

1936. directed my attention". None of the other cases referred to by him raise the precise point under consideration; and each lease or kabuliat must be construed on its own language and with reference to its own circumstances. On a fair reading of the kabuliat before us I cannot doubt that the default of each lessee was to be visited upon him alone (barring, of course, the liability for rent which was joint), and that while the respondents are right in contending that the defaults need not be cumulative for a forfeiture to be incurred, the appellants are entitled to succeed in part to the extent that an alienation by one lessee does not effect a forfeiture of the shares of the other lessees.

PANCHAM
SINGH
v.
RAI
PROMOTHA
NATH
MITRA.
DHAVLE, J.

Appeal allowed in part.

REVISIONAL CRIMINAL.

Before Agarwala and Madan, JJ.

1936.

July, 24.

MANGAR KOIRI

v.

KING-EMPEROR.*

Arms Act, 1878 (XI of 1878), section 19(f)—arms found in house owned by a joint Hindu family—want of proof of possession of individual members—head of the family alone responsible.

Where an unlicensed weapon is found concealed in a room of a house occupied by the members of a joint Hindu family and there is no evidence that the room was in the particular or exclusive possession of any member of the family, it cannot be inferred that the weapon was in the possession of any other person than the head of the family.

Emperor v. Sikhdar(1), dissented from.

Empress v. Sangam Lall(2) and *Kaul Ahir v. Emperor*(3), relied on.

*Criminal Revision no. 335 of 1936, against an order of D. E. Reuban, Esq., I.C.S., Sessions Judge of Gaya confirming the order of Babu Inder Narayan, Magistrate, 1st class, Gaya, dated the 21st April, 1936.

(1) (1932) A. I. R. (All.) 441.

(2) (1899) I. L. R. 15 All. 129.

(3) (1933) A. I. R. (All.) 112.

The facts of the case material to this report are stated in the judgment of Agarwala, J.

Baldeo Sahay and Rajkishore Prasad, for the petitioner.

Assistant Government Advocate, for the Crown.

AGARWALA, J.—This is an application from an order of the Sessions Judge of Gaya confirming an order convicting the petitioners under section 19(f) of the Indian Arms Act and sentencing them to rigorous imprisonment for nine months each in respect of the possession of a weapon which in the record is called *karabin*, a small quantity of gun powder and a few pieces of copper. It appears that the police searched the house of the petitioners in consequence of information that stolen property was stocked there and in the course of the search discovered the *karabin*, gun powder and the copper. The petitioners had no license for the *karabin* and the sanction of the District Magistrate having been accorded the prosecution was launched. It has been found that the accused Mangar is the head of a joint family of which the other accused are members. The *karabin* and other articles were found in a loft in one of the rooms of the house, concealed under *bhusa* stacked in the loft. There is no evidence that this room was in the particular possession of any member of the family or that any of the accused persons was in exclusive possession of the *karabin*. The learned Sessions Judge, founding his decision on a case decided by Bennet, J., sitting singly, *Emperor v. Sikhdar*(1), held, that in circumstances such as in the present case, all the senior male members of a joint family are in possession of whatever is in the house. The view taken by Bennet, J. in that case differs considerably from the view taken in other decisions of the Allahabad High Court and of other High Courts. In the case of *Empress v. Sangam Lal*(2), Knox and

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Blair, J.J. said, "Where articles are found in a house belonging to a joint family 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". The decision of Bennet, J. in *Sikhdar's* case⁽¹⁾ was commented on by Pullan and Thom, J.J. in *Kaul Ahir v. Emperor*⁽²⁾, where their Lordships were not prepared to agree with the view taken by him. In the absence of proof in the present case that the room in which the weapon was kept was in the exclusive or particular possession of any member of the family, I am not prepared to hold that it can be inferred that the weapon was in the possession of any other person than the head of the family, namely, the petitioner Mangar. I would, therefore, discharge the rule so far as this petitioner is concerned and confirm it with respect to petitioners Hulas Koiri and Balal Koiri whose convictions and sentences are set aside.

MADAN, J.—I agree.

Application of Hulas and Balal allowed.

Application of Mangar dismissed.

APPELLATE CIVIL.

Before Agarwala and Madan, J.J.

JAINANDAN RAM TEWARI

v.

RURIA URAON*

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), sections 208, 212 and 214—deposit of decretal amount after the statutory period, effect of—setting aside of sale if without jurisdiction—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 174.

*Appeal from Appellate Decree no. 771 of 1935, from a decision of Babu Khetra Nath Singh, Subordinate Judge of Ranchi, dated the 30th May, 1933, confirming a decision of Babu Nirmal Chandra Ghosh, Munsif of Ranchi, dated the 9th September, 1932.

(1) (1932) A. I. R. (All.) 441.

(2) (1933) A. I. R. (All.) 441.

1936.

July, 28.