

57, 1947

No. 94 of 1946.

In the Privy Council.

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
JURISDICTION.
LEGAL STUDIES

ON APPEAL

FROM THE SUPREME COURT OF FIJI (CRIMINAL

BETWEEN

44433

PATESARI MAHARAJ

Appellant

AND

THE KING

Respondent.

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF FIJI (CRIMINAL JURISDICTION).

BETWEEN

PATESARI MAHARAJ

Appellant

AND

THE KING

Respondent.

10 RECORD OF PROCEEDINGS.

No. 1. CHARGE.

CRIMINAL PROCEDURE CODE.

Form 2. (Section 82.)

FIJI } —Class Magisterial Area of Central.
To wit } District of Ba.

*In the
2nd Class
Magistrate's
Court,
Tavua.*

No. 1.
Charge,
12th May
1945.

PATESARI F/N RAMLOTCHAN of MAGERE, TAVUA is charged on the complaint of HARRY HALSTEAD, Assistant Superintendent of Fiji Police, Ba, with the following offence:—

20 *Statement of Offence*

POSSESSION OF ARMS WITHOUT A LICENCE—contrary to Section 4 Ordinance 8 of 1937.

Particulars of Offence

PATESARI F/N RAMLOTCHAN on the 11th day of May, 1945, at Magere, Tavua, in the Central District was found in possession of arms to wit: one revolver of .45 calibre, without a licence or permit.

Dated at Ba this 12th day of May, 1945.

(Sgd.) H. HALSTEAD,
Asst. Supt.

*In the
2nd Class
Magistrate's
Court,
Tavua.*

*Evidence of
Prosecution
Witnesses.*

No. 2.
Harry
Halstead,
Asst. Supt.
of Police,
30th July
1945.

No. 2.
EVIDENCE of Prosecution Witnesses.

2nd Class Magistrate's Court, Tavua.
Before R. A. F. Wallis, Esquire,
2nd Class Magistrate Tavua,
30th July, 1945.

14/45 POLICE

v.

PATESARI MAHARAJ

1. Unlawfully in possession of a revolver.
2. Unlawfully in possession of three .38 revolver bullets— 10 4-8-37.

Insp. Halstead asks that information be altered to .45 calibre.
Allowed.

Accused states that Mr. Chalmers is his lawyer, but has not come although accused told him the date was to-day. Case to proceed.

Accused has no objection to both charges being heard together.
30th July, 1945.

HARRY HALSTEAD. Sworn.

Asst. Supt. of Police i/c C.I.D. Suva.

As a result of information obtained I left Ba Police Station on 1. 5. 45 20
at 2.50 p.m. with Sgt. Attar Singh and Cpl. Bhan Pratap, Const. Orisi,
to execute a search warrant in house of accused at Maqere—a track leads
from the road to the compound of the accused—compound is fenced right
round except where track enters. It consists of a bure opposite track
and end on to it. A large wooden house about 15-20 yds. away from the
bure and a stable and a kitchen behind it. Bure has two doors, one on
end facing track and one on side facing house. On arrival at the compound
saw accused lying on a bed in the bure which was across the end door.
He was called and questioned by Sgt. Attar Singh under my direction—
said whole compound was his. When asked said he had no arms and 30
ammunition—warrant then read to him—he declined to search police
party—house and kitchen then searched without result—stable also—
then the bure—greater part of floor taken up with heaps of padi rice
which was turned over, and then Const. Orisi and Attar Singh started to
search thatching. I was standing at side door—accused inside—during
search Sgt. Attar Singh drew my attention to something buried in wall—
behind end post diagonally opposite end door. I pulled it out—found
it to be this .45 Colt revolver loaded in alternate chambers with 3 rounds
of .45 automatic ammunition, whole being wrapped in the cloth—shown
to accused who said he knew nothing of it. Examined outside of wall 40
with accused—would have been impossible to put revolver in that position
from outside—thatching quite undisturbed. I arrested the accused and
took him to Ba Police Station where I charged him with possession of
revolver and cautioned him. He made a statement which I took down
in English, interpreted from Hindi to English, read back to him in Hindi
by Sgt. Attar Singh. He said it was correct, fixed left thumb mark.
Ex. A
Ex. B
Ex. C
Ex. D
This is the statement (printed at p. 10 as Exhibit "G"). In fairness
to accused I think I should add that in my opinion it is very doubtful
whether revolver could have been fired with the ammunition found in it.

XXd. Reserved. 50

Taken and sworn at Tavua Court House in the presence and hearing
of the accused this 30th day of July, 1945.

H. HALSTEAD.

No. 3.

EVIDENCE of Prosecution Witnesses.

In the
2nd Class
Magistrate's
Court,
Tavua.

Evidence of
Prosecution
Witnesses.

