

1909.  
June 16.

*Present* : Mr. Justice Wendt.

PUNCHIRALA KORALA v. JOHN.

*P. C., Keryalla, 11,004.*

*Instrument of house-breaking—A carpenter's gouge—Penal Code, s. 449—  
Ordinance No. 12 of 1906.*

A carpenter's gouge is an instrument that is capable of being used for purposes of house-breaking, and a person who is in possession of such an instrument under circumstances which lead to the inference that it was intended to be used as a house-breaking instrument is guilty of an offence under section 449 of the Penal Code, as amended by Ordinance No. 12 of 1906.

**A** PPEAL by the accused from a conviction under section 449 of the Penal Code, as amended by Ordinance No. 12 of 1906. The facts sufficiently appear in the judgment.

No counsel appeared.

*Cur. adv. vult.*

June 16, 1909. WENDT J.—

The appellant has been convicted under section 449 of the Penal Code, as amended by Ordinance No. 12 of 1906, of having been found by the Korala having in his possession, without lawful excuse, an instrument of house-breaking. He was found on the high road

at about 9 P.M. at a place to which he was a stranger, and was stopped on suspicion. On him were found the instrument in question, a bunch of keys, and a knife. The defence was that the Korala put these articles upon the appellant in order to fasten a false charge upon him. The Magistrate disbelieved that defence, and I disbelieve it, too. The question I reserved for consideration was whether the instrument in question was an instrument of house-breaking. It has been very properly sent up by the Magistrate, who correctly describes it as a carpenter's gouge, but considers that it is well suited for house-breaking. Under the English Statute 24 and 25, Vict. c. XCVI., section 58, it was enacted that "whosoever shall be found by night having in his possession without lawful excuse any picklock.....or other implement of house-breaking shall be guilty," &c., and in *R. v. Oldham*<sup>1</sup> it was held by the Judges upon a case reserved that house-door keys, though commonly used for lawful purposes, are capable of being employed for purposes of house-breaking, and that it is a question for the jury whether the prisoner had them without lawful excuse and with the intention of using them as implements of house-breaking. Alderson B., in giving judgment, expressly mentions a chisel as capable of being a house-breaking implement. That case is in point. There were circumstances here, such as the mode in which the gouge was carried, the false defence set up, &c., from which it was open to the Magistrate to infer as he has done that the instrument was intended to be used for house-breaking.

I dismiss the appeal.

*Appeal dismissed.*

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<sup>1</sup> (1852) 2 Den. C. C. 472.