

APPELLATE CRIMINAL.

Before U San Maung, J.

NGA SAW SHWE (APPELLANT)

v.

THE UNION OF BURMA (RESPONDENT).*

H.C.
1948

June 30.

Arms Act s. 19 (f) as amended by Act LXIV of 1947—Anomaly—Hiding of rifle by burying it—Presumption.

Under s. 19 (f) of the Arms Act an offence is punishable with imprisonment for three years only while an offence under s. 20 is punishable with rigorous imprisonment up to seven years. After the amendment by Burma Act LXIV of 1947 when a person is in possession of a rifle in contravention of s. 14 or s. 15, he is punishable under s. 19 (f) with transportation for life or with death. If he is in possession of the same rifle in such manner that his possession may not be known to any public servant he is only punishable with rigorous imprisonment up to seven years under s. 20. This anomaly has been overlooked by the Legislature.

The accused had hidden a rifle by burying it under the earth. He must be presumed to have intended to keep his possession hidden from the knowledge of a public servant. This case is distinguishable from where the concealment was under the floor-board of the cattle shed which adjoined the house.

Maung Hia Sein v. The King, (1947) R.L.R. 53, distinguished.

U SAN MAUNG, J.—In Special Judge's Trial No. 6 of 1948 of the Additional Special Judge (U Hnit) of Henzada the appellant Saw Shwe was sent up for trial by the police for an offence punishable under section 19 (f) of the Arms Act as amended by the Arms (Temporary Amendment) Act, 1947, Burma Act No. LXIV of 1947. On the facts the learned trial Judge came to the conclusion that the offence committed by the appellant was one punishable under section 20 of the Arms Act, and accordingly convicted him under that section and sentenced him to rigorous imprisonment for five years.

I have admitted this appeal only for the purpose of considering whether, when an accused person is sent

* Criminal Appeal No. 403 of 1948 being appeal from the Order of Additional Special Judge of Henzada, dated 16th March 1948, in Special Judge's Trial No. 6 of 1948.

up for trial under section 19 (f) of the Arms Act, as amended by Burma Act No. LXIV of 1947, it is competent for a magistrate to convict him under section 20 of the Act when the facts appearing in evidence justifies a conviction under the latter section. Curiously enough, before section 19 (f) of the Arms Act was amended by Burma Act No. LXIV of 1947, an offence under that section was punishable with imprisonment for three years only, whereas an offence under section 20 of the Act was and still is punishable with rigorous imprisonment which may extend to seven years. After the amendment offences under section 19 (f) become punishable with death or transportation for life, if the arm, ammunition or military store found in the possession of the accused person is a machine-gun, bren-gun, tommy-gun, sten-gun or rifle, etc. Now, the relevant portions of section 19 (f) of the Arms Act, as amended, will read as follows :

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“19. Whoever commits any of the following offences (namely) :

* * * *

(f) 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 punished with imprisonment for a term which may extend to three years, or with fine, or with both :

Provided that where any person commits an offence falling within clause (f), he shall be punished with death or transportation for life, if the arm, ammunition or military store found in the possession of such person is a machine-gun, bren-gun, tommy-gun, sten-gun or rifle, etc.”

The relevant portion of section 20 reads :

“20. Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Penal Code,

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shall be punished with imprisonment for a term which may extend to seven years, etc."

Therefore, an anomalous situation arises, namely, that, when a person is in possession of a rifle in contravention of the provisions of section 14 or section 15 of the Arms Act, he is punishable under section 19 (f) with transportation for life or with death, whereas if a person is in possession of the same rifle in such manner as to indicate an intention that his possession may not be known to any public servant as defined in the Penal Code, he is only punishable with rigorous imprisonment extending to seven years under section 20 of the Act. This anomaly must have been overlooked by the Legislature in enacting the Arms (Temporary Amendment) Act, 1947.

On the facts it is clear that the appellant in this case had hidden a rifle by burying it under the earth. He must, therefore, be presumed to have intended to keep his possession hidden from the knowledge of a public servant as defined in the Penal Code. His case is distinguishable from that of *Maung Hla Sein v. The King* (1), where the concealment of a rifle under the floor-board of the cattle shed which adjoined the house was held to be not possession with an intention that such possession might not be known to any public servant.

The conviction of the appellant under section 20 of the Arms Act is correct and the sentence of five years rigorous imprisonment calls for no interference. The appeal is dismissed.