

In Re: Muthuswami

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Court : Chennai

Decided On : Nov-02-1955

Reported in : (1956)IMLJ304

Judge : Ramaswami, J.

Appellant : In Re: Muthuswami

Judgement :

ORDER

Ramaswami, J.

1. This is a criminal revision case filed against the conviction and sentence of the learned Additional First Class Magistrate of Pudukottai in C. C. No. 154 of 1954 and confirmed by the learned Additional Sessions Judge of Tiruchirapalli Division in C. A. No. 397 of 1954.

2. The case for the prosecution as established by the five witnesses examined by them was as follows : P. Ws. 1 and 3 are the forest guard and watcher of Tiruvarangulam reserve forest. Their evidence is that on 21-5-1954 while patrolling the forest in Milakaranai block No. 5 beat at about 5-30 p. m. they heard a gun shot noise, that they went towards the spot, that seeing the hoof mark's of a deer they waited there for some time behind a bush, that they saw the accused tracking the hoof marks of the deer holding a gun in his hand, that they immediately caught him and snatched the gun from him and that when p. w. 1 made preparations to

record a statement from the accused the latter took to his heels disappeared among the bushes leaving the gun with them.

Afterwards they went to the village headman of Tiruvarangulam P. W. 2, and gave a report Ex. P. 1 as they already knew the accused's name who belonged to Monganapatti, nearby village. P.W. 2 sent the gun with his report, .Ex. P. 1(a) through the Forest Guard, P. W. 1 himself to the police station where the police recorded another complaint Ex. P. 2 from him. P. W. 1 stated that the gun M. O. 1 which was a single-barrelled muzzle loading gun was not loaded when he seized it from the accused.

P. W. 5 the court clerk spoke to the sending of the gun to the Chemical Examiner for examination. The report of the Chemical Examiner Ex. P. 5 showed that the gun had been used recently. P. W. 4 the Sub-Inspector of Police, Alangudi, investigated the case and filed the charge-sheet for an offence under Section 19 (e) of the Indian Arms Act. The Sub Inspector testified that the gun M. O. 1 was in working order.

3. The accused denied the occurrence and stated that he had been falsely implicated by P. W. 1 who is his enemy.

4. Both the lower courts came to the conclusion that on this evidence the prosecution has brought home the offence beyond reasonable doubt to the accused and convicted and sentenced him. Hence this criminal revision case.

5. In the lower court it was strenuously contended that inasmuch as the gun was not loaded when P. Ws. 1 and 3 seized it from the accused in the forest, the accused cannot be said to have gone armed. Therefore the term 'going armed' may be briefly construed.

6. The expression 'going armed' clearly indicates two things, namely, first an intention to use it as a fire-arm, and secondly the possibility of using it. Thus, there must be an intention to use the arm. Where there was only one empty cartridge in the weapon, and no cartridges at all were found on the person of the accused, which showed that it would be possible for him to use the weapon as a fire-arm, it

was held that, for the purpose of a conviction under this clause, there must be some clear evidence of intention on the part of the accused to use the weapon.

In the absence of such evidence, this clause would fail to apply : In re Sonaimuthu Ambalam v. Emperor AIR 1925 Mad 585(A). The essence of the offence under this clause is the going armed, i.e., carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises : Emperor v. Harpal Rai ILR 24 All 454 (B). It would be observed that this clause does not include the word 'habitually' and the words 'goes-armed' merely connote carrying a weapon, with the intention of using it, when the necessity arises.

Even an isolated act of carrying a weapon, in contravention of the licence, would amount to an offence within the mischief of this clause. The words 'goes armed' would imply a motion as well as the possession of the arms in contravention of the licence, and mean nothing more than carrying a weapon, with the intention of using it as a weapon, when the necessity or opportunity for its use arises.

The words do not necessarily connote a habitual course of conduct. Where, therefore, an accused gets himself possessed of a sword, with the intention of using it as a weapon for the purpose of attacking his opponents and uses it, while using that weapon, he must have moved about, and he would, therefore, be considered to have gone armed within the meaning of this section; Manjubhal Gordhandas v. Emperor AIR 1929 Bom 283 (C).

7. The possession of a gun without ammunition, in the absence of a licence, is not punishable under this clause. The offence would, however, fall under Clause (f) of this section. But the contrary view was taken in Crown v. Mohamed Punjal AIR 1925 Sind 177(D), where it was held that a person, who carries about a gun without any ammunition, can be said to go 'armed'.

8. The mere temporary possession, without a licence, of arms for purposes other than their use as such, is not an offence within the meaning of this section. The above principle is not confined to the case of a servant carrying his master's gun, but applies also to a friend performing the same office for a friend : ILR 24 All 454 (B).

