Excise peons, Sughar Singh and Tilak Singh were on

duty at the station checking suspicious luggage of passengers. Sughar Singh noticed the appellant with a hand-bag walking through the crowds. His suspicion was excited and he stopped him on the platform and asked him what the bag contained. It was a canvass bag and locked. The appellant stated at first that there was nothing in it and later that there was a pistol or something dangerous in it, Sughar Singh asked for the key which he refused to give at first. He was threatened and then he took out a ring containing two keys, one of which opened the lock. Inside the bag there was a pistol. The appellant could produce no licence, Sughar Singh prepared a search list in the presence of Panchia coolie and Raja Ram bearer of the refreshments room and then took the appellant together with the bag and the pistol to the railway police station where at about 4 P. M. he made report about the matter.

3. The appellant pleading not guilty denied that the bag or the pistol was in his possession. He admitted having arrived at Agra by train and having been arrested at the station. He stated that he arrived there from Gwalior, handed over the ticket and passed out through the gate when Sughar Singh called him and took him to the police station and that he (Sughar Singh) had a bag in his hand and made a report that the bag was in his (appellant's) possession. He denied that any key was recovered from his possession, or that he was arrested on the platform. He admitted that he held no license for a pistol.

4. Sughar Singh, Panchia and Raja Ram are the witnesses for the prosecution ; they all support the prosecution case. The statement of Sughar Singh is corroborated by the first information report. The most important fact to notice about his evidence is that there was absolutely no reason for him to concoct a false case against the appellant. The appellant himself stated that he was not even known to him. No altercation of any kind had taken place and I am not prepared to believe that all of a sudden, for no reason whatsoever, Sughar Singh took it into his head to bring a false charge against the appellant. I do not know how he had a pistol ready to be planted on the appellant. There are some contradictions among the statements of the three witnesses but they are natural and do not necessarily indicate either that some of the witnesses were not present or that they were telling lies, If one witness stated that Sughar Singh had a fountain pen with which

he prepared the search list and another stated that he obtained a pen from somewhere or if one stated that he prepared one list and another that he prepared two lists, or if one stated that the appellant said that there was a pistol in the bag and another that he said that there was something dangerous in it, it does not mean that the evidence of the witnesses should be disbelieved. Neither Panchia nor Raja Ram had any grievance against the appellant. The search list is missing so are the keys. It seems that a key was kept in the lock of the bag from where it slipped out and got lost, along with its companion, The prosecution produced before the Court a copy of the search list prepared from another copy of it. There are some mistakes in the preparation of the copy but that is immaterial. The keys are mentioned in the copy. It is in the evidence that the appellant started disclaiming his ownership of the bag but that was natural when he was caught with it in his possession. He knew that the bag would be opened and the pistol would be found inside. His denial does not necessarily support his case that the bag was planted upon him. When he said that the bag was not his, he did not mean that it had been planted upon him by Sughar Singh.

5. The appellant examined one witness in defence. He is a rickshaw driver Allahdin of Agra. Allahdin stated that he was present on the platform when the appellant was arrested by Sughar Singh on a false charge. He asked Sughar Singh why he arrested the appellant and Sughar Singh replied that he had left some luggage; this is different from what was said by the appellant himself. According to the appellant, Sughar Singh simply took him to the police station without saying anything. Allahdin stated that the appellant enquired of his name there and then and that he not only told him his name but also went out of his way to promise that he would give defence evidence for him if necessity arose. I do not know how any reliance can be placed upon the testimony of such a witness who goes about proclaiming his readiness to give evidence even for people not known to him.

6. The case is quite clear; the appellant had the bag in his possession and the bag contained the pistol for which he held no licence. He is undoubtedly guilty under Section 19 (f) of the Arms Act. It now remains to be seen whether he is also guilty under Section 20, Arms Act.

