

APPELLATE CRIMINAL.

1888
January 21.

Before Mr. Justice Knox and Mr. Justice Blair.

QUEEN-EMPRESS v. SANGAM LAL.

Act XI of 1878, s. 19 (f), 25—Unlawful possession of arms—Search-warrant, contents of—“ Possession ” what evidence necessary where arms found in common room of joint family house.

When a Magistrate issues a search-warrant under s. 25 of the Indian Arms Act, 1878, it is necessary that he should record the grounds of his belief that the person against whom the warrant is issued has in his possession arms, ammunition or military stores for an unlawful purpose.

Where proceedings under the Indian Arms Act, 1878, in respect of the unlawful possession of arms are taken against a member of a joint Hindu family not being the head of such joint family and arms are found in a common room of the joint family house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession.

THE facts of the case, so far as they are necessary for the purposes of this report, appear from the judgment of Court.

The Hon'ble Mr. *Colvin* and Babu *Durga Charan Banerji*, for the appellant.

The Public Prosecutor (Mr. *A. Strachey*) for the Crown.

KNOX and BLAIR, JJ. The appellant, Sangam Lal, has been convicted of an offence under s. 19 (f) of Act XI of 1878. It appears that on a search made in a *baithak*, called by the Police Sangam Lal's *baithak*, two swords were found inside an almirah which was locked when the police arrived and which had to be forced open by them because the key was not produced. Two axes were found elsewhere, but we are satisfied that the learned Judge took a proper view of them when he wrote that if the case against the appellant was limited to the discovery of these two axes he might safely have been acquitted. We have not seen the axes; they have not been produced before us; but from their description we are satisfied that they are not weapons within the meaning of the Arms Act of 1878.

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Before we deal with the case regarding the possession of the swords, we think it proper to place on record our disappointment at finding that the District Magistrate appears to have issued the search-warrant before he had complied with the provisions of the law which were intended as a safeguard against the undue issue of search-warrants under Act No. XI of 1878. We cannot find, and the learned Public Prosecutor has not been able to refer us to, any record by the District Magistrate setting out the grounds of his belief that there were in the possession of the appellant weapons kept by him for an unlawful purpose.

Even the warrant, which was issued apparently without any such record, is silent upon this important point, *viz.*, the fact of any unlawful purpose. We trust that after this clear expression of our opinion we shall always find placed on record by Magistrates, before they issue search-warrants under this Act, the grounds of their belief that there are in the house which it is proposed to search weapons kept for an unlawful purpose.

The facts that the weapons were found in the place described by the police and that Sangam Lal possesses no license for the possession of any arms are admitted. But the learned Counsel for the appellant presses upon our notice that there is no evidence of any value to show that the weapons were in Sangam Lal's possession or control, properly so called.

There is no evidence to show that the place where the weapons were found was a place in the separate and exclusive possession of the appellant. The presumption is, and it is a presumption which is not rebutted by one jot or tittle of evidence, that the house, the room, the almirah were in the possession of a joint Hindu family living joint, and that Ram Chand, the father, who was then alive, was the managing head of that family. Ram Chand was, as a matter of fact, at the time the police arrived, in the pursuit of his ordinary avocations in the room where the almirah was in which the weapons were found. There were a *masnad* and other pieces of furniture which showed that he as well as the appellant was in the habit of using that room.

In coming to the conclusion that the weapons were in the exclusive possession of the appellant, the learned Judge has relied upon a statement made by Ram Chand in the absence of the appellant. That statement was not evidence against the appellant and should never have found a place upon the record, and we dismiss it at once from all consideration.

The other reasons for the belief that the almirah was in the exclusive possession and control of the appellant, are that the weapons were encased in scabbards of a kind only made in Gwalior, and that it is in evidence that at one time the appellant was a captain in the service of the Maharaja of Gwalior, and further that on previous occasions the Sub-Inspector of Daraganj had seen this same almirah opened by the appellant with a key in his possession.

There are strong indicia of a certain amount of possession and control, but we are not disposed in the present case to depart from the well-known rule of law that where articles are found in a house in such place or places as several persons living in the house may have access to, there is no presumption as to possession and control that those articles are in the possession and control of any other person than the house-master.

There are not wanting signs that the police have been too ready to mark the house as Sangam Lal's, when in reality it was and would ordinarily have been described as the house of Ram Chand. This raises an unpleasant doubt and makes us look more critically than we might otherwise have done upon other evidence adduced by them to the fact that the almirah was in the exclusive possession and control of the appellant.

We do not lay it down as an invariable rule that where weapons are found in a house occupied by a Hindu family living jointly, possession is necessarily that of the managing member, and the managing member only; but we do lay down that in all such cases where it is sought to establish that possession and control are with some member of the family other than the managing member, there must be good and clear evidence of the fact before we can in an Act

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of this kind arrive at such a conclusion. The Act is one highly penal and one which must be strictly construed.

In the present case, and for the reasons given above, we hold there has not been sufficient proof that exclusive possession and control were with the appellant.

We accordingly admit the appeal, set aside the conviction and sentence passed upon Sangam Lal, find him not guilty of the offence with which he stood charged, and direct that the fine, if paid, be refunded.

APPELLATE CIVIL.

Before Mr. Justice Tyrrell and Mr. Justice Blair.

ISHWAR NARAIN (PLAINTIFF) v. JANKI (DEFENDANT).*

Hindu Law—Hindu Widow—Reversioner—Right to sue—Next presumptive reversioner—Intervening woman's estate.

The plaintiff, grandson (daughter's son) of a deceased Hindu, sued during the life-time of his mother to set aside a will made by his mother's father in favour of an idol under the management of his stepmother, the testator's second wife.

Held that, there being no evidence of collusion or connivance, the plaintiff, not being the next reversioner, was not competent to maintain the suit. The fact that his mother's estate, should it ever come into her possession, would be only a limited estate, would not affect the plaintiff's subsisting position in respect of his right to sue. *Madari v. Malki* (1) followed; *Balgobind v. Ram Kumar* (2) dissented from.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Moti Lal*, for the appellant.

Mr. *C. Dillon* and Munshi *Ram Prasad*, for the respondent.

TYRRELL and BLAIR, JJ. One Mangli died on the 27th of July 1885, leaving a widow, Musammat Janki, who obtained possession of his estate. Mangli had a daughter, Musammat Sheodeli Kuar, who is stepdaughter of Musammat Janki. The plaintiff, appellant

* First Appeal No. 114 of 1890 from a decree of Maulvi Syed Akbar Husain, Subordinate Judge of Cawnpore, dated the 31st March 1890.

(1) L. L. R., 6 All., 428.

(2) I. R., 6 All., 431.