No. 3.
Sgt. Attar
Singh, 30th
July 1945.

Sgt. ATTAR SINGH. Sworn.

Remember 11th May, this year. With A.S.O.P. Halstead, Cpl. Bhan Pratap and Const. Orisi went to house of accused at Maqere—on arrival accused seen lying on bed in bure—spoke to him—told him I had a search warrant for arms and explained contents to him. He agreed to the search. Asked him who the house belonged to—he replied that the tin house and bure were all his—asked him whose the land was on both sides of the house and he said it was his. Asked if he wanted to search police party. He said, "No." After that searched tin house with accused and searched for arm. Nothing was found. Then kitchen and stable similarly. Then started to search bure. Moved heap of padi—then thatched walls inside. Constable Orisi there also. I found something in a corner. Called A.S.O.P. Halstead, drew his attention. Accused also in bure at the time. Asst. Supt. pulled out parcel in front of accused and Bhola. He opened parcel—removed .45 revolver, 3 rounds in chamber. Accused denied knowledge—outside of bure then examined—no disturbance—was new bure. Then arrested and taken to Ba police station. Charged by Asst. Supt. Halstead, made statement which I interpreted from Hindi to English. I read it back in Hindi to accused who agreed it was correct. He was also charged with possession of 3 rounds of ammunition. Cautioned. Taken in English by A.S.O.P. Halstead—interpreted by me from Hindi to English—read back from English to Hindi—stated correct and affixed left thumb print.

Ex. "E." That is it. (Printed at p. 11 as Exhibit "H.")

Ex. E.

XXd. Reserved.

Sgt. ATTAR SINGH.

Taken and sworn at Tavua Court House in the presence and hearing of the accused this 30th day of July, 1945. Before me.

2nd Class Magistrate, Tavua.

No. 4.

EVIDENCE of Prosecution Witnesses.

No. 4.
Harry
Halstead
(recalled),
30th July
1945.

HARRY HALSTEAD—Recalled.

I also charged accused with possession 3 rounds ammunition—cautioned him. By recall statement taken down by me in English—interpreted from Hindi to English—read back to him in Hindi by Sgt. Attar Singh—stated correct and fixed his left thumb mark. This is the statement (printed at p. 11 as Exhibit "H").

Ex. E

H. HALSTEAD.

Taken and sworn at Tavua Court House in the presence and hearing of the accused this 30th July, 1945, before me.

2nd Class Magistrate, Tavua.

CPL. BHAN PRATAP. Tendered for cross-examination only.

Accused states defence reserved.

CONST. ESERI. Tendered for cross-examination only.

Accused states defence reserved.

*In the
2nd Class
Magistrate's
Court,
Tavua.*

No. 5.
Statement
of Accused,
30th July
1945.

No. 5.

STATEMENT of the Accused.

STATEMENT OF ACCUSED TAKEN.

I am innocent—I wish to reserve my defence.
(Sgd.) PATESARI MAHARAJ in Hindi.

R. A. F. WALLIS,
Magistrate.

Taken at Tavua Court House this 30th day of July, 1945.

2nd Class Magistrate, Tavua.

The accused is committed for trial at the next session of the Supreme Court to be held at Ba. 10

R. A. F. WALLIS.

Police have no objection to Bail.

Bail granted. Self in £50. 2 sureties £25 each.

R. A. F. WALLIS.

No. 6.

INFORMATION by the Attorney-General.

*In the
Supreme
Court
of Fiji,
Lautoka.*

No. 6.
Informa-
tion by
Attorney-
General,
25th
October
1945.

No. 58 of 1945.

IN THE SUPREME COURT OF FIJI.

At the Sessions holden at Lautoka

20

On the 20th day of November, 1945.

PATESARI MAHARAJ is charged with the following offences :—

FIRST COUNT.

Statement of Offence.

Receiving stolen goods, contrary to section 335 of the Penal Code.

Particulars of Offence.

Patesari Maharaj on a day unknown prior to the 11th day of May, 1945, at Maqere in the Central District did receive one .45 calibre pistol the property of the United States Forces knowing the same to have been stolen.

30

SECOND COUNT.

Statement of Offence.

Possession of arms without licence, contrary to section 4 of the Arms Ordinance, 1937.

Particulars of Offence.

Patesari Maharaj on the 11th day of May, 1945, at Maqere in the Central District had in his possession a .45 calibre pistol without licence.

THIRD COUNT.

Statement of Offence.

Possession of arms used by the forces of an allied power in the Colony without permission granted by the Officer Commanding the said forces, contrary to Regulation 74 (1) of the Defence (General) Regulations, 1942.

Particulars of Offence.

10 Patesari Maharaj on the 11th day of May, 1945, at Maqere in the Central District had in his possession a .45 calibre pistol used by the United States Forces without permission granted by the Officer Commanding the said Forces in Fiji.

