

1921.

Present : De Sampayo J.

THE POLICE SERGEANT v. ABEYHAMY.

856—P. C. Ratnapura, 18,991.

*Penal Code, s. 449—Implements of house-breaking—Screwdriver—Gimlet.*

Accused was found in possession of two carpenters' tools, a gimlet, and a screwdriver.

*Held*, that the possession of the implements did not justify a conviction under section 449 of the Penal Code, as they cannot be properly described as implements of house-breaking.

THE facts appear from the judgment.

*Bartholomeusz*, for appellant.

September 21, 1921. DE SAMPAYO J.—

The accused was charged under section 449 of the Penal Code with being found in possession of "two implements of house-breaking with intent unlawfully to break into any building."

The Magistrate convicted him and sentenced him to two months' rigorous imprisonment. It seems to me that there is an entire absence of proof that the two instruments produced are instruments of house-breaking within the meaning of the section. The police constable was called in support of the prosecution, but instead of describing the instruments to enable the Court to draw the inference that they were instruments of house-breaking, he took upon himself to say that the tools he produced were house-breaking instruments. The insufficiency of that evidence was apparently perceived, and he was recalled later on in the case, but he did not improve matters. He only then said that one of the tools looked as if it had been recently used for digging, and the other was described by him as being a steel 4 inches long, and that it can be used as a screwdriver. The accused described one of the tools as one used for boring holes (I take it the name of it is "gimlet") and the other as a screwdriver. We must in the circumstances reasonably conclude that these were carpenters' tools. I think, without going further, the accused should have been discharged, as there was no proof of the instruments being house-breaking instruments. But the accused went further and explained in his evidence that these things did not belong to him, but had been left in his house by a carpenter named Simeon Fernando, who with his family had lodged in his house some time before this occurrence. There is no

reason to doubt that the carpenter and his family lived in the accused's house. Simeon Fernando himself was called, and he admitted the fact, and also claimed the articles as his. One would have thought that this evidence removed any kind of suspicion, if any was established, against the accused. The Magistrate, however, remarked that these tools were clumsy in make, and that he did not think any carpenter would work with them. These instruments have not been sent up, and we are not able to judge of the correctness of the observation of the Magistrate, but I am prepared to believe that they were not in good order, and that is not to be wondered at, seeing that, according to the evidence, the tools were left in the accused's house the year before. I think the accused is entitled to be acquitted.

The conviction is set aside.

*Set aside.*



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