

**Abani Mohan Bhattcharjee Vs. Emperor**

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**Court :** Kolkata

**Decided On :** Jul-31-1933

**Reported in :** AIR1934Cal368

**Appellant :** Abani Mohan Bhattcharjee

**Respondent :** Emperor

**Judgement :**

**Mitter, J.**

1. I have had the advantage of reading beforehand the judgment which my learned brother is about to deliver in these two appeals; I entirely agree with him in the conclusions reached by him in the reasonings on which those conclusions are based, and in the order which he proposes to make in these two appeals.

**Henderson, J.**

2. The facts of the case out of which these appeals have arisen are briefly as follows: The appellant Probat is a detenu who was interned at Faridpur, a village in the District of Burdwan. He ran away on 9th January 1932, and disappeared. On receipt of certain information a party of Police Officers raided No. 4 Ahiritola 1st lane the room where the absconder was expected to be found was vacant. The owner of the house Dhakaram made some inquiries and informed the Inspector P. W. 1 that the occupants of the room in question had removed to the house of

Nagen Das (P.W. 6) in Sitala lane. The Inspector and some other Police Officers went there. On being summoned the appellant came out and was arrested. The Police then searched the room and recovered the revolver (Ex. 2) and air pistol (Ex. 3). It is the prosecution case that the room was in the occupation of both the appellants. Three charges were framed against the appellants-the first Under Section 19(f), Arms Act, read with Section 19(a) with reference to the revolver: the second Under Section 19(f) with reference to the air pistol and the third Under Section 120, B.I.P.C, setting out a conspiracy to commit the offences specified in the two former charges. The learned Magistrate convicted both the appellants on all three charges: he made the last two sentences concurrent with each other but consecutive to that passed on the first charge.

3. In appeal the following points have been pressed on behalf of both the appellants: (1) that the conviction on the third charge cannot be supported: (2) that no license was necessary for the air pistol; (3) that in any view only one offence Under Section 19(f) of the Act was committed. On behalf of Abani it is urged that he had nothing to do with the pistols and is entitled to an acquittal. On behalf of Probhat it was contended: (1) that the pistols were planted by the Police; (2) that possession has not been brought home to him. With regard to the first point it is to be noted that the Magistrate accepted the prosecution case in full and convicted both appellants of the specific offences Under Section 19(f): there was nothing left over to form the basis of a charge of conspiracy: the basis of that charge was an alleged agreement to do an illegal act. There is no evidence of any such agreement and this conviction is based solely upon an inference from the fact of possession. In these circumstances the conviction both of the specific offences and a conspiracy to commit them has very little meaning and the practical effect of imposing consecutive sentences is to punish the appellants twice over for one act. In view of the findings arrived at by the learned Magistrate we should not be prepared to uphold the conviction and sentence on the third charge. There are two branches to Mr. Mukherjee's argument on the second point: he contends firstly that an air gun or air pistol does not come within the definition of 'arms' in Section 4 and secondly that air pistol of this particular type are exempted under the Government notification referred to by the learned Magistrate.

4. The definition of 'arms' in Section 4 is intentionally wide and the list of weapons referred to therein is clearly not exhaustive. In our opinion it cannot be said that every type of air gun or air pistol must be excluded from the definition. On the other hand the Government notification makes it necessary to take out a license even for air guns coming within item 2 (iii) of Schedule 2 of the rules. It appears however from the evidence of the expert that this particular weapon is a toy pistol and in our opinion it will suffice if the sentence on the second charge is made concurrent With that on the first.

5. The third point is based on the analogy of a charge Under Section 411, I.P.C. It is argued that only one offence can be committed at any given time and it is quite immaterial how many unlicensed arms are possessed. In our opinion this contention must be overruled. The essence of the offence is the possession of arms without a license and a license is required for each separate weapon. In dealing with the facts of the case it must be noted that it was contended on Abani's behalf that he is not proved to have resided anywhere with Probhat. There is independent and one sided evidence to show that he was the actual tenant of both the rooms; if he was really living somewhere else, he could easily have proved it: but he made no attempt to do so. But in our opinion this does not carry the prosecution case any further. The evidence must be taken as a whole. It has been proved that Abani was in occupation of the room in Ahiritola lane some two or three months before Probhat arrived. He is in regular employment and used to be absent at his work from 8 a.m. to 10 p.m. It is thus clear that he gave shelter to his cousin, who was an escaped detenu. Nothing further is proved against him. He was admittedly not in the room when the pistols were found. We are not impressed by the evidence given that Abani went out that night about 8 p.m.: this statement was not made to the police.

6. But apart from that the pistols might have been introduced after his departure. The case against him depends solely upon circumstantial evidence and the circumstances are consistent with his innocence. When once the prosecution fails to connect him with knowledge of the revolver, it is clear that he cannot be convicted of conspiracy. It would be impossible to infer merely from the fact that he gave shelter to Probhat that he was privy to any offence the latter might commit.

He is therefore entitled to an acquittal. It remains to consider the specific defence of Probat. We are satisfied that there is no substance in the suggestion that the revolver was planted by the police: it is in fact nothing more than a suggestion. Neither in his statement to the Court nor at the time did the appellant himself make any such suggestion. The search was witnessed by independent persons of the locality. The police were not even investigating a case at the time. They were there in order to arrest an absconding detenu and did not even know that they would find him. The search of the room where he was found was a matter of routine. It was finally argued that the conviction cannot stand, as it is impossible to say which of the appellants had the pistol under his control. But the present case is not one of that nature. The pistol was found in an open suit-case. This appellant was alone in the room at the time. He never disclaimed any knowledge of it or suggested that it might have been introduced by Abani. In our opinion his guilt is fully brought home to him.

7. The result is that the appeal of Abani is allowed: the conviction and sentence are set aside and he will be set at liberty immediately. In the case of Probat the conviction and sentence on the third charge is set aside: the conviction and sentences on the first and second charges are maintained but the sentences will be concurrent. With this modification his appeal is dismissed.

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