9. A man, who is found going about with a pistol, gun, sword, or other weapon, within the definition of 'arms' in Section 4 of the Act, must, in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise, and, unless he is licenced to carry the weapon, and is not exceeding the terms of his licence, he may be properly convicted under this clause : Queen Empress v. Bhure ILR 15 All 27 (E).

The term 'going armed' in this clause and 8. 13 of the Act, means only carrying arms with intention to use such arms, should an occasion arise. It does not, however, include taking arms for the purpose of repair Queen Empress v. Alexander William 1891 AWN 208 (F).

10. The expression 'going armed' in Section 13 and Section 19 (e) of the Arms Act does not necessarily imply motion on the part of the person going armed or his leaving his own premises. The essence of the offence of 'going armed' under Section 13, which is punishable under Section 19(e). is, first, the carrying of the weapons in question on the person of the accused, and, secondly, the intention on the part of the accused of using the arms as weapons when necessary or opportune.

Such an intention is a necessary ingredient of the offence under Section 19 (e). The court has to look to the circumstances of each case to see whether such an intention can be found or not. Where the accused at a time when riots were going on came out of his living rooms with two dharias, and was found sitting on his ota at a distance of about 8 to 10 paces from his door, the ota abutting on the -road, where the police found several people running away the accused must be held to be guilty of the offence of 'going armed' in contravention of the provisions of Section 13 within the meaning of Section 19 of the Arms Act : Emperor v. Abdul Hafiz AIR 1948 Bom 173 (G).

11. A person carrying a revolver with four live cartridges in a bag 'goes armed' within the meaning of Section 19 (e) and is not merely in possession of a weapon : Dinanath v. State AIR 1954 J & K 41 (H) AIR 1925 Mad 585 (A) distinguished; Imamuddin v. Emperor : AIR1941 Pat284 (I), relied on,

12. Use of a gun by the servant of a licensee for his own purpose is an offence though the servant can carry legally the gun for the purposes of his master or in the presence of his master : Vairavan Servai in re. AIR 1924 Mad 668, (J).

13. The word 'arms' as defined in Section 4 of the Arms Act includes part of arms. It would, therefore, include a gun minus a percussion cap, and a person carrying that gun would be going armed with arms and the person carrying such a gun without licence would be guilty under Section 19(e); Emperor v. Gajraj Singh (K). To carry a weapon not in the hands but tied to the cycle in the manner of a piece of luggage amounts to going armed within the meaning of Section 19(e); : AIR1941 Pat284 (I).

14. Therefore, there was no substance in this contention. The circumstances of the case clearly showed that the gun had been used before it was seized and therefore the essence of the offence under this clause, viz., carrying of weapon with the intention of using it as a weapon when the necessity or opportunity arose was amply fulfilled.

15. In this Court it was strenuously contended by the learned advocate for the accused, without substance and for which excellent commentaries are readily available - AIR Manual Civil and Criminal, Vol., 1 page 142; G. K. Roy, the Indian Arms Act Manual, page 60; Basant Krishna Khanna Indian Arms Act, page 28; Fagir Chand Widge, the Law relating to Arms, Ammunition and Military Stores in India, page 48, Khan's Arms and Explosures, Vol. I, p. 138 - that the prosecution has not proved that the accused has no licence for being in possession of a gun.

Section 14 enacts that no person shall have, in his possession or under his control any cannon, or fire-arms, or ammunition. Section 15 prohibits the possession of arms of any description in any place, to which Section 32 Clause (2) of Act XXXI of 1860 applied at the time the Arms Act of 1878 came into force, i.e., any place, which has been disarmed, or wherein an order for general search or seizure of arms was issued. Clause (f) of this section punishes the infringement of these two provisions.

16. The licence for holding a fire-arm is a personal privilege and the licensee is not entitled to use the gun as he may lawfully use any other article of his. The owner of a car may lend it to a friend, but he cannot lend his gun to him. In the former case, the possession of the friend would be the possession of the owner, but the possession of the friend, in the case of the gun, may not necessarily be the possession of the licence-holder. The reason is this, the law aims at the control of fire-arms in this country, and the object of the law would be defeated if the privilege granted to a comparatively few people could be extended beyond its terms, Babu Ram v. Emperor : AIR1925 All396 .

17. Therefore, when a person is found in possession of a gun and goes armed with it and does not produce or set up a licence after he is apprehended with the gun, and questioned about it a presumption can be drawn against him under Section 114 that he is not a licensee. It is incumbent on him to show that his possession of the gun and his going armed with it is covered by licence and he has not committed any offence.

18. The net result of this analysis of the evidence is that this criminal revision case, totally devoid of merits - the conviction being correct and the sentence being appropriate - is dismissed.

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