

ALLAHABAD HIGH COURT

Emperor

Vs

Harpal Rai

(Knox.A and Blair, JJ.)

05.05.1902

JUDGMENT

Knox and Blair, JJ.

1. Harpal Rai has been found guilty of an offence under Section 19 of the Arms Act. The learned Magistrate who has convicted him found on the evidence that on January the 9th one Mr. Colin Nichols gave a pistol to the son of Harpal Rai, and asked him to get it repaired for him in Zamania. As Harpal Rai was taking the pistol to the blacksmith in accordance with his instructions, he was charged with the offence of going armed with the aforesaid pistol. This Court has pointed out, first, in the case of *Queen-Empress v. Alexander*¹ and again in the case of *Queen-Empress v. Bhure*² and again in *Queen-Empress v. Tola Ram*³ that the mere temporary possession, without a license, of arms for purposes other than their use as such is not an offence within the meaning of Section 19 of the Indian Arms Act of 1878. The learned Magistrate apparently thought that the principle that underlies these decisions was confined to the case of a servant parrying his master's gun, and had no application to a friend performing the same office for a friend. The essential of the offence is the going armed, that is, carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises.

2. It is difficult to understand how a pistol which was in need of repairs could be seriously looked upon either as a weapon of offence or defiance.

3. Another difficulty which appears to have weighed with the learned Magistrate is that if this principle be accepted, the Arms Act would become a dead letter for district like Ghazipur.

4. The learned Assistant Magistrate is bound to follow the rulings of this Court, and not to hesitate because he conceives that their results will be, in his opinion, disastrous in some direction or other.

5. We set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

Cases Referred.

1 William Weekly Notes 1891 p. 208

2 Weekly Notes 1892 p. 221

3 Weekly Notes 1894 p. 82

