

I would, therefore, dismiss this appeal, but in the circumstances leave the parties to bear their own costs.

AGHA HAIDAR J.

AGHA HAIDAR J.—I agree.

N. F. E.

*Appeal dismissed.*

APPELLATE CRIMINAL.

*Before Mr. Justice Fforde.*

ABDUL WAHID—Appellant

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 703 of 1927.

1927  
Sept. 30.

*Indian Arms Act, XI of 1878, section 20—not confined to import or export of arms—Concealment—on Railway platform.*

*Held*, that it is a question of fact whether a person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in section 20 of the Arms Act.

*Held further*, that the section is not confined to cases where the import or export of arms is attempted ; but that the fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal that weapon from *inter alia* railway officials who are about that platform.

*Chet Singh v. The Crown* (1), followed.

*Appeal from the order of Chowdhry Daya Ram, Magistrate, 1st class, Kasur, District Lahore, dated the 20th June 1926, convicting the appellant.*

NAND LAL, for Appellant.

D. R. SAWHNEY, Public Prosecutor, for Res-  
pondent.

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JUDGMENT.

FFORDE J.—The appellant has been convicted under the provisions of section 23 of the Indian Arms Act of having in his possession a *chhavi* in such a manner as to indicate an intention that its possession may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a Railway, or to the servant of a public carrier. I have not the slightest doubt that so far as the possession of the *chhavi* is concerned the Crown has abundantly established its case. The appellant was caught on the platform of the railway station with a *chhavi* blade concealed in his loin cloth. The only question is whether the circumstances of the case constitute an offence under section 19 or under section 20 of the Indian Arms Act.

FFORDE J.

Section 19 (f) makes it an offence to possess such a weapon, and section 20 makes it an offence to possess such a weapon in such a manner as to indicate an intention to conceal the possession of the weapon from *inter alia* a railway servant. There is no doubt that carrying a *chhavi* concealed in a loin cloth indicates an intention to prevent the fact that the *chhavi* is in the possession of the accused being known to any one. The question is, does the mere fact that a person has been found carrying a *chhavi* (in a way which is not unusual in this province), when amongst railway officials, lead to the necessary inference that the concealment is for the purpose of preventing those officials knowing that he is carrying such a weapon.

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Dr. Nand Lal argues that to take this view would lead to certain anomalies, for instance, if a man were carrying a *chhavi* in the open country concealed in a loin cloth, that would not be an offence under section 20, but if he continued his journey and arrived ultimately amongst railway servants the offence would immediately come under section 20. This raises questions which do not arise here. In every case it is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in section 20. I am only concerned with the facts disclosed by the evidence in the case before me, and it seems to me that the fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal that weapon from *inter alia* railway officials who are about that platform. I am in complete agreement with the view adopted by Addison J. in *Chet Singh versus the Crown* (1), that section 20 is not confined, as has been held by Scott-Smith J. and Kensington J. to cases where the import or export of arms is attempted. It seems reasonably clear from sections 19 and 20 of the Indian Arms Act that the matter is not confined as held by those two learned Judges. In my judgment, upon the circumstances of this case as proved, the appellant has been rightly convicted under section 20 of possessing a *chhavi* in such a manner as to indicate an intention that his possession may not be known to any person employed on a railway.

The next question which remains to be considered is whether the penalty of five years' rigorous

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(1) (1926) I. L. R. 7 Lah. 65.

imprisonment is not too severe a punishment for the present offence. As Dr. Nand Lal has pointed out the appellant is a young man of 24. There is no proof that he is a man of bad character; there is no evidence that he was engaged on any criminal undertaking at the time that he was arrested, and the learned trial Judge in imposing a penalty of five years' rigorous imprisonment was probably influenced by the fact that there was a suspicion in the mind of the police that the appellant was about to take part in a dacoity. Suspicion of this nature, however, is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the actual offence which has been proved. The punishments for this offence, so far as the reported cases cited to me show, have varied from three months' imprisonment to three years for a first offence. I think that, in the absence of any aggravating circumstances having been proved, the sentence imposed in the present case is far too severe, and I think that an appropriate sentence would be one of two years' rigorous imprisonment.

I would accordingly accept the appeal to the extent of reducing the sentence to two years' rigorous imprisonment: otherwise the appeal must stand dismissed.

N. F. E.

*Appeal accepted in part.*

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v.

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FORDE J.