

Pabitar Singh

Vs

State of Bihar

Criminal Appeal No. 128 of 1969

(A. N. Grover, M. H. Beg JJ)

22.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Patna High Court. Originally two persons Pabitar Singh (the present appellant) and Ram Ashray Sharma who were both Loco employees of the Railway were tried under Sections 25 and 26 of the Indian Arms Act, 1959, hereinafter called the "Act". The learned Assistant Sessions Judge found each one of them guilty under both the sections. The sentence imposed was three years rigorous imprisonment under Section 26 and one year's rigorous imprisonment under Section 25 of the Act. The sentences were to run concurrently. The convicted persons filed an appeal to the Court of Sessions. The Additional Sessions Judge, Gaya, who heard the appeal found the appellant guilty under both the sections of the Act. He maintained the sentence imposed on him. Ram Ashray Sharma was given the benefit of doubt and acquitted. Pabitar Singh moved the High Court in revision. His conviction under Section 26 of the Act was set aside by the High Court but his conviction and sentence under Section 25 of the Act were upheld.

2. It is necessary to state a few facts. The appellant and Ram Ashray Sharma were in joint occupation of quarter No. 490-A of the Loco Colony at Gaya. Some confidential information was conveyed by Bishrampore police station to the Kotwali police station at Gaya that stolen properties connected with a dacoity were lying concealed in the aforesaid quarter. Consequently Rama Shankar Upadhyay Station House Officer, Gaya Kotwali police station raided the quarter at 5.45 a.m. on November 5, 1962. He took with him two witnesses P.W. 1, Vijay Kumar Dubey and P.W. 5, Deonandan Ram. The quarter was found locked from outside. Ram Ashray Sharma was reported to be on duty. He was sent for and he opened the outer lock of the quarter the with his key. It was alleged that when the search was made inside the quarter the appellant was found in the quarter, concealing himself in the kitchen room which was bolted from inside. That room was got opened. A country-made gun was found lying in between two bricks on the top of which a tine containing flour in a bag covered with a brass thali was placed. The bedroom was searched and two live 12-bore cartridges were found wrapped in a small cloth. These had been placed behind a framed picture of Lord Shiva.

3. The learned Judge of the High Court formed the view that the appellant could not be convicted in respect of the carstidges which were found in the bedroom which was in joint occupation of Ram Ashray Sharma and the appellant. According to the learned Judge the inference of conscious possession of the appellant had been drawn by the courts below from the fact that the picture behind which the cartridges were found was just above the cot. The fact that cot belonged to Pabitar Singh

had been stated by P.W. 1 alone. No reliance could be placed on that witness as he had to be declared hostile. In view of the fact that the room was in joint possession of two persons the learned Judge held that no inference of the appellant's conscious possession of the cartridges and their concealment by him could be drawn.

4. So far as the gun was concerned the learned Judge observed that it was found inside the kitchen room in which Pabitar Singh was found having concealed himself. He was the only occupant of the room at the moment. He had bolted the room from inside. In spite of certain serious discrepancies and the matters which will be presently discussed the learned Judge accepted the finding based mainly on the evidence of the Sub-Inspector that the appellant had concealed himself in the kitchen room and the gun was found concealed there and an inference could, therefore, be drawn that he was in conscious possession of that gun.

5. We may at this stage refer to the relevant provisions of the Act and the changes which appear to have been made in the Indian Arms Act, 1878 by the Act with which we are concerned, namely the Arms Act, 1959. Section 14 of the Act of 1878 provided that no person shall have in his possession or under his control any cannon or firearm or any ammunition or military stores except under a licence and in the manner and to the extent permitted thereby. Section 15 related to possession of arms of any description without licence prohibited in certain places. Section 19(1)(f) to the extent it is material was in these terms :

"Section 19(1). Whoever commits any of the following offences (namely) -

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(f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of Section 14 of Section 15;"

"shall be punished with imprisonment for a term which may extend to three years or with fine, or with both."

The Act came into force on the first day of October, 1962 as it was on that date that the requisite notification was made, under Sub-Section (3) of Section 1. Section 3 reads :

"No person shall acquire, have in his possession or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder :

Provided that....."

Section 7 relates to prohibition of acquisition or possession etc. of prohibited arms or prohibited ammunition. Chapter III contains provisions relating to licences, Chapter IV to power and procedure and Chapter V to offences and penalties. Section 25 to the extent it is relevant for this case is as follows :

Section 25(1) "Whoever -

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3; or

x x x x x##

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both."

Section 35 provides :

"Where any arms or ammunition in respect of which any offence under this Act has been or being committed are or is found in any premises, vehicle or the replace in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone."

6. In Section 25(1)(a) only the words "has in his possession" have been retained and the other words which appeared disjunctively in Section 19(1)(f) namely, "or under his control" having been omitted. Section 35 appears to have newly inserted to clarify the true position where any arms or ammunition are or is found in any premises etc., in the joint occupation or under the joint control of several persons. Each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms and ammunition in the premises unless the contrary is proved will be liable for that offence.

