

## APPELLATE CRIMINAL.

*Before Mr. Justice Addison.*  
CHET SINGH, Appellant

*versus*

THE CROWN, Respondent.

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Dec. 7.

Criminal Appeal No. 958 of 1925.

*Indian Arms Act XI, of 1878, Section 19 (f)—Possession of arms—Section 20—special intention to conceal from Public servant, etc., necessary—Trafficking—Sentence.*

Each case of concealment of arms must be decided on its own facts as to whether it falls under section 19 or section 20 of the Arms Act, but for section 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, railway official or public carrier.

Thus, where the appellant rode on horseback to a rendezvous with arms for sale, wrapped in a gunny bag, at a place where he would not anticipate meeting the police, and was arrested while settling the price and convicted under section 20 of the Arms Act—

*Held*, that, although it was a case of trafficking in arms requiring the full sentence, the conviction must be altered to one under section 19 (f) of the Act.

*Crown v. Azu* (1), and *Khem Singh v. Crown* (2), followed.

*Ibrahim v. Crown* (3), dissented from.

*Ahmad Hossein v. Queen-Empress* (4), *Faqiria v. Emperor* (5), *Sher Ali v. Emperor* (6), and *Chanan Singh v. Crown* (7), referred to.

*Appeal from the order of Pandit Siri Kishan, Magistrate, 1st class, Amritsar, dated the 15th August 1925, convicting the appellant.*

MUHAMMAD RAFI, for Appellant.

GOVERNMENT ADVOCATE, for Respondent.

(1) (1906) 9 Cr. L. J. 259 (F.B.) (4) (1900) I. L. R. 27 Cal. 692.

(2) 8 P. R. (Cr.) 1915.

(5) (1922) 23 Cr. L. J. 339.

(3) 9 P. R. (Cr.) 1912.

(6) (1922) 23 Cr. L. J. 609.

(7) (1925) I. L. R. 6 Lah. 151.

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## JUDGMENT.

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ADDISON J.—The appellant Chet Singh has been convicted under section 20 of the Arms Act for being in unlawful possession of two revolvers and ten loaded cartridges in such a manner as to indicate an intention that his possession of them might not be known to any public servant. He has been sentenced to seven years' rigorous imprisonment together with a fine of Rs. 500 and he has appealed.

The case on the merits was not seriously argued and it has been established beyond dispute that he had these articles in his possession. In fact, a trap was laid for him into which he fell. Karam Singh, *lambardar*, informed the police that the appellant was in the habit of selling revolvers and opium and the Sub-Inspector of police asked him to let him know whenever he had any to sell. Accordingly the *lambardar* in question settled with the appellant that he would bring some persons to buy revolvers from the appellant at a particular place and time. The appellant went to this place on horse-back, carrying in front of him a gunny bag in which were the revolvers and cartridges in question together with 8½ seers of Kabul opium. He was seized as they were settling the price. There is not the slightest doubt that he had these two revolvers and ten cartridges and he was properly convicted and the question only remains as to whether the conviction should have been under section 19 (f) or section 20 of the Arms Act.

It was held by a Single Judge of this Court in *Ibrahim v. Crown* (1), that section 20 of the Arms Act, applied only to cases where the import or export of arms was attempted. This decision was based on *Crown v. Azu* (2) and *Ahmad Hossein v. Queen*

(1) 9 P. R. (Cr.) 1912. (2) (1906) 9 Cr. L. J. 259 (F.B.).

*Empress* (1). In *Ahmad Hossein v. Queen-Empress* (1), however, what had happened was that the police searched the appellant's house and found some arms in it. It was held that in a case such as that section 20 did not apply. It was not held that that section only applied to the import and export of arms. *Crown v. Azu* (2) was a similar case. There when the accused's house was searched certain fire-arms were found under a heap of straw where they were concealed in order that visitors should not see them. It was held that this was not a concealment with the intention specified in section 20. The following words might be quoted:—"The possession was no doubt furtive, but it is not every act of furtive possession that is penal under the first paragraph of section 20. The possession must be furtive as against public servants, railway servants or public carriers, and such cases would generally occur where arms were being illicitly imported or transported. It is probable that the accused concealed the firearms in order that visitors to his house should not see them and give information against him, but such a concealment would not fall under the first part of section 20. There is no reason to suppose that the accused anticipated a search of his house by a public-servant, and if he had, he would probably have buried the firearms. I, therefore, think that the arms were not concealed in such a manner as to indicate the intention stated in the first part of section 20." These words do not mean that a conviction under section 20 can only be obtained in cases of import or export of arms. What was said was that such convictions would generally occur where arms were illicitly imported or transported, that is, taken from

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place to place, as it would usually be on such occasions that the person in possession of them would attempt to conceal them from a public servant or a railway employee, etc.