FOURTH COUNT.

Statement of Offence.

Unlawful possession of explosives, contrary to Defence (Explosives) Order, 1944, made under Regulation 84 (1) of the Defence (General) Regulations, 1942.

Particulars of Offence.

Patesari Maharaj on the 11th day of May, 1945, at Maqere in the Central District had in his possession 3 rounds of .45 calibre ammunition.

Dated the 25th day of October, 1945.

20

(Sgd.) E. M. PRICHARD,

Crown Counsel.

(In exercise of powers vested under section 74 of the Criminal Procedure Code.)

In the Supreme Court of Fiji, Lautoka.

No. 6. Information by Attorney-General, 25th October 1945, continued.

No. 7.

PLEA of Accused.

Lautoka,

Tuesday, 20th November, 1945.

No. 7. Plea of Accused, 20th November 1945.

30 REX
v.
PATESARI MAHARAJ

- (1) Receiving Stolen Goods.
- (2) Possession of Arms.
- (3) Possession of Military Property.
- (4) Possession of Explosives.

Information read.

Interpreter sworn : C. A. John.

Plea :

- (1) Not Guilty.
- (2) Not Guilty.
- (3) Not Guilty.
- (4) Not Guilty.

Counsel : PRICHARD for Crown.

40

CHALMERS for accused.

Ask that Bail be extended.

Order : Stand down for trial.
Bail extended.

(Sgd.) R. C. HIGGINSON,
P.J.

EVIDENCE of Prosecution Witnesses.

*In the
Supreme
Court
of Fiji,
Lautoka.*

Lautoka,

Monday, 18th March, 1946.

*Evidence of
Prosecution
Witnesses.*

Before His Honour MR. JUSTICE THOMSON.

No. 8.
Harry
Halstead,
Asst. Supt.
of Police,
18th March
1946.

THE KING

v.

PATESARI MAHARAJ

- | | | |
|---|---|----|
| } | (1) Receiving Stolen Goods. | |
| | (2) Possession of Arms without Licence. | |
| | (3) Possession of Arms used by forces of an Allied power. | |
| | (4) Unlawful possession of explosives. | 10 |

E. M. Prichard for the Crown.

N. S. Chalmers, Counsel for defence.

Assessors : WILLIAM VERNON RICE

FRANK MARKHAM WADDINGHAM.

Information read.

Interpreter sworn : C. A. John.

PRICHARD : I have an application to make to the Court for leave to offer no evidence on the first and third counts on this Information.

CHALMERS : Nothing to say.

THE COURT : I find the prisoner Not Guilty on the first and third 20 counts.

PRICHARD : You have just heard the charge against Patesari Maharaj read to you by Mr. Registrar. It is a charge of being unlawfully in possession of a pistol and some ammunition, and the evidence for the prosecution will be simply evidence of members of the police search party who searched the premises occupied by Patesari Maharaj under search warrant on the date in question and found a loaded revolver concealed in the thatch of a bure forming part of the compound.

HARRY HALSTEAD. Sworn.

Asst. Supt. Police.

30

1. I think in May of last year you were in charge of the C.I.D. ?—That is correct.

2. And you were in this area at the time ?—I was.

3. I think it was on the 11th May last year that you went out with a search party ?—I did.

4. Including Sgt. Attar Singh and some constables ?—Yes.

5. Under search warrant ?—We had a search warrant.

6. And you were acting I suppose on information received ?—Yes.

7. Did you go to the premises occupied by the accused ?—I did.

8. I think that was a settlement called Maqere, in the Tavua area ? 40—Yes.

9. Is that anywhere near the government road ?—Yes, the entrance to the accused's compound is off a road which branches off the government road. It is a government road, but not the King's Road.

