

In Re: Ramalinga Goundan

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Court : Chennai

Decided On : Aug-06-1937

Reported in : AIR1937Mad975; (1937)2MLJ620

Appellant : In Re: Ramalinga Goundan

Judgement :

ORDER

King, J.

1. The petitioner has been convicted under Section 19(f) of the Indian Arms Act by the Sub-Divisional First Class Magistrate, Coimbatore, and his conviction has been confirmed on appeal by the learned Sessions Judge. The evidence for the prosecution shows that on the morning of the 9th October, 1936, a miscellaneous collection of arms and ammunition was found in a house belonging to the petitioner at Kuppandam palayam. The petitioner had been arrested on a charge of murder in Coimbatore the previous evening. Except the fact that the arms and ammunition were found in the petitioner's house there is really no evidence for the prosecution and the case against the petitioner depends upon the evidence of the discovery in the house, whether it is of itself sufficient for a conviction or not. The defence was that the contraband property must have been foisted into the house by some one of the petitioner's enemies and an attempt was made to prove by positive evidence that persons had been seen tampering with the roof of the house on the night before the property was seized. Both the Courts have unhesitatingly

refused to accept this evidence for the defence and I see no reason to differ from them. They point out the impossibility of any attempt having been made within so brief an interval to foist a case against the petitioner. The Courts below however appear to have laid very much stress upon this failure of the defence, to reach another conclusion, namely, that because the defence put forward was the tampering with the roof within a few hours of the discovery of the property, the petitioner must have himself lived in the house until very shortly before the discovery, and in fact the Courts below seem to me to have proceeded on the assumption that there can have been no possible alternative case between that for the prosecution and that attempted to be proved by the defence. When defence evidence of this kind is rejected, the situation simply is as if the evidence had never existed. If the defence evidence is believed, it would of course rebut the prosecution. If it is not believed, the prosecution is left just where it was before the defence witnesses were called and it cannot be assumed for a moment from the evidence let in by the defence that there is any admission that the petitioner or his family were living in the house until the night before or a day or two before the discovery of the property. The learned Sessions Judge assumes in paragraph 3 of his judgment that the petitioner and his wife were in the house a day or two previously. The petitioner does not say this in any statement of his own and I have found no trace of any possible statement to that effect in the evidence of his wife. No witnesses were called by the prosecution to prove just at what time the petitioner was in residence in this house and the omission to adduce this evidence is of some importance when it is remembered that the petitioner was in the habit of staying at no less than three houses. So far as the evidence goes it is impossible to be certain that this house had not remained untenanted for a long period. No doubt the house was locked and would normally be locked. No doubt a grave suspicion is cast upon the owner of the house in a case of this kind, but after all the articles found are not *prima facie* the type of articles which would be kept by a man who wished to shoot with a gun or a revolver without a license. Most of them are quite unserviceable and there is a mass of miscellaneous collection of cartridges some of which might and some of which could not fit the gun or revolver. The property found therefore of itself suggests the possibility that the plea of foisting put forward by the petitioner in this case may not be altogether

unreasonable. If there had been clear evidence that the petitioner had been living in this house until within a short period before the discovery, I do not think I would have been justified in interfering with the conviction. But as no attempt has been made to prove just when the accused was last residing in the house I think a sufficient element of reasonable doubt is introduced into this case to make it possible that the petitioner's plea might be true and to warrant his acquittal I accordingly set aside the conviction and sentence and direct the petitioner to be acquitted and that his bail bonds be cancelled.

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