7. It is to be noted that the appellant has been found guilty of being in possession of the pistol and not of going armed; this is clear from the finding of the learned Sessions Judge that he is guilty at least under Section 19 (f), Arms Act. I do not think that the appellant could be said to have gone armed when he had no present intention of using the pistol. He had kept it in the locked handbag; he was not carrying it in his hand. Unless a man carries arms with the intention of using them he is not guilty under Section 13 of going armed.

8. Having in possession or under control a pistol is punishable under Section 19 (f) and doing so 'in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway' is punishable under Section 20, para 1.

9. The intention of the appellant behind his keeping the pistol in the hand, bag is not known by any direct evidence. The learned Sessions Judge has presumed that it was to conceal the fact of his having the pistol in his possession. It will not be disputed that when a person carries a pistol in a hand-bag, the intention that his possession of it should not be known to any person is not the only intention which can explain that Act; it is capable of being explained by other intentions as well. If it cannot be explained by any other intention, the offence would certainly be of Section 20. But if it is capable of being explained by other intentions also, one has to see what was the predominant intention. If it was to conceal the possession, he would still be found guilty under Section 20. The test that I would apply to ascertain if concealment of the possession was the predominant intention or not is whether he would have carried the pistol in the same manner even if he held a licence for its possession. If he would carry it in a locked hand-bag even if he had a licence and consequently had no reason to conceal the fact of his possession from a public servant or a railway servant, then it cannot be said that concealment was the predominant intention behind the act of carrying it in a locked bag. Courts have refused to infer an intention to conceal the possession when unlicensed arms are carried in a manner which is a usual or convenient manner of carrying even licensed arms. If an unlicensed pistol is carried in a pocket it is not held to be concealment bringing the offence within the purview of Section 20; see *Udham Singh v. Emperor*, 16 Cr. L. J. 637: (A. I. R. (2) 1915 Lah. 193), *Ghulam*

Mohammad v. Emperor, A. I. R. (14) 1927 Lah. 561: (28 Cr. L. J. 671) and Ganga Prasad v. Emperor, 34 Cr. L. J. 890: (A. I. R. (20) 1933 Pat. 498). In Udham Singh's case: (16 Cr. L. J. 637: A. I. R. (2) 1915 Lah. 193), Leslie Jones J. observed:

'No man, however, who carries a revolver, would put it anywhere else than in a pocket. For the sake of convenience he would not think of carrying it in his hand, and unless he wished to advertise its possession to the whole world, he would not carry it exposed to view as in a belt.' When a man carried unlicensed revolvers and cartridges in a gunny bag to a place arranged for their sale, the Court refused to convict him under Section 20, observing that he merely carried them in a convenient manner to the place without any anticipation of meeting the police and consequently without having any idea of concealing them; see Chet Singh v. Emperor, A. I. R. (13) 1926 Lah. 262: (27 Cr. L. J. 625). I do not think it makes any difference whether a pistol is carried in a pocket or in a hand-bag; both are usual and convenient modes of carrying it. Carrying it in a hand-bag even if it be looked, indicates no greater intention to conceal the possession than carrying it in a pocket. A man may carry currency notes in his pocket without having in his mind any intention of concealing its possession from the public. If he carries it instead in a hand-bag nobody would say that he did so with an intention of concealing it from the public. The fact that the pistol is not visible to the public is absolutely irrelevant. The law is not so absurd as to lay down that when a person has in his possession an unlicensed pistol he must carry it exposed to the public view lest he should be found guilty of the graver offence of Section 20. It certainly does not expect a man having no licence for a pistol to advertise his possession of it by carrying it exposed. This fact has been relied on in the cases of Udham Singh v. Emperor, 16 Cr. L. J. 637: (A. I. R. (2) 1915 Lah. 193) (supra), Channan Singh v. The Crown, A. I. R. (12) 1925 Lah. 395: (26 Cr. L. J. 733) and Chet Singh v. Emperor, A. I. R. (13) 1926 Lah. 262 : (27 Cr. L. J. 625). A man does not always carry even a licensed pistol exposed to the public view. Therefore in the words of Sir Henry Scott. Smith in the case of Channan Singh v. The Crown (A. I. R. (12) 1925 Lah. 395: 26 Cr. L. J. 733)