7. It is abundantly clear from a perusal of the judgments of the courts below including the High Court that the case was neither tried nor examined from the point of view of the provisions contained in Section 35 of the Act. In the present case the quarter was admittedly in joint occupation of both the appellant and Ram Ashray Sharma. It is true that at the item of the raid Ram Ashray Sharma was not present but the mere presence of the appellant was not sufficient to make him guilty of the offence unless the court could come to the conclusion that there was reason to believe that he was aware of the existence of the gun in the premises. If the view of the courts below is accepted that the appellant had concealed himself after having locked the kitchen when the raid took place and that he was in exclusive possession of the kitchen it might have been possible in the light of other facts and circumstances to come to the conclusion that the conditions laid down in Section 35 were satisfied. The courts have, however, ignored some salient facts which were proved and which completely negated the case of the prosecution that the appellant had locked himself in the kitchen and was in sole occupation thereof. The learned trial judge pointed out that the story that the appellant had locked himself in the kitchen was not supported by P.W. 1. In his view that witness had displayed considerable sympathy for the accused person. He therefore took into consideration the statement made by the witness to the police. P.W. 1 had been declared hostile. It has not been shows on behalf of the State how such a course could be followed and any statement made by him could be relied on particularly, when the aforesaid witness had been declared hostile and had to be cross-examined by the prosecutor. The appellant had also moved the trial judge for local inspection and it was pointed out to the judge that there was no device at all in the door of the kitchen by which it could be closed from inside. Other inaccuracies in the description of the room which were to be found in the statement of P.W. 14 Rama Shankar Upadhaya-the Investigating Officer-were also pointed out to him. This is what the trial judge stated in his judgment :

"It cannot, therefore, be denied that the description of the room as given by the I.O. applied to the latrine of the quarter rather than the kitchen except for its location i.e.,

that it was situated adjacent east to the northern end of the inner verandah. The latrine, it may be pointed out is at some distance east of the verandah."

8. After stating a few facts the trial judge came to the conclusion that the Investigating Officer had made some confusion in the description of the kitchen. The learned Sessions Judge accepted the finding that the appellant had decided to "close himself in the Kitchen".

9. Now the story that the appellant had concealed himself inside the kitchen was based substantially on the evidence of P.W. 14, the Investigating Officer. A perusal of his statement would not satisfy any court that implicit reliance could be placed on his evidence. He had deposed in categorical terms that he found the door of the kitchen closed from inside. He stated in cross-examination that the chains were fitted in the door from inside as also from outside. The hinge for chaining the door was not fitted to the door frame but it was fitted to the door plank. He also gave description of the kitchen which was found to be different when the inspection was made by the trial judge nor were any chains or mark of any chains was found in the door of the kitchen as deposed to by P.W. 14. P.W. 2 Ram Swarath, officer incharge, police station Daltonganj who accompanied the raiding party also stated that the door of the kitchen room was closed which was got unfastened. It is implicit in his statement that there was some bolting or chaining device in the door of the kitchen room by which it had been secured by the appellant. This is not at all supported by the inspection note. The allegation that the kitchen had been bolted from inside by the appellant who had concealed himself there at the time of the raid finds mention in the first information report as well. The courts below do not appear to have looked at the prosecution evidence in the light of this gross exaggeration which had been introduced about the door having been bolted or chained from inside by the appellant where he was alleged to have concealed himself. Once that vital fact is disbelieved the entire story of his having concealed himself in the kitchen become doubtful and worthy of rejection.

10. It has also been suggested in some of the judgments of the courts and this fact has been relied upon on behalf of the State before us that the kitchen was used only by the appellant and not by Ram Ashray Sharma, the other occupant. However, there is absolutely no material on which any such suggestion could be justified or based. We are wholly at a loss to understand how a quarter which consisted only of a bedroom and a kitchen would not be in the joint possession of both these persons, namely, the appellant and Ram Ashray Sharma.

11. The next and the crucial question that arises is whether the prosecution has established the essential ingredients of the offence in the light of the provisions of Section 35 of the Act. It has been urged that when the appellant was using the kitchen it was legitimate to expect that he would be aware of the existence of the gun which was concealed there. The gun was concealed in such a manner that it was not visible to the naked eye. Although there may be very grave suspicion that the appellant was aware of the existence of the gun but the prosecution is bound to establish facts from which the court could have reason to believe that he was aware of the existence of the unlicensed firearm. We are not satisfied in the present case that any such facts have been established.

12. Lastly it cannot be over-emphasised that in cases of the present nature where not only the liberty of a citizen is involved but also whole career on-conviction a person in service is bound to be dismissed-great care and attention should be devoted by the courts to all questions of law and fact which unfortunately has not been done in the present case. That has led to miscarriage of justice. The appellant is entitled to the benefit of doubt and he is hereby acquitted.

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