APPELLATE CRIMINAL.

Before Mr. Justice Mya Bu.

1927
Sep. 9.

KING-EMPEROR
v.
NGA LU GALE.*

Arms Act (IX of 1878), ss. 4, 19 (e)—Primary purpose of the implement the criterion—Claspknife not necessarily excluded—Criminal Procedure Code (Act V of 1898), s. 412—Practice in appeal against acquittal without jurisdiction by lower Appellate Court.

Held, that the criterion for determining whether an implement is or is not "arms" is the purpose for which it is primarily intended.

Held, that a large claspknife with a blade 5½ inches long, with a pointed end fitted to a long handle into which the blade turns on being closed falls within the meaning of arms.

Where the accused was convicted by a first class Magistrate on his plea of guilty and the Sessions Court without jurisdiction entertained an appeal against the conviction and set it aside, the High Court on appeal against such acquittal would consider the propriety of the conviction, before re-imposing sentence on the accused.

Bishen Singh v. *Emperor*, 51 Cal. 573 ; *Crown* v. *Hmat Kyan*, 1 L.B.R. 271 ; *Ebrahim Dawoodji Babi Bawa* v. *King-Emperor*, 3 L.B.R. 1—*referred to.*

Tun Byu, Assistant Government Advocate—for the Crown.

E. Maung—for Respondent.

MYA BU, J.—In Criminal Regular Trial No. 51 of 1926 of the Court of the Township Magistrate of Kayan, the respondent was tried for an offence punishable under section 19 (*e*) of the Arms Act for going armed with a claspknife (Exhibit 1), on the 2nd of April, 1926.

The case for the prosecution was that on that day the respondent went to a monkey show near the bazaar at Kayan carrying the knife opened in his hand and interfered with the show. When examined by

* Criminal Appeal No. 1465 of 1926.

the Magistrate he admitted that he had the knife with him, but stated that it was in his pocket and was not held open in his hand. On the charge under section 19 (*e*) of the Arms Act being framed against him, he pleaded guilty and stated nothing in his defence. Consequently, the learned Magistrate convicted him of the charge and sentenced him to suffer three months' rigorous imprisonment. From this conviction the respondent appealed to the Court of Sessions, Hanthawaddy, in Criminal Appeal No. 123 of 1926, on the ground that he was too drunk to know anything on the occasion which gave rise to charge, and that the witnesses for the procecution did not state that he had the knife in his hand.

According to section 412 of the Criminal Procedure Code, it was obviously not open to the respondent to appeal against the conviction. The Sessions Court, however, remarked that the respondent had been convicted of carrying a dagger, and that, as the weapon was merely a large sailor's claspknife, it set aside the conviction and sentence and acquitted the respondent.

As, under section 412 of the Code of Criminal Procedure, no appeal lay from the conviction, the order of acquittal made by the Court of Session was made without jurisdiction. Even if the proceeding was regarded as a revision, the Court of Session would still have no jurisdiction to set aside the conviction. It is this order of the Appellate Court which is now appealed against by the Local Government.

It is clear that the order of acquittal under appeal must be set aside as being made without jurisdiction. The question now remains whether, by going armed with the knife in exhibit, the respondent committed an offence punishable under section 19 (*e*)

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of the Arms Act. It resolves itself into a question whether this knife is "arms" within the meaning of section 4 of the Act.

The definition of "Arms" in the Act runs thus :—

> "'arms' includes firearms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and part of arms, and machinery for manufacturing arms."

It is not contended in this case that the knife in exhibit can be described as a dagger; but the above definition does not purport to enumerate exhaustively all kinds of weapons which are arms, so that it is clear that, beyond the list of weapons mentioned in this definition, there could be arms.

In the case of *The Crown* v. *Hmat Kyan* (1), Mr. Justice Thirkell White, Chief Judge, and Mr. Justice Fox, held that a claspknife does not fall within the ordinary natural meaning of the word "arms", but it was pointed out that the purpose for which an implement is primarily intended regulates whether it would in ordinary parlance be spoken of as an arm, and if it is not designed for use as a weapon of offence and defence, although it may be used as such, then it is not an arm.

In the report of the case, the size of the claspknife is not mentioned, but it is apparent that the ruling does not purport to lay down as a hard and fast rule that no claspknife would fall within the meaning of the word "arms."

The same learned Judges dealt with the same question in regard to a claspknife in the case of *Ebrahim Dawoodji Babi Bawa* v. *King-Emperor* (2), wherein they re-affirmed the criterion laid down in the case of *The Crown* v. *Hmat Kyan* (1), but held that

(1) 1 L.B.R. 271. (2) 3 L.B.R. 1.

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dagger-shaped knives of the kind produced in the case fell within the definition of "arms", although they might be called claspknifes. Those knives were of the following description :—The steel blade was five and one-fifth of inches long, six-elevenths of an inch broad, was shaped and pointed as a dagger is shaped and pointed and was fitted to a long handle in the way in which the ordinary pen and pocketknife is fitted, that is to say, it turned over into the handle and when open and shut it was held by a spring.

As regards the criterion, it is clear that the purpose for which an implement is primarily intended regulates whether it should be deemed to be arms. In the present case, the knife has a blade $5\frac{1}{2}$ inches long with a pointed end, and it is fitted to a long handle and turns over into the handle, and there cannot be any room for doubt that the primary purpose for which such an implement is manufactured is to supply weapons to persons who want efficient stabbing instruments. It is extremely difficult to conceive of any domestic purpose for which such an instrument would be necessary or useful. It is a sort of weapon which, though not called a dagger, would be as effective as a dagger in its use.

In the case of *Bishen Singh* v. *Emperor* (1), a knife with a tapering blade, sharp throughout one edge and only towards the point of the other, which is attached to a cross-guard and handle, and which can be used for stabbing and cutting, was held to be "arms" within the meaning of the section.

The fact that the blade of the knife in the present case appears to be less tapering, and that there is no cross-guard to it, does not appear to me to make any real difference to the solution of the question.

(1) (1924) 51 Cal. 573.

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In my opinion, the knife under consideration is an instrument which does fall within the meaning of the term "arms" in section 13 of the Act. That being so, the respondent's conviction by the learned Magistrate was correct, and I restore the same.

As regards the sentence I take into consideration the fact that it is not uncommon to come across claspknives of the kind for sale in the bazaars which might most probably have led the respondent to think that there was no prohibition against the arming of himself with such a knife and also the fact that he was in custody during the the trial in the Magistrate's Court and has been in custody in connection with this appeal. I would therefore restore only half of the term of rigorous imprisonment passed by the Magistrate. In the result this appeal is allowed and the respondent is convicted and sentenced under section 19 (*e*) of the Arms Act to suffer one and a half months' rigorous imprisonment, the period to be computed from the date of the Magistrate's sentence and the period of imprisonment undergone after the Magistrate's sentence should be counted towards the imprisonment now passed.