'something more than a mere ordinary concealment should be established,' before the accused can be held guilty under Section 20. It was stated in *Jogendra Mohan v. Emperor*, 34 Cr. L. J. 879 : (A. I. R. (20) 1933 Cal. 516), that there is a strong presumption that a person in unlicensed possession of a revolver has a fixed intention that his possession should not become known to public servants. This presumption can be said to exist in respect of all offences, committed by all persons and not merely in respect of an unlicensed possession of arms. To start with the presumption that the concealment is with the intention referred to in Section 20 is to rewrite the law. The law is not that a person is prima facie guilty under Section 20 and would be guilty under Section 19 (f) only on his showing that he did not intend to conceal his possession of the arms; it is otherwise. Some kind of concealment of the possession is contemplated by the legislature because as I said earlier, it would be monstrous for it to lay down that a person keeping in his possession unlicensed arms must keep them exposed to the public view lest he should render himself liable to a severe penalty. The intention mentioned in Section 20 has to be proved by the prosecution though it will usually be proved from circumstantial evidence. But there must be circumstances from which it can be presumed; the Court cannot start with assumption of the intention from the mere circumstance that the arms are not exposed to the public view. The legislature has laid the onus of proving the special intention on the prosecution and the prosecution cannot be disburdened of the onus. That something more than ordinary concealment which is natural and to be expected of every criminal is clear from a number of authorities. It was the difficulty of distinguishing between the ordinary concealment and the special concealment sought to be punished under Section 20 that led some Courts to the view that Section 20 is meant to punish only concealed exports and imports of arms. A well-known case in which such a view was adopted is *Ibrahim v. Crown*, 44 P. W. R. Cr. 1912 : (9 P. R. 1912). *Kensington J.* stated at p. 21:

'Section 20 should not be applied to ordinary cases of concealment of arms, though the reasons have not been very clearly stated by the learned Judges, the conclusion appears to have been that Section 20 directly applies only to cases where imports or exports of arms is attempted. This appears to me to be a reasonable conclusion. There is otherwise no possibility of distinguishing ordinary

cases of concealed arms under Section 19 and of proving that the special intention was to conceal from the police. It is obvious that whenever arms are illegally possessed, and are concealed in order to hide the possession, Section 20 would on a literal construction of the wording be applicable rather than Section 19, but such is not the usual practice of the Courts.' Channan Singh (A. I. R. (12) 1925 Lah. 395 : 26 Cr. L. J. 733) followed Ibrahim's case: (44 P. W. R. Cr. 1912: 9 P. R. 1912) but the view was expressly dissented from by the Lahore High Court and other High Courts in Chet Singh's case (A. I. R. (13) 1926 Lah 262: 27 Cr. L. J. 625), Sachindra v. Emperor : AIR1933 Cal692 ; Mt. Babo v. Emperor, 26 Cr. L. J. 1459: (A. I. R. (13) 1926 Lah. 61). Jagdish Dutt v. Emperor . I certainly agree with the later authorities but I also agree with Kensington J. when he remarked that ordinary concealment should be distinguished from the special concealment sought to be hit by Section 20. In Chet Singh's case, (A. I. R. (13) 1926 Lah. 262 : 27 Cr. L. J. 625) Addison, J. observed:

'There must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a railway official.' According to Leslie Jones, J. in the case of Udham Singh, 16 Cr. L. J. 637: (A. I. R. (2) 1916 Lah. 193):

'If a man is in reality trying to conceal a revolver in such manner as to bring him within the purview of Section 20 of the Act, there will probably be some other evidence, such as conduct for instance, to justify his conviction.' In Ram Sarup v. Emperor, 3 A. L. J. 833 : (3 Cr. L. J. 88), Bannerji J. was of the opinion that 'there must be some overt act of concealment or attempt at concealment.' There is no evidence in the present case of any special concealment which can be distinguished from the ordinary concealment. There is no evidence of any overt act. On the other hand, there is the clear statement of Sughar Singh himself that the appellant confessed, even before the hand-bag was opened, that there was a pistol in it. When he himself confessed that there was a pistol, I do not know how it can be said that he kept it in the hand-bag with the intention of concealing its presence there from a public or railway servant. In Surjan Singh v. Emperor, 26 Cr. L. J, 166; (A. I. R. (10) 1923 Lah. 10), the accused, who was travelling by train, had concealed arms in his loin cloth but himself took them out before a railway

official and even though he did this in order to threaten him he was held guilty not under Section 20 but under Section 19.

