

Babu Ram Vs. Emperor

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Court : Allahabad

Decided On : Jul-15-1918

Reported in : 47Ind.Cas.801

Judge : Piggott, J.

Appellant : Babu Ram

Respondent : Emperor

Judgement :

Piggott, J.

1. Babu Ram appeals against his' conviction on a charge under Section 19(f) of the Indian Arms Act (XI of 1878). The case against him is that he had in his possession and under his control two swords, one gun, one pistol and certain ammunition in contravention of the provisions of the Arms Act, that is/to say, without having any license for the same. The evidence has been fully set forth and discussed in the admirably lucid and convincing judgment of the Session? Court and I do not propose to go into it at length. The essential facts are that a certain house was searched upon information given by one Khiali Ram, who has been produced as a witness for the prosecution, and that the arms which are the subject-matter of the charge were found in a receptacle formed by hollowing out a log of wood, the receptacle itself being buried underground in a small room in a corner of the building. The case for the defence is that-' the discovery of the arms

in that place does not prove that they were in the possession or under the control of Babu Ram. The suggestion further is that it is a matter of fair inference from the evidence that they had been concealed in that place by enemies of Babu Ram in order to get him or his father Hulas Rai into trouble. The decision of the questions thus raised must depend upon the proper appreciation of certain evidence given by Sub-Inspector Mafuz Ali Khan and the witnesses Angan Lal and Sikhar Chand on the one side, and the witnesses Maharaj Singh, Chunni Lal and Gokul on the other. Maharaj Singh and Chunni Lal were official witnesses to the search, that is to say, the witnesses from the neighbourhood of the appellant's house whose attendance had been procured by the Sub-Inspector in accordance with the Section 103 of the-Code of Criminal Procedure. The Sub-Inspector had complied with the law by calling in these two persons, but the fact that he had done so does not bind the Court to accept as true their evidence, if it can be shown to be false, in the present case the Sub-Inspector for ' reasons sufficiently apparent had taken the trouble to secure the attendance of two other witnesses; the evidence given by himself and by these men, Angan Lal and Sikhar Chand, receives strong corroboration from the unimpeachable testimony of Rai Bahadur Man Singh, Superintendent of Police, and Mr. Sheo Rakhan Singh, Deputy Magistrate, I have not the slightest doubt, after an examination of the record, that the learned Sessions Judge, who had the concurrence of the Assessors, was perfectly right in rejecting the evidence of Maharaj Singh, Chunni Lal and Gokul. Anything less convincing on the face of it I have rarely read. Their assertion that the house in question had been lying vacant for years is conclusively disproved by the observations made on a subsequent date by the Superintendent of Police and the Deputy Magistrate. The most crucial point in their evidence, namely, the assertion that the Sub-Inspector on entering the house went straight to the remote and somewhat isolated chamber in which the discovery was made, is introduced in a singularly unconvincing manner in the evidence of Maharaj Singh, and is, in my opinion, quite sufficiently contradicted by the ordinary probabilities of the case. The conduct ascribed to the Sub-Inspector by the defence evidence is that of a man at once unscrupulous and singularly guileless and open in betraying himself by his actions. I am satisfied that the inner room in which these arms were found was under the control and in the exclusive possession of the appellant Babu Ram. He

had the key of the outer door of the house in his own possession. He was the only inhabitant of the house (along with his family) at the time of the search, and he produced from his own possession the key of the inner room from which alone the small closet in which the unlicensed arms were found could be approached. I have not been asked by the prosecution to reconsider the question whether the learned Sessions Judge was right in refusing to record the conviction in this case under the first clause of Section 20 of Act XI of 1878. Personally I find it difficult to understand with what purpose the offences mentioned in Clause (f) of Section 19 of the said Act are included in the list of offences specified in the first portion of Section 20, if that section was not intended to apply to such a case as the present. The question must not be confused by reference to the wholly distinct question of the scope of the second clause of Section 20 of Act XI of 1878, in respect of which I in no way dissent from the opinion pronounced by a learned Judge of this Court in the case of *Ram Sarup v. Emperor* 3 A.L.J. 883 : 28 A. 309 : A.W.N. (1906) 11 : 3 Cr.L.J.88. The sentence passed, however, was within the power of the Court below under Section 19 of Act XI of 1878, and I see no adequate reason for making a formal alteration in the conviction.

2. A strong point has been made on behalf of the appellant of the alleged illegality of the search of this house by the Sub-Inspector Mafuzs Ali Khan, without a warrant from a Magistrate. I find nothing in the provisions of Chapter VII of the Indian Arms Act to make such a search illegal. Section 25 deals with the special case of a Magistrate who receives information that a person who has arms, ammunition or military stores in his possession, is keeping them for some unlawful purpose or that for any other reason such person cannot be allowed to remain in possession of the same without danger to the public peace. In cases falling under Section 25 it is wholly irrelevant whether (the arms, ammunition or military-stores in question are or are not covered by license. Unlicensed possession of arms' punishable under Section 19, Clause (f) of Act XI of 1878, is a cognisable offence, and is, therefore, an offence which under the Code of Criminal Procedure a great many Police Officers are entitled to investigate. In the conduct of such an investigation a search for the purpose of discovering the arms in respect of which it is believed that an offence has been committed would be legal under Section 165 of the Code of Criminal Procedure. The Legislature, however, has seen fit to

restrict the, powers of Police Officers in the, matter of offences punishable under Section 19; Clause (f) (f the Indian Arms Act, by the special provisions of Section 30 of the said Act. The power of search in' respect of an offence punishable under that particular clause of the Act is required to be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf. The Local Government has seen fit to empower amongst other reasons. Police Officers in charge of reporting stations, by virtue of their office, to conduct such searches Sub-Inspector Mafuz Ali Khan was on the date in question an officer in charge of a reporting station and there is nothing illegal in the action taken' by him. I am quite satisfied that the appellant has been rightly convicted and I am not pre-pared to interfere with the severity of the sentence, passed by the Court below. I think the learned Sessions Judge has given an adequate reason for the same. I dismiss the appeal. The appellant must' surrender to his bail to undergo the unexpired portion of his sentence.

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