

APPELLATE CRIMINAL.

Before Mr. Justice Addison and Mr. Justice Johnstone.

THE CROWN—Appellant

versus

PURAN SINGH—Respondent.

1927

June 22.

Criminal Appeal No. 677 of 1926.

Indian Arms Act, XI of 1878, section 19 (f)—Instrument consisting of a lathi and an axe-like blade—not used for domestic or agricultural purposes.

Held, that an instrument, consisting of a lathi 6 feet and 3 inches long, having at one end a hollow screw, and an axe-like blade, 5 inches by 4½ inches, the blade having a screw to allow of its being fixed into the long lathi, is an "arm" within the meaning of section 19 (f) of the Arms Act.

Gahna v. The Crown (1), The Crown v. Santa Singh (2), and The Crown v. Ralla Singh (3), referred to.

Appeal from the order of Rai Bahadur Lala Ganga Ram, Soni, Sessions Judge, Ludhiana, dated the 12th April 1926, reversing that of Chaudhri Muhammad Fida Ullah, Magistrate, 1st class, Ludhiana, dated the 30th March 1926, and acquitting the respondent.

GOVERNMENT ADVOCATE, for Appellant.

H. RUSTOMJI, for Respondent.

JUDGMENT.

ADDISON J.—The respondent was tried under section 19 (f) of the Indian Arms Act for being in possession of an "arm" and was convicted of that offence on the 30th of March 1926 when he was sentenced to three months' rigorous imprisonment. His

ADDISON J.

(1) 33 P. L. R. 1914.

(2) 16 P. R. (Cr.)-1900.

(3) 32 P. R. (Cr.) 1918.

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appeal was accepted on the 12th April 1926 by the learned Sessions Judge on the ground that the blade of the weapon was an ordinary axe-blade and that therefore, it could not be said to be an "arm". Against his acquittal by the Sessions Judge the Crown has appealed.

The respondent was an absconder in a dacoity case. The police received information that he was living with a relative in a particular village. They raided the house about 3 A.M. on the 1st October 1925 and arrested the respondent when he was lying asleep on a bed. After the arrest the house was closed. It was searched in the morning after daylight. During the search, concealed in the bed on which the respondent had been sleeping were found a long *lathi* and an axe-like blade, detached from each other. There is ample evidence to this effect and the only question is whether these two articles when combined together constitute an "arm".

The instrument in question consists of two separate pieces, namely, a *lathi* 6' 3" long, at one end of which is a hollow screw, and the axe-like blade, 5" by 4½". This blade has a screw to allow of its being fixed into the long *lathi*. No instrument like that is ever used for domestic or agricultural purposes. The handle is too long and the screw would soon become useless if the instrument was much used. On the other hand, it is an admirable weapon for offence and defence, while it admits of being successfully concealed by hiding the axe-like head on the person and carrying the handle as a *lathi*. The learned Sessions Judge was clearly wrong in holding that because the head was like an ordinary axe-head, it was not an "arm". In the first place it was not

an ordinary axe-head because of the screw. In the second place the length of the handle renders the instrument useless for domestic purposes. Further, his decision goes in the face of numerous decisions of this Court. In *Gahna v. The Crown* (1), where there was a handle 4' long and an axe-like blade capable of being fixed to the handle by a ring, it was held that this did not differ from a *chhavi* and that it was an "arm" within the meaning of the Arms Act. In *The Crown v. Santa Singh* (2), it was held that "where the circumstances of a case show that a weapon or instrument is carried or possessed for the purpose of offence or defence and not as an article of domestic or agricultural utility, there is no reason why such weapon or instrument should not be held to fall within the category of 'arm'," and further that "it was not necessary to decide whether the weapon was a *chhavi* or a *gandasi*, it being immaterial what the name, shape or size of an instrument is, but material to determine the use for which it is carried or possessed". The same conclusion was arrived at in *The Crown v. Ralla Singh* (3).

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In these circumstances I would accept the appeal and, setting aside the order of acquittal passed by the learned Sessions Judge, convict the respondent of an offence under section 19 (f) of Act XI of 1878.

The respondent was about half a month in Jail before he was acquitted by the Sessions Judge. He has been out of Jail since April 1926. The sentence passed upon him by the Magistrate was by no means excessive, but owing to the fact that he has been for so long out of Jail I do not think that he should be sent

(1) 33 P. L. R. 1914.

(2) 16 P. R. (Cr.) 1900.

(3) 32 P. R. (Cr.) 1918.

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back to Jail. At the same time, as half a month's imprisonment is obviously much too light a sentence, I would sentence him now to pay a fine of Rs. 100 and in default of its payment to undergo two months' rigorous imprisonment. The respondent will either pay the fine or surrender to his bail-bond before the District Magistrate.

JOHNSTONE J.

JOHNSTONE J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haider.

ABBAS KHAN AND ANOTHER (PLAINTIFFS)

Appellants

versus

RAM DAS AND MUHAMMAD (DEFENDANTS)

Respondents.

1927

May 10.

Civil Appeal No. 294 of 1923.

Mortgage—Interest—whether a charge on the mortgaged property—and whether payable after the expiry of due date—in the absence of express stipulation.

Held, that a mortgagee is entitled to treat interest due under a mortgage as a charge upon the mortgaged property in the absence of a contract to the contrary.

Ganga Ram v. Natha Singh (1), followed.

Held also, that where in a mortgage deed there is a provision to pay simple or compound interest at a certain rate and the mortgage is to be redeemed within a certain period and there is no express stipulation that after the expiry of that period interest shall be paid, it is reasonable to ascribe to the parties the intention that the same rate of interest (whether simple or compound) shall be payable after the expiry of the period.