10. In the case of Sachindra v. Emperor: : AIR1933 Cal692 , Harsh Nath v. Emperor (A. I. R. (2) 1915 Cal. 719: 16 Cr. L. J. 9), Jagdish v. Emperor , Jodh Singh v. Emperor, 40 Cr. L. J. 279: (A. I. R. (26) 1939 Lah. 17) and Emperor v. Man Singh A. I. R. (29) 1942 ALL. 349; (43 Cr. L. J. 854), conduct has been considered in order to arrive at the finding that the concealment was with the special intention referred to in Section 20, Sachindra Kar Gupta appeared confused when he met the police at crossing and began to shiver when he was stopped by them and tried to bolt away when challenged by the police. Harsha Nath Chatterji kept illicit arms in a house taken by him under a false name and the doors and windows of which he always kept closed. Jagdish Dutt Shukla attempted to get the revolver which he had kept under his pillow when his room was suddenly raided by the police. Man Singh was found sitting on a platform looking suspiciously at his jhola which contained a revolver. All these persons were found guilty under Section 20. The act done by them was to possess arms without a licence. With respect to the learned Judges who decided those cases, I find it somewhat difficult to see any connection between the conduct and the manner in which the arms were possessed by them. The conduct was clearly of nervous people who had a guilty conscience. It had nothing to do with the manner in which they possessed the illicit arms. If the particular intention referred to in Section 20 is to be deduced from the conduct, it must be such conduct as is connected with the manner of possession. The intention must be indicated by the manner of possession; this is what Section 20 says. And if it is indicated by conduct, the conduct must have intimate connection with the manner of possession. In the present case, there is evidence of Sughar Singh that the appellant tried to slip away secretly through the crowd and refused to deliver the key of the bag on demand. His statement that he tried to slip away secretly is very vague. If a passenger walks fast and makes his way through crowds there is nothing suspicious in it, Raja Ram only found the appellant walking briskly; and Panchia stated that he at first denied his ownership of the bag. I do not find anything in this conduct suggesting that the appellant's intention behind keeping the pistol in the hand-bag was that mentioned in Section 20.

11. Antecedents of accused were relied upon in Prem Kumar v. Emperor, 33 Cr. L. J. 110: (A. I. R. (18) 1931 Lah. 571). A revolutionary was caught at a railway station with a trunk containing an unlicensed revolver and he was presumed to have intended to conceal his possession of the revolver from railway officials. As there is no evidence of any antecedent of the appellant I need not discuss how far antecedents are relevant in an enquiry about the intention behind carrying an unlicensed pistol in a hand-bag or trunk, In Jogendra Mohan's case: : AIR1933 Cal516 reliance was placed upon the fact that he did not offer any explanation for his being found in possession of an unlicensed revolver. The appellant before me similarly might have failed to give explanation for his possession but I do not know how I can deduce that he had the particular intention merely from his failure to give explanation.

