

APPELLATE CRIMINAL.

Before U San Maung, J.

SOE KHIN (APPELLANT)

v.

THE UNION OF BURMA (RESPONDENT).*

H.C.
1948

Aug. 23.*Arms Act, s. 19 (f)—Burma Act No. LXIV of 1947—S. 19—Ammunition definition of—Proviso of a section, rules of interpretation.*

Appellant was found in possession of 315 empty cartridges without hammer striking marks on the percussion-caps and 13 empty cartridges with hammer striking marks. On examination they were found to be from Vicker and Browning machine-guns and incapable of being reloaded in Burma. The appellant's defence was that he had purchased the cartridges for the sake of brass contained.

Held: Ammunition is defined in s. 4 of the Arms Act and includes all parts of ammunition and therefore includes empty cartridges. Case law on the point considered.

Emperor v. Ebrahim Alibhoy, (1905) 7 Bom. L.R. 474 S.C. (1905) C.L.J. 449; *Emperor v. Baldeo Singh*, 31 All. 152; *Emperor v. Aladin*, 46 All. 107; *Emperor v. Bhopal Singh*, A.I.R. (1936) All. 392, followed.

Emperor v. Amir, 47 All. 629; *Kallu v. Emperor*, A.I.R. (1926) All. 255, not followed

The proper course in construing a section with a proviso is that the section must be construed as a whole, each portion throwing light if need be on the rest. The enacting clause, saving clause and proviso, should be taken and construed together.

Maxwell on Interpretation of Statutes, 9th Edn. 165, referred to.

The expression "ammunition for any of the said guns" occurring in the proviso to s. 19, Arms Act must be deemed to include empty machine-gun cartridges and the appellant was rightly convicted.

The result may be unfortunate in special cases, e.g. a man found in possession of a single machine-gun cartridge may be liable to death or transportation for life but this is a matter for the legislature to rectify and not for the court.

Shein Wun (Government Advocate) for the respondent.

U SAN MAUNG, J.—In Criminal Regular Trial No. 10 of 1948 of the First Additional Special Judge of

* Criminal Appeal No. 474 of 1948 being appeal from the order of the 1st Additional Special Judge of Pakôkku, dated 30th April 1948, in Criminal Regular Trial No. 10 of 1948.

H.C.
1948
SOE KHIN
v.
THE UNION
OF BURMA.
U SÂN
MAUNG, J.

Pakôkku, the appellant Soe Khin was convicted under section 19 (f) of the Arms Act read with the proviso to section 19 of the Act as added by Burma Act No. LXIV of 1947 and sentenced to transportation for life. The appellant admitted having been found in possession of 315 empty cartridges without hammer striking marks on the percussion-caps and 13 empty cartridges with hammer striking marks on the percussion-caps. Ten of these empty cartridges were sent to U Hla Baw, Principal of Detective School at Insein, who when examined on commission gave his opinion that they were from Vicker and Browning machine-guns and were incapable of being re-loaded in Burma. Five of the empty cartridges sent to this witness had percussion-caps which were yet unexploded and on tests being made this witness found that 2 of these caps exploded when fired by him and that 3 did not explode probably because the lead azide compound therein was damp. The appellant's defence, which was probably a true one, was that he had purchased the empty cartridges from one Khin Maung (the appellant in Criminal Appeal No. 475 of 1948 of this court) for the sake of the brass they contained. However, whatever may be his motive it is a matter for consideration whether he had committed any offence for being in possession of empty machine-gun cartridges with unexploded percussion-caps therein. Now, "ammunition" as defined in section 4 of the Arms Act includes among other things, percussion-caps and all parts of ammunition and there is ample authority for the view that the expression "all parts of ammunition" as used in section 4 of the Arms Act includes empty cartridges. In *Emperor v. Ebrahim Alibhoy* (1) a Bench of Bombay High Court held that the accused who was

(1) (1905) 7 Bom. L.R. 474 S.C. (1905) C.L.J. 449.