10. How far from Vatia Point is the accused's compound?—I should say about 150 yards.
11. How many buildings are there in the compound?—There was a bure, a large wooden house, kitchen and stable.
12. Was the compound fenced?—Completely fenced around except where the track from the government road enters it.
13. This track leads straight from the government road to the compound?—At that time through grown cane.
14. It doesn't lead anywhere else?—No.
- 10 15. I think this search was made in the afternoon?—That's right. We left Ba police station at 2.55 and actually searched at 3.55 p.m.
16. Did you find anyone at the compound when you got there?—On my arrival at the compound I saw the accused lying on a bed across the end entrance to the bure.
17. Anyone else there?—There was also an old man—I don't know his name—in the bure, and one of the accused's sons came later. I am not sure whether two of his sons came later.
18. I suppose you explained to the accused what you were there for?—I did.
- 20 19. Where did you make the first search?—In the house.
20. By the house you mean the large wooden building?—Yes.
21. Was anything found in the house?—No.
22. What then?—We then searched the kitchen, the stable, and the last place searched was the bure.
23. Was there anything in the bure, apart from the bed you have mentioned?—Most of the floor was taken up with loose paddy rice, and in one corner was a chaff-cutting machine.
24. This bure has no actual doors?—No. There are entrances only. Nothing to close the bure up with.
- 30 25. Did you find anything in the bure?—Sgt. Attar Singh drew my attention to something behind one of the corner posts. I put my hand into the thatch and found a revolver. It was buried completely behind the post in the thatch. This is it. It was loaded in three alternate cylinders. The ammunition was of the automatic type. These.
26. By ammunition of the automatic type you are referring to the type that is used in an automatic weapon?—Yes.
27. Would it be very useful in that revolver?—In my opinion, I don't think it could be used in that revolver.
- The Court:*
- 40 28. It is a very old type revolver—pre-1914?—It is the type issued to the British soldier in the last war.
29. As to preservation was it in the same state as it is now?—Yes, it was pretty much in this condition. C.C.
30. Is it serviceable, do you think?—Yes. It was wrapped in this cloth. Ex. C.
31. You mentioned this was in one corner of the bure behind the post?—Yes.
32. I wonder whether from that photograph you could recognize the bure and say where the weapon was found?—It was in the corner alongside where the person in the photograph is standing. Ex. D.
- 50 33. And did you examine the thatch yourself?—I did.

*In the
Supreme
Court
of Fiji,
Lautoka.*

*Evidence of
Prosecution
Witnesses.*

No. 8.

Harry
Halstead,
Asst. Supt.
of Police,
18th March
1946,
continued.

Ex. A.
Ex. B.

C.C.

Ex. C.

Ex. D.

*In the
Supreme
Court
of Fiji,
Lautoka.*

*Evidence of
Prosecution
Witnesses.*

No. 8.
Harry
Halstead,
Asst. Supt.
of Police,
18th March
1946,
continued.

34. Did you look at the outside of the thatch?—I did.
35. Was there any sign of disturbance of the thatch, corresponding to where the revolver was found?—Not a bit. In my opinion, it was impossible for the revolver to be put in that position from the outside.
36. Now, I think you arrested the accused?—I did.
37. Took him to the police station?—Yes.
38. Where you charged him with the unlawful possession of this revolver?—Yes.
39. And cautioned him in the proper manner?—Yes.
40. And did he make a brief statement?—He made a statement which I took down in writing in English.
41. Sgt. Attar Singh acted as your interpreter?—Yes.
42. Did you read it back to him?—Yes.
43. Through the interpreter?—Yes.
44. Did he understand it?—Yes.
45. Approve of it?—Yes.
46. And put his thumb print on it?—Yes.
47. Is that the statement?—Yes.
I put that in for identification, sir.
48. I think you similarly charged and cautioned him in respect of the ammunition?—I did.
49. And he made a statement which was recorded in exactly the same way?—Yes.
50. And to which he put his thumb print?—Yes.
51. Is that the statement?—Yes.
I put that in for identification.
52. Now, concerning this compound, Superintendent. You said that you approached it by a track from Vatia Point road?—Yes.
53. And then you came to a fenced compound?—Yes.
54. Which would be the first building you would come to?—The bure.
55. And how far would that be from the entrance in the fence?—I should say about 30–40 yards. It is really a gap in the fence.
56. You mentioned the fact that the accused and another man were there and that two sons came later. Were there any woman?—No.
57. Any dogs?—Two dogs.

XXn. Chalmers :

58. You mentioned that you consider it impossible for that gun to have been put in through the thatch from the outside?—Yes.
59. Don't you think that is rather a wild statement?—No.
60. Do you think it is at all improbable or impossible? I shoved my camera through the thatch and smoothed the thatch down and asked four independent people to point out the spot and they couldn't.—The thatch was new at that time and very tightly bound down and I got two people in the presence of the accused to try and put the revolver through and they failed.
61. It would be quite possible to enter that building at any time during the night?—If the dogs did not bark and if there was no one in it, it would be possible.

To Court :

62. There would be no physical difficulty?—No.

Chalmers :

63. You mention that coming down the track—as you know, I live in that locality.—Yes.

64. Coming down from the main Vatia road to the house there was cane on both sides. Are you correct there?—As far as I remember. I wouldn't be dogmatic on the point.

65. Would you say that was the locality of the house, looking from the stable?—Yes.

10 66. It is all open country round about there?—As shown by that photograph. There was, to the best of my recollection, cane growing on the fence side of the bure at the time we searched.

67. Do you know who that cane belonged to?—I don't.

67A. This would show the general situation of the house from the iron house?—Yes.

68. You don't happen to know that the fence there near that bure is the boundary of the accused's property?—I don't know.

69. Now, this fence you talk of. Is it not just one of these usual type of Indian fences—two or three wires?—That is so.

20 70. Nothing to prevent anybody getting through that wire quite easily at any time?—Nothing at all.

