

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

PRABHAT CHANDRA CHOWDHRY

v.

EMPEROR.*

1907
Dec. 17.

Arms Act (XI of 1878) ss. 14 and 19(f)—Temporary possession of a gun.

Section 19(f) of the Arms Act does not make the mere possession of a gun punishable thereunder, but a possession contrary to s. 14 of the Act.

The temporary possession of a gun by a man who has snatched it up to fire at a mad dog which had entered his premises, is not contemplated by s. 14.

THE petitioner was convicted by the Subdivisional Magistrate of Goalpara of being in possession of a gun without a license under section 19(f) of the Arms Act and sentenced to a fine of Rs. 5. He was the cousin of one Rajendra Narain Chowdhry who was the owner of the gun and who was exempted from the operation of the Act. It appeared that Rajendra, who was at the time in England, had kept the gun with his younger brother. On the 30th March 1907 a mad dog having entered the accused's compound he snatched the gun from the hands of a servant of its owner and fired at the dog. The shot glanced off a brick and struck a man who died a few days after. The accused was at first tried for, and convicted of, an offence under section 304A of the Penal Code by the Subdivisional Officer, and he was now put on trial under the Arms Act for being in unlicensed possession of a gun, and convicted and sentenced as stated above.

Mr. P. L. Roy (Babu Bykunt Nath Das with him), for the petitioner. The possession of the accused was merely a temporary one for the purpose of shooting a mad dog which had entered his compound. Such possession is not within the purview of s. 14 of the Indian Arms Act, and the conviction is, therefore, illegal.

No one appeared for the Crown.

* Criminal Revision No. 1254 of 1907.

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RAMPINI AND SHARFUDDIN, JJ. This is a Rule, calling upon the Deputy Commissioner of Goalpara to show cause why the conviction of and sentence passed on the petitioner should not be set aside, on the ground that he was not in possession of the gun within the meaning of the Arms Act.

The petitioner has been convicted under section 19(*f*) of the Arms Act (XI of 1878), and sentenced to pay a fine of Rs. 5.

The facts are these. The gun used by the petitioner belongs to a gentleman named Rajendra Narain Chowdhry, who has been exempted from the operation of the Arms Act. This gentleman is now in England. His gun seems to have been left by him with his brother, Jatindra Narain Chowdhry. The petitioner is a cousin of these two gentlemen. On the 30th March last a mad dog entered the compound of the *bari* of the petitioner, and he seized the gun, which was in the hands of one Rajeswar, a servant, and fired at the dog. Unfortunately he missed the animal, but a shot from the gun wounded a man named Thanda Rajbansi. For this he was convicted under section 304A, Indian Penal Code, and sentenced to a fine of Rs. 300 and to detention in Court for one day. The Sessions Judge, on appeal, reduced the fine to Rs. 100.

Now the petitioner has been again prosecuted under section 19(*f*) of Act XI of 1878. As regards this second prosecution we think, in the first place, that it was unnecessary, and, in the next place, that the petitioner is not liable under the provisions of section 19(*f*) of the Act. The provisions of section 19(*f*) do not make the mere possession of a gun punishable; they make possession contrary to the provisions of section 14 of that Act, punishable; and we agree with the learned counsel, who appears for the petitioner, that the temporary possession which the petitioner had of the gun when he snatched it up and fired it was not the possession contemplated by section 14.

We accordingly make the Rule absolute and set aside the conviction and sentence.

The fine, if paid, must be refunded.

Rule absolute.