

(1943) 07 MAD CK 0011
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

Kandikatla Nagabhushanam alias Bhushanam

RESPONDENT

Date of Decision : 29-07-1943

Acts Referred:

Arms Act, 1959 — Section 19(f)
Evidence Act, 1872 — Section 27

Citation : AIR 1943 Mad 661 : (1944) ILR (Mad) 224 : (1943) 56 LW 519 :
(1943) 2 MLJ 283

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—This is an appeal by the Crown against the order of acquittal of the accused in C.C. No. 39 of 1942 on the file of

the Sub-Divisional Magistrate's Court of Amalapuram who was charged with having committed an offence punishable u/s 19(f) of the Indian Arms

Act. The case against him was that he was in possession of a revolver M. O, 1 without a license. The evidence against him consisted mainly of a

confessional statement made by him when he was arrested in connection with another case, when he is said to have stated that this revolver was

presented to him by a communist named Pattabhiramayya and that he had hidden it underneath the ground in his father-in-law's house. The

revolver was recovered on this information given by him. He took the police inspector to his father-in-law's house and dug out this revolver from

underneath the ground in one of the rooms of his father-in-law's house. The Magistrate acquitted the accused as he was of opinion--

the confessions of the accused in the presence of the police officer is not admissible in evidence inasmuch as it has not led to the discovery of the

M.O. -1 which was produced by the accused himself and not simultaneously but immediately after. The statement practically accompanied by the production of the property is distinctly different from that which would lead to the discovery of the property. So that part of evidence is not admissible as per Section 27 of the Evidence Act.

and also because he was of opinion that the revolver which was said to be not irreparable by P.W. 1 was an unserviceable revolver and it was not a firearm as defined in the Arms Act. He was also of opinion that the prosecution had not proved that the room from which the revolver was taken was in the exclusive possession of the accused.

2. The revolver has been sent for and has been examined by me as also by the counsel for the accused. I am not able to see anything in the

revolver to indicate that it is an unserviceable one. It is true it is rusty. But when the Circle Inspector was asked about it he stated it was not

irreparable. That a firearm even though it is unserviceable but could be repaired is a firearm the possession of which without license would amount

to an offence has been held by a Full Bench of this Court in Queen-Empress v. Jayarami Reddi ILR (1897) Mad. 360 . I do not think the learned

Magistrate was justified in finding the accused not guilty merely because M.O. I was rusty and it may require some repair. As a matter of fact the

expression ""arms"" has been defined in Section 4 of the Indian Arms Act as including ""firearms, bayonets, swords, daggers, spears, spearheads and

bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms."" Section 19(f) reads as follows:

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

Section 15 shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

3. There are several parts of a revolver which are to be found"" in M.O. 1 and it is "" arms"" within the meaning of that expression as defined in

Section 4. It is not the accused's case that he had any revolver, and it is proved that he holds no license. Consequently if the accused was in

possession of the same without license, he will certainly be guilty of the offence with which he has been charged.

4. With regard to the case that he was in possession of the article, the

prosecution relies for this mainly on the evidence furnished by the confessional statement in the other case. That such a confession though made during the course of investigation in another case is relevant evidence was pointed out by this Court in *Kamakshi Naidu, In Re: Kamakshi Naidu*, . It cannot be said as pointed out by the Magistrate that the discovery of the article M.O. I was not in consequence of the confession. We have the evidence of the Circle Inspector that after the accused was arrested he questioned him and that he gave a statement and after recording the statement in which he definitely stated that the revolver which was given to him by Pattabhiramayya was buried by him in his father-in-law's house, he, the Circle Inspector, was taken by the accused to that house and the accused dug it out and gave the Inspector the revolver. It cannot therefore be said that this discovery was not in consequence of the information given by the accused. It was not simultaneous and the statement was recorded in the presence of witnesses before they moved to the house from where the property was dug out. This is therefore a case in which the confession is admissible u/s 27 of the Evidence Act. If it is admissible then the description of the revolver as a revolver presented by Pattabhiramayya will indicate that the accused got possession of it as a donee. It is true that the room in which the revolver was buried was not in the exclusive possession of the accused. It is not necessary that it should be in the exclusive possession of the accused. It is only in cases where the only evidence in the case is that a particular article was found in a particular place in which a particular person lived, no inference could be drawn that he alone was in possession of the article if there is evidence that others had an opportunity of going to that particular place where the article was found. Here it is not the fact that the revolver was found in the father-in-law's room that is sought to be used to prove that the accused was in possession of it. It is his statement that he placed it there and buried it there after receiving it from Pattabhiramayya that is sought to be used in evidence to prove that he was in possession of the same and the statement clearly indicates that he admitted he was in possession of the same. The fact that he was not in possession of the room makes no difference.

5. In the result the order of acquittal is set aside and the accused is convicted for the offence punishable u/s 19(f) of the Indian Arms Act and

sentenced to one year's rigorous imprisonment.