found in possession of the empty cartridge cases was rightly convicted under section 19 (f) of the Arms Act but considered that it was a technical offence for which a fine of four annas was sufficient to meet the ends of justice. This ruling was followed by a single Judge of the Lahore High Court in *Emperor v. Baldeo Singh* (1) which in turn was followed by a Bench of the same High Court in *Emperor v. Aladin* (2). On the other hand, in *Emperor v. Amir* (3) where the accused was found in possession of two empty cartridge cases which were of a peculiar kind which were not capable of being re-loaded in India, it was held by Stuart J. that the accused had not committed any offence under section 19 (f) of the Arms Act as the empty cartridges could not be considered as ammunitions. However, this decision was criticised by a Bench of the Allahabad High Court in *Emperor v. Bhopal Singh* (4) where the learned Judges observed :

H.C.
1948
—
SOE KHIN
v.
THE UNION
OF BURMA.
—
U SAN
MAUNG, J.

“The learned Judge (Sessions Judge) relied on *Emperor v. Amir* (3), in which a man was convicted for having two cartridges in his possession, and it was held by a learned Judge of this Court that no offence had been committed because the cartridges could not be re-loaded in India. The decision in that case was followed in *Kallu v. Emperor* (5). These decisions are by single Judges of the Court. There is a decision of a Bench of this Court in *Emperor v. Aladin* (2), in which it was held that empty cartridge cases come within the definition of ammunition under the Arms Act. It has been argued before us that cartridge cases may come within the definition, but it is necessary to prove as a positive fact that they are capable of being re-loaded before they can be described as ammunition. We are in agreement with the decision of the Bench of this Court to which we have had a reference. A cartridge case is undoubtedly a part of ammunition within the meaning of section 4, Arms Act. No doubt it may be open to a person being in possession of such a case to show that it is no longer ammunition because it is incapable of being

(1) 31 All. 152.

(3) 47 All. 629.

(2) 46 All. 107.

(4) A.I.R. (1936) All. 392.

(5) A.I.R. (1926) All. 255.

H.C.
1948
—
SOE KHIN
v.
THE UNION
OF BURMA.
—
U SAN
MAUNG, J.

re-loaded and used as a part of ammunition at any future time. There is nothing in the Act which says that part of ammunition shall not be ammunition unless it can be made up and incorporated in ammunition in India or anywhere else."

I am in entire agreement with these observations and I, therefore, hold that empty cartridges are ammunition as defined in section 4 of the Arms Act although they may not be capable of being re-loaded in Burma if they are capable of being re-loaded and incorporated in ammunition in some other country where there are machines and materials for the purpose of such re-loading.

The next question for consideration is whether the offence committed by the appellant is one punishable with death or transportation for life under the proviso to the section 19 of the Arms Act as added by Burma Act No. LXIV of 1947. The empty cartridges complete with percussion-caps which were found in the possession of the appellant were from cartridges capable of being used on Vicker and Browning machine-guns if they were all of the same specimen as those which were sent to U Hla Baw. Now, the proviso to section 19 of the Arms Act reads :

" Provided that where any person commits an offence falling within clause (e) or 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 or American carbine, or ammunition for any of the said guns, or a hand-grenade, or any other arms of the description which the Governor may ; by notification, declare in this behalf."

The rule regarding the interpretation of a proviso to a section of an act is that the proviso must be taken and construed together with the main proviso. "There is no rule that the first or enacting part is to be construed without reference to the proviso. The proper course is

to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest. The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together, is to prevail." (See Maxwell on Interpretation of Statutes, Ninth Edition, at page 165.)

Therefore, the expression "ammunition for any of the said guns" occurring in proviso to section 19 of the Arms Act must be deemed to include empty machine-gun cartridges. The appellant has been rightly convicted under section 19 (f) of the Arms Act read with the proviso thereto and the sentence of transportation for life is the minimum that can be awarded to him under the law now in force. The result of this decision may be unfortunate in that a man found in possession of a single machine-gun cartridge may be liable to death or transportation for life but this is a matter for the Legislature and not for this Court to rectify and I have no doubt that when this decision is brought to the notice of the authorities concerned steps will be taken by them to make such suitable amendment in the law as they may deem expedient.

H.C.
1948

SOE KHIN
v.
THE UNION
OF BURMA.

U SAN
MAUNG J.