12. Of the cases discussed by me those of Chet Singh, (A. I. R. (13) 1926 Lah. 262: 27 Cr. L. J. 625), Prem Kumar (33 Cr. L. J. 110: A. I. R. (18) 1931 Lah. 571), Sachindra Kar : AIR1933 Cal692 , Jodh Singh, (40 Cr. L. J. 279 : A. I. R. (26) 1939 Lah. 17), Mt. Babo (26 Cr. L. J. 1459 ; A. I. R. (13) 1926 Lah. 61) Man Singh (A.I.R. (29) 1942 ALL. 349 : 43 Cr. L. J. 854), Harsh Nath (A. I. R. (2) 1915 Cal. 719 : 16 Cr. L. J. .9), Jagdish Dutt and Jogendra Mohan : AIR1933 Cal516 are the cases in which the accused was found guilty under Section 20, In Chet Singh's case (A. I. R. (13) 1926 Lah. 262: 27 Cr. L. J. 625), it was only an obiter dictum of Addison J. that

'For example, if arms were carried hidden on a railway journey this special intention might be easy to infer.' With respect I do not find it easy to follow the cases of Prem Kumar (33 Cr. L. J, 110: A. I. R. (18) 1931 Lah. 571), Jodh Singh (40 Cr. L. J. 279: A. I. R. (26) 1939 Lah. 17), Jogendra Mohan : AIR1933 Cal516 and Man Singh. (A. I. R. (29) 1942 ALL. 349: 43 Cr. L. J. 854). Sachindra Kar Gupta carried a loaded revolver in a holster tied round his waist with a cloth under his shirt. That probably was an unusual mode of carrying a revolver; he might not have carried it in that manner if he held a licence. In Babo's case 26 Cr. L. J. 1459 : A. I. R (13) 1926 Lah. 61), there was more than ordinary concealment; the accused who was a woman, hid under the chaddar that she was wearing a bag containing arms. A woman does not go armed and everything was unusual about

the manner in which Babo carried the arms. Harsha Nath also acted unusually in the matter of keeping illicit arms in his house. Jagdish Dutt Shukla's case was covered by para. 2 of Section 20 with which I have no concern. There is one more case, Abdul Wahid v. Emperor, 29 Cr. L. J. 256: (A. I. R. (15) 1928 Lah. 110), in which the accused was convicted under Section 20 because he was found on a railway platform with arms concealed in his loin cloth. If it was an unusual way of carrying arms tied in the loin cloth the conviction under Section 20 is understood.

13. Among the cases in which the accused was convicted under Section 19 rather than under Section 20 and from which I derive some support for my view are those of Ram Sarup (3 A. L. J. 833: 3 Cr. L. J. 88), Ghulam Mohammad. (& I E. (H) 1927 Lah. 561: 28 Cr. L. J. 671), Chet Singh (A. I. r. (13) 1926 Lah. 262: 27 Cr. L. J. 625) and Surajan Singh (26 Cr. L. J. 166: A. I. R. (10) 1923 Lah. 10), Sabjhatullah Shah v. Emperor, 32 Cr. L. J. 517: (A. I. R. (18) 1931 Sind 9 and The Crown v. Azu, 9 Cr. L. J. 259: (1 S. L. R. 18). Ram Sarup concealed fire arms in a granary and behind the beams in his shop and even denied at the commencement of the search that he had any illicit arms in his possession still he was not found guilty under Section 20. Ghulam Mohammad was caught in a Court compound with arms concealed in a fold of the loin cloth. Chet Singh carried revolvers and cartridges in a gunny bag. Surjan Singh travelling by train, had arms concealed in his loin cloth. Sabjhatuallah Shah kept arms in locked box in the tahkhana of his house. Azu concealed arms under straw in his house. I do mention cases of Ibrahim (44 P. W. R. Cr. 1912: 9 P. R. 1912) and Channan Singh (A. I. R. (12) 1925 Lah. 395: 26 Cr. L. J. 733) because they proceeded on a view which has been discarded by later authorities.

14. I am unable to find that the appellant had any intention of concealing the pistol from a public servant or a railway servant when he carried it in his hand-bag; he might have carried it in the hand bag as a convenient and usual mode of carrying it. He cannot be convicted under Section 20 in the circumstances.

15. The sentence of two years imprisonment does not call for any reduction even though the conviction is altered.

16. I alter the conviction from one under Section 20 to one under Section 19 (f), Arms Act, and with this modification dismiss the appeal, maintaining the sentence. The appellant, who is on bail, must surrender himself to undergo the unexpired portion of his sentence.

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