71. Do you happen to know that the accused suffers from asthma and at that time was lying sick?—I didn't know that.

72. Did he appear to be sick?—Not particularly sick. He is an old man but he did not appear to be sick.

73. Did you test him out as to how to handle a gun?—No.

74. I think he told you, Mr. Inspector, when you asked him whether he had any arms, that he didn't have any arms and that he didn't even know anything about guns?—The first question was, I asked him if he had any arms, and he said "No."

30 *To Rice, Assessor :*

75. I would ask if, in Mr. Halstead's opinion, that ammunition could be fired from that gun.—It is possible that it would fire, but it is rather improbable.

No. 9.

EVIDENCE of Prosecution Witnesses.

SERGEANT ATTAR SINGH, Sgt. Fiji Police. Sworn.

76. I think you went with Superintendent Halstead on the 11th May last year?—Yes.

77. To Maqere?—Yes.

40 78. As part of a search party?—Yes.

79. You went to the accused's premises?—Yes.

80. Did you see him there?—Yes.

81. Where was he when you arrived?—Lying on a bed in the bure.

82. Did you have any conversation with him?—Yes. I called him and he came out from the bure.

83. Did you ask him whose premises they were?—Yes. About the house and the land, and he said they belonged to him.

*In the
Supreme
Court
of Fiji,
Lautoka.*

*Evidence of
Prosecution
Witnesses.*

Ex. E

No. 8.

Harry
Halstead,
Asst. Supt.
of Police,
18th March
1946,

Ex. F

continued.

No. 9.

Sgt. Attar
Singh, 18th
March 1946.

Taken by me at Ba Police Station on 11th May, 1945. It was interpreted from Hindi into English and read back to the accused by Sgt. Attar Singh and he said it was correct and affixed his left thumb print.

(Sgd.) H. HALSTEAD
Asst. Supt.

*In the
Supreme
Court
of Fiji,
Lautoka.*

I hereby certify that I have interpreted the statement of the accused Pateshri from Hindustani to English and this document itself from English to Hindustani to the best of my ability and knowledge.

(Sgd.) SGT. ATTAR SINGH.

*Evidence of
Prosecution
Witnesses.*

No. 10.
Statement
of Accused
taken at
Police
Station,
11th May
1945,
continued.

No. 9.
Sgt. Atta
Singh,
continued.

10

4.40 p.m.

EVIDENCE of Sgt. Attar Singh (continued).

107. I think the Superintendent also charged the accused with possession of the ammunition?—Yes.

108. Did he caution him?—Yes.

109. And the statement was taken in exactly the same way?—Yes.

110. Is that the statement?—Yes.

(Statement read as follows.)

20

No. 11.
STATEMENT of Accused taken at Police Station.

EXHIBIT "H."

Fiji Police.

STATEMENT.

Ba Station,
Ba Province.
11th day of May, 1945.
4.40 p.m.

No. 11.
Statement
of Accused
taken at
Police
Station,
11th May
1945.

Name PATESHRI f/n Ram Lochan.
Address Maqere, Tavua.
Occupation Cane Planter.

30

Having been charged with the unlawful possession of 3 rounds of ammunition and having been cautioned by Asst. Supt. Halstead, states:—

I don't know how many rounds inside. I don't know how to load it. I don't know anything about it.

Left thumb print.

Taken by me at Ba Police Station on 11.5.45. It was interpreted from Hindi into English and read back to the accused by Sgt. Attar Singh and he said it was correct and affixed his left thumb print.

(Sgd.) H. HALSTEAD
Asst. Supt.

40

I hereby certify that I have interpreted the statement of the accused Pateshri from Hindustani to English and this document itself from English to Hindustani to the best of my ability and knowledge.

(Sgd.) SGT. ATTAR SINGH.
4.40 p.m.

*In the
Supreme
Court
of Fiji,
Lautoka.*

XXd. Chalmers :

111. Have you known the accused very long ?—Yes.

112. And I put it to you that he is an exceptionally quiet-living man ?—Yes.

113. Lives very much to himself and has borne a splendid reputation in that district ?—Yes.

*Evidence of
Prosecution
Witnesses.*

CROWN COUNSEL : There are two witnesses who attended only for cross-examination. My learned friend says he does not wish to cross-examine. Might the statement of the accused at the preliminary inquiry be read ?

(Statement at p. 4 read.)

THE COURT : I suppose the Governor's order has been published in some way ?

CROWN COUNSEL : It has been published in the Royal Gazette.

(Case for Prosecution closed.)