In *Khem Singh v. Crown* (1), the view taken in *Ibrahim v. Crown* (2) was not followed and it was held that each case of concealment of arms must be decided on its own facts, that is as to whether it fell under section 19 or section 20 of the Arms Act and that the circumstances in that case showed that the concealment was made so that the possession of the weapons should not be known to the police and the offence, therefore, fell under section 20. *Faqiria v. Emperor* (3) is another case of this High Court where the concealment of a *Chhavi* was held to fall under section 20 of the Arms Act and the principle laid down in *Khem Singh v. Crown* (1) was again followed in *Sher Ali v. Emperor* (4). The head-note of *Chanan Singh v. Crown* (5) is to the effect that something more than an ordinary concealment should be established in order to bring the illegal possession of arms within the meaning of section 20 of the Arms Act. It also goes on to add that section 20 applies only to cases where the import or export of arms is attempted. It would appear, however, from the body of the judgment that it was not necessary for the decision of the case to add what is given in the second part of the head-note.

In my judgment the general principle laid down in *Khem Singh v. Crown* (1), which was decided by a Division Bench of this Court, is correct, namely, that each case of concealment of arms must be decided on its own facts as to whether it falls under section

(1) 8 P. R. (Cr.) 1915.

(2) 9 P. R. (Cr.) 1912.

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(4) (1922) 23 Cr. L. J. 609.

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19 or section 20 of the Arms Act. If however arms were merely concealed in a house, which, it could not be anticipated, the police would come and search, section 20 would not apply. For a conviction to fall under section 20 there must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a railway official. For example, if arms were carried hidden on a railway journey this special intention might be easy to infer. The same would be the case if arms were carried concealed through a city where numerous constables were posted or if they were carried past or through a police station. It would not be so easy to infer this intention if the arms were carried concealed in the open country where it was not anticipated that any public servant would be met, though even in such cases it might be possible to arrive at a finding that the intention was to conceal them from the police. In fact the words already quoted from *Crown v. Azu* (1) and the principle laid down in *Khem Singh v. Crown* (2) give the correct method of discriminating as to what section the offence does fall under.

In the case now before me it is obvious that it cannot be inferred that the appellant was carrying the arms in question so as to conceal them from the police. He did not anticipate meeting the police. He was merely carrying them in a convenient manner to the place arranged for their sale. He wrapped the opium, cartridges and two revolvers in a gunny bag and carried them to that spot in front of him on his horse. It was scarcely possible for him to have carried them exposed. This case, therefore, clearly falls under section 19 (f) of the Arms Act.

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I accordingly accept the appeal and alter the conviction to one under section 19 (f), Arms Act. As this is a case of trafficking in arms, I sentence the appellant to the full sentence of three years' rigorous imprisonment, together with a fine of Rs. 250, and in default of its payment, to three months' further rigorous imprisonment.

N. F. E.

*Appeal accepted in part.*

### APPELLATE CRIMINAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice Zafar Ali.*

MUSSAMMAT GHULAM JANNAT, Appellant

*versus*

THE CROWN, Respondent.

Criminal Appeal No. 604 of 1925.

*Criminal Procedure Code, Act V of 1898, sections 287, 350—Statement of accused recorded by one Magistrate—case committed for trial by his successor—Admissibility as evidence in the Sessions Court.*

The Magistrate, who had recorded the statement of the accused at the inquiry, was succeeded by another Magistrate who committed the case for trial.

*Held*, that in view of section 350 of the Criminal Procedure Code the statement was rightly admitted in evidence under section 287.

*The Sessions Judge of Mangalore v. Malinga* (1), followed.

*Appeal from the order of E. R. Anderson, Esquire, Sessions Judge, Multan, dated the 29th April, 1925, convicting the appellant.*

ABDUL RAZAK, for Appellant.

ABDUL RASHID, Assistant Legal Remembrancer, for Respondent.