

1943

Present: Jayetileke J.

MARTINUS, Appellant, and DOLE, Respondent.

38—M. C. Badulla-Haldummulla, 15,617.

Fingerprints—Charge of housebreaking—Accused's fingerprints on glass pane—Explanation by accused—Inference of guilt.

Where, in a charge of housebreaking and theft, the only evidence of any importance against the accused was certain fingerprints which were admitted to be his, and which were found on the outer side of a glass pane of a window, and where the accused gave an explanation how the fingerprints came to be on the window,—

Held, that the Magistrate was not entitled to infer that the accused was the thief.

King v. Logus (34 N. L. R. 255) distinguished.

A PPEAL from a conviction by the Magistrate of Badulla-Haldummulla.

No appearance for accused, appellant.

N. Nadarasa, C.C., for Crown, respondent.

Cur. adv. vult.

February 17, 1943. JAYETILEKE J.—

The accused in this case was convicted under sections 433 and 369 of the Penal Code with having committed housebreaking and theft and sentenced to one year's rigorous imprisonment and one year's police supervision.

The only evidence of any importance against the accused is that certain fingerprints which were admitted to be his were found on the outer side of a glass pane of a window of one of the bed rooms of the building he was charged with having broken into. The thief was supposed to have entered the house through that window.

The learned Magistrate relying on the case of *King v. Logus*¹, has inferred from the presence of the fingerprints on the glass pane that the accused was the thief. The facts of that case were quite different from the facts of the present case. In that case the fingerprints were found on the glass panes of a door inside the house leading from the hall to an inner room and there was evidence that the accused was not in the habit of going into that house. The accused did not give evidence or make a statement explaining the presence of the fingerprints on the glass pane. Dalton J. held that in the absence of evidence by the accused that he ever was in the house before or that he was entitled to go there, the District Judge was entitled to infer from the fingerprints upon the door that the accused was one of the thieves.

In this case the accused has given evidence. He said that he had been working for five months prior to the date on which the burglary took place quite close to this building and that he was in the habit of going daily to this building to drink water.

¹ 34 N. L. R. v. 255.

About ten days before he was arrested he noticed that one of the window panes had been broken and out of curiosity he placed his hands on a glass pane and peeped inside the house.

This evidence explains the presence of the fingerprints on the glass pane. In these circumstances I do not think the Magistrate was entitled to infer that the accused was the culprit.

I would set aside the conviction and sentence and acquit the accused.

Set aside.