CHALMERS : I take the point that there is no case to answer. Since this information was laid a case on appeal was decided by His Honour the Chief Justice at the last sessions here (my learned friend appearing for the Crown and Mr. A. D. Patel for the appellant) which is on all fours, I submit, with this case, in which a sub-machine gun was found in a thatched house belonging to the accused and there was no evidence to show or connect him in any way with that gun. And His Honour pressed my learned friend on the question of *mens rea* and my learned friend admitted that it was essential to establish *mens rea* in a case of this sort. I would refer Your Honour to the Penal Code, sec. 4, on the definition of possession. I submit that there must be some knowledge. It must be shown that the accused had some knowledge of the existence of that gun. The building, as in this case on appeal, was an open one to which access could have been had by anybody at any time who had any motive for trying to frame up a case against any person.

R. v. Harris. Archbold 29th Ed. p. 682.

R. v. Merriman (1907) Vict. L.R. 1 (Archbold 31st Ed. p. 725).

All the accused can show in his defence is what he has already said—that he did not know of the existence of the gun, that it was there, that he knows nothing about arms.

I submit that possession here does not mean absolute possession : it means possession with guilty knowledge. And I submit there is no evidence of that.

CROWN COUNSEL : I fully accept my learned friend's definition of "possession." I am not sure what he means by "absolute possession," but in my submission in a case of this type possession of an article means that the article is on a man's premises or his property with his sanction—with his consent and with his knowledge. I submit that those are the elements that make up possession in this case, and if by "guilty knowledge" my friend means one of those elements then I would agree with him. I do understand that is what he means, and if that element is not present—if the article is on his property without his knowledge, without his sanction, that is not possession of any description. It is then a question as to the

No. 9.
Sgt. Attar
Singh, 18th
March 1946,
continued.

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evidence in proof of that element, and my learned friend has referred to Your Honour's notice a case decided at the last sessions. I have some recollection of the case but regret that I am not in a position to assist the Court at the moment : it is my recollection that that case was a case under the Defence Regulations and not a case under the Arms Ordinance, which does make a difference. In any case, I would submit that it is purely a matter of fact in every case, and obviously the question of knowledge would have to be left to the jury, if there were a jury, as a matter of fact which they might infer from all the surrounding circumstances. It is

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THE COURT : It probably settles the matter as far as count 2 is concerned, but is there any corresponding provision in the Defence Regulations ?

CROWN COUNSEL : To the best of my knowledge there is not. I would nevertheless submit that there are circumstances from which it is perfectly reasonable to ask that the inference be drawn.

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THE COURT : As far as count 2 is concerned, I do fear, and I do not speak without having advised myself, because I have had to consider the same point two or three days ago in a similar case—I do think, as far as count 2 is concerned, sec. 37 of the Ordinance is against you at this stage Mr. Chalmers, and it is very clear and categorical in its terms. As regards count 4, if the ammunition had been found separately, I think I should agree with your submission, but it was mixed up with the firearm, and I think that means that you have got some sort of a case to answer. I appreciate, of course, the distinction between the two cases as regards the point of proof that will be necessary for the Crown to get a conviction and I shall be at some pains to direct the assessors accordingly when the

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CHALMERS : As Your Honour pleases. I call Patesari Maharaj.

No. 12.

EVIDENCE of Accused.

PATESARI MAHARAJ. Sworn.

114. I think you are a cane farmer and live at Maqere ?—Yes.

115. And you have been living there, I think, for 25–30 years ?—Yes.

116. You remember the day the Superintendent went to your house with some constables ?—Yes.

40 117. The Superintendent says you were lying down in the bure. —Yes, I was sick.

118. Did you suffer from anything ?—Asthma.

119. Do you always sleep in that bure ?—No, not always, but when it is very hot in the iron house I go and rest in that open bure.

120. And at about that time were you suffering from asthma ?—Not as much as I am now.

*In the
Supreme
Court
of Fiji,
Lautoka.*

*Evidence of
Prosecution
Witnesses.*

*Evidence of
Defence
Witness*

No. 12.
Evidence
of Accused,
Patesari
Maharaj,
18th March
1946.

*In the
Supreme
Court
of Fiji,
Lautoka.*

No. 12.
Evidence
of Accused,
Patesari
Maharaj,
18th March
1946,
continued.

121. In fact, I think you only got out of bed to come along to this case?—Yes, you came and told me that my case was on this morning and I left my bed and came to Court.

122. You came with me?—Yes.

123. Apart from you and any other members of your family, does anyone ever sleep in the bure?—No. The chaff cutter is there.

124. There is a fence that runs along near the bure?—Yes, we have a fence to keep the other animals off our land.

125. That fence that runs past the bure is a boundary fence?—Yes.

126. And whose land is on the other side of that fence?—Mata Dhin's. 10

127. And they cultivate and use that land?—Yes.

128. While I am on the subject of Mata Dhin: a little bit before this was your son assaulted?—Yes, Mata Dhin's sons had beaten my son.

