

[COURT OF CRIMINAL APPEAL.]

1955 Present: Howard C.J., Keeneman and Jayatilke JJ.

THE KING v. LEWISHAMY, *et al.*45—*M. C. Badulla-Haldunmulla, 225.**Unlawful assembly—Possession of stolen property—Inference of guilt—Misdirection.*

Where, in a charge of unlawful assembly, the only evidence against the accused was the fact that certain property removed from the scene of the offence was found in the possession of the accused, and, where the presiding judge in his charge to the jury directed them as follows:—
If you are satisfied these dishes and other articles were stolen property, if the accused was the sole occupant of the building in which the stolen property was found and that the explanation given by him is not in your opinion a reasonable explanation, then it will be open to you, if you are disposed to draw the inference that the accused was a member of an unlawful assembly

Held, that there was a misdirection of law as the fact that the accused were found in possession of stolen property leads to the inference that they were merely receivers of these goods and as such they would be entitled to an acquittal, on the charge of being members of an unlawful assembly.

A PPEAL against a conviction by a Judge and jury before the Midland Circuit.

N. M. de Silva for the appellants.

E. H. T. Gunasekera, C.C., for the Crown.

Cur. adv. vult.

January 29, 1945. HOWARD C.J.—

In the cases of the twentieth and twenty-second accused the only evidence to implicate them in this charge of being members of an unlawful assembly was the fact that certain property removed from the boutiques was found in the smithies of these two accused. In connection with that evidence the learned Judge at pages 39 and 40 says—"So upon that ruling, I think I may direct you that if you are satisfied that these dishes and the other articles were stolen property, if the accused was the sole occupant of the building in which the stolen property was found, and that the explanation given by him is not in your opinion a reasonable explanation, then it will be open to you, if you are so disposed, to draw the inference that the accused was a member of an unlawful assembly and as such he broke into this Zakah Stores and or other stores and so possessed himself of this property, while being a member of that assembly, and that, if not he himself, others, were armed with deadly weapons, and that they or some of them did use violence to get into the buildings from which these things were stolen. That is the position in regard to the twenty-second accused". A similar direction is given with regard to the

twentieth accused. The learned Judge, however, has not told the jury that it is possible that the fact that the twentieth and twenty-second accused were found in possession of stolen property leads to the inference that they were merely receivers of these goods. If they were in fact merely receivers, they would be entitled to an acquittal on this charge of being members of an unlawful assembly. We think that this was a misdirection and the convictions of these two accused, the twentieth and the twenty-second, must be set aside.

With regard to the ninth accused, the main evidence against him was that in his garden was also found property which was identified as having come from the boutique where this unlawful assembly took place. There was also some evidence that he was seen amongst persons who were in the boutique that night. On the other hand, the learned Judge threw some doubt on the credibility of some of these witnesses; nor was their evidence accepted by the jury with regard to others of the accused who were acquitted. In these circumstances it is possible that the Jury merely looked at the testimony which established that the ninth accused was found in possession of property which had been stolen. We therefore think that the conviction of the ninth accused must also be set aside.

The appeals of these three accused are allowed.

Appeals allowed.