129. And did you report it to the Inspector who is in Court—Inspector Tucker?—Yes. He was the officer in charge there.

130. And Inspector Tucker came out and investigated, did he not?—Yes.

131. And then he took action?—Yes.

132. From the time your son was assaulted until this gun was found, what time had elapsed?—About three or four weeks, as far as I can recollect 20 now.

133. And I think the trouble was over the question of the election of a sirdar, was it not?—Yes.

134. Mata's son Shiunath had been the sirdar?—Shiunath.

135. I think members of your family and others put Shiunath out and elected Budhu?—Yes.

136. I think shortly after that Budhu was assaulted and the Police took that matter up in the Tavua court?—Yes.

137. Mata's sons were mixed up in that too, weren't they?—Yes.

138. Now you know that that gun was found in your bure, don't 30 you?—Yes.

139. Had you ever seen that gun before?—I don't know anything about it. I have already told them that I don't know anything about it.

140. And Mata lives I think about 15 or 20 chains away from you, does he not?—Yes, about that.

141. And he has a licence for arms, has he not?—Yes, and he has a gun, too.

142. Do you know if there was anybody living with him that came from some other district?—There was one Raghu Raj living with him at the time. 40

143. And do you know where he was working?—At times he would work in the mill and at other times he would be working at Namaka.

144. That is the air base?—Yes. He used to be there on and off. He would be working there and then he would work elsewhere.

145. Can you tell His Honour how you think the gun might have got there?—My enemies must have got it in somehow. We sleep in the wooden house during the night. There is nobody there in that bure.

146. At that time had you any dogs?—I had dogs before that occasion. Several had died.

147. At that time had you any dogs?—I didn't have any. 50

148. The Superintendent says he saw two dogs there.—They were not my dogs.

XXd. Crown Counsel :

149. I suppose you have some dogs now ?—Yes.
150. You had dogs before the gun was found, and dogs afterwards ?
—Small pups, just recently bought.
151. How long was this interval when you were without dogs ?—Five or six months without dogs, and recently we went and got some pups.
152. You saw the dogs there when the Superintendent was there ?
—I didn't see any dogs. There may have been dogs round about there, in the cane field.
- 10 153. You are quite sure you didn't see any dogs in your compound ?
—No. The dogs I had had died already. Long ago.
154. They were licensed dogs ?—Yes, those were licensed dogs that I had on my premises before.
155. They were licensed at the time of their death ?—Yes. They were. And that licence cannot be used for any other dog.
156. How many people have you got living in your compound ?
—Four of us. Two boys, myself and the wife of one of those boys. The married couple had gone away to a party and only myself and another son were at home.
- 20 157. When the police came ?—Yes.
158. Which house did the married couple usually sleep in ?—In a back room in the same building.
159. In that tin house you have the married couple, your son and his wife ?—Yes.
160. And yourself ?—Yes. One room belongs to me.
161. These sons of yours are grown up men aren't they ?—Yes. He has two children too—the boy that is married.
162. And they also sleep in the tin house ?—Yes.
163. So that there are about six people sleeping in that house ?—
- 30 Yes. On the side of it is one small room which I occupy.
164. And these sons of yours take quite an interest in local politics ?
—They are cane farmers. As far as that is concerned. The growing of cane and the sirdar, and all that.
165. And they got into a fight about it ?—Yes.
166. And you think it was the opposite party who planted this gun, do you ?—Well, that is my opinion. That is what I think. I have no other enemies but those people.
167. You think it might have been one of Mata Dhin's sons ?—Well, I didn't say it. How can I say it was he ?
- 40 168. Do you know a man called Dhan Raj ?—Yes, I do.
169. Have you had any trouble with him at all ?—You mean with him ?
170. Yes ?—All we had once was a quarrel over some of his cattle damaging my property or trespassing on my land ; that was about all.
171. Where did he work ?—He used to be there round about our place but now I believe he is somewhere in Toko.
172. Is he the man who was working as a storekeeper in Ba ?—I have never heard of a Dhan Raj with a store.
173. You don't know a man by that name working for Harnam Singh
- 50 in Ba ?—That is Dhan Pal. He is the man that worked for Harnam Singh.
174. Did you ever have any trouble with him ?—Nothing whatsoever.

*In the
Supreme
Court
of Fiji,
Lautoka.*

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No. 12.
Evidence
of Accused,
Patesari
Maharaj,
18th March
1946,
continued.

*In the
Supreme
Court
of Fiji,
Lautoka.*

No. 12.
Evidence
of Accused,
Patesari
Maharaj,
18th March
1946,
continued.

175. Do you know if your sons ever had any bother with him?—I know nothing about the sons.

176. This bure of yours. About how far from the wooden house would it be?—About 12–14 paces.

177. And you believe that somebody came in the night and put that revolver inside the bure?—Yes.

178. Without waking you up?—No.

179. I want you to think carefully again about this dog question?—Yes.

180. When the police arrived there were two dogs in your compound? 10

—Well there are dogs roaming about the place. My dogs had died. There are dogs in the cane. Occasionally I have seen some. Not mine.

181. I am going to suggest that these were yours?—I do not know anything about them.

182. Did the police draw your attention to the dogs while they were there?—No.

183. I put it to you that you did know that revolver was in the corner of the bure there?—I do not know anything about it. What would I do with anything like that? I do not know anything about it.

Re-Xn. Chalmers.

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184. Did you hear the Inspector give his evidence in the lower court?—Yes.

185. Did you hear him say anything about seeing dogs there?—No.

186. And did the police ever ask you any questions about dogs?—Nobody asked me any questions about dogs.

(Case for Defence closed.)

No. 13.
Summing
Up, 18th
March 1946.

No. 13.

SUMMING UP—Judge's Note of.

The two charges are different.

The ordinary rule of burden of proof applies to the explosives charge. 30

As regards the Arms charge, the position is altered by section 37 of the Arms Ordinance which says that once the arms are discovered on the premises then the occupier is to be deemed to be in possession, unless he *proves* the contrary. Suspicion is not enough—there must be proof. You can accept his denials if you believe them but as far as the defence of planting is concerned there must be some specific item of evidence—mere evidence of enmity to create suspicion is not sufficient.

Crown case is the evidence of finding plus the position in which they were found.

Defence consists of his denials plus evidence of enmity of neighbours. 40

You can believe his denials if you like but there is no evidence that the neighbours did anything suggesting they planted the gun.

On arms charge, unless he has satisfied you of lack of knowledge, little option but to convict by reason of section 37. On ammunition, if the Defence have raised reasonable doubt in your minds, you can (and should) acquit.

No. 14.

VERDICT AND SENTENCE.

Assessors retire.

In Court : *Rice, Assessor :*

2nd Count Guilty.
4th Count Not Guilty.

Waddingham, Assessor :

2nd Count Guilty.
4th Count Not Guilty.

*In the
Supreme
Court
of Fiji,
Lautoka.*

No. 14.
Verdict and
Sentence,
18th March
1946.

10 CHARLES WILLIAM TUCKER. Sworn. Inspector of Police at Tavua.

Know accused for 18 months. Believe a good character. Never known him in trouble.

CHALMERS : Have known accused 25 years. Quiet living man. Have never known him in any trouble. Generally respected. Chronic asthmatic.

SENTENCE : 9 months I.H.L.

No. 15.

ORDER granting special leave to appeal.

AT THE COURT AT BUCKINGHAM PALACE

20

The 6th day of November, 1946.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. SHINWELL

MR. SECRETARY WESTWOOD

MR. TOMLINSON

*In the
Privy
Council.*

No. 15.
Order
granting
special
leave to
appeal, 6th
November
1946.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 30th day of October 1946 in the words following viz. :—



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“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Patesari Maharaj in the matter of an Appeal from the Supreme Court of Fiji (Criminal Jurisdiction) between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters) :

*In the
Privy
Council.*

No. 15.
Order
granting
special
leave to
appeal, 6th
November
1946,
continued.

that the Petitioner prays for special leave to appeal against the Judgment of the Supreme Court of Fiji dated the 18th March 1946 whereby the Petitioner was found guilty of possession of a revolver without a licence contrary to Section 4 of the Arms Ordinance 1937 and was sentenced to nine months imprisonment with hard labour: that the principal grounds upon which the Petitioner seeks special leave to appeal are as follows:—(a) There was no evidence that the Petitioner was aware that the revolver was concealed on his premises and in the absence of *mens rea* there can be no offence under Section 4 of the said Ordinance: (b) Even if *mens rea* is not essential there can be no offence under the said Section without evidence of knowledge: (c) the learned Trial Judge wrongly directed the assessors that the effect of Section 37 of the said Ordinance was to shift the onus of proof and to place upon the Petitioner the burden of satisfying the Court that he had no knowledge of the revolver: (d) the Trial did not comply with the requirements of the Criminal Procedure Code of the Colony of Fiji: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Supreme Court of Fiji dated the 18th March 1946 and for such further and other relief as to Your Majesty in Council may seem fit :

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Fiji dated the 18th day of March 1946.

“And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

**LIST OF DOCUMENTS AND EXHIBITS OMITTED FROM THE RECORD BY
CONSENT.**

Exhibit A	..	..	..	..	Revolver
Exhibit B	..	..	..	..	Three Revolver Bullets
Exhibit C	..	..	..	..	Piece of Cloth
Exhibit D	Photograph of Bure
Exhibit E	Photograph of Bure
Exhibit F	Photograph of Bure

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