1913.

Present: Wood Renton J.

THE KING *v.* PERERA.

56—D. C. (Crim.) Colombo, 3,510.

Instrument of house-breaking—Bunch of keys—Penal Code, s. 449.

A bunch of keys is capable of being an instrument of house-breaking within the meaning of section 449 of the Penal Code.

For a conviction under section 449 it is not incumbent on the prosecution to prove an intention on the part of the person in possession of instruments of house-breaking without lawful excuse to break into a particular building.

A sword is a "dangerous and offensive weapon." For a conviction under section 449 the burden of establishing that a person armed with a dangerous or offensive weapon was so armed with intent to commit an unlawful act is on the prosecution.

THE facts appear from the judgment.

E. W. Jayewardene, for the appellant.—The mere possession of an instrument of house-breaking is not an offence. There must be an intent to commit the offence, sufficiently manifested by some overt act. *Silva v. Charles.*[1] A bunch of keys cannot be said to be an instrument of house-breaking. The case of *Queen v. Oldham*[2] quoted in *Punchirala Korala v. John*[3] is distinguishable. There a clear intention to use them as a house-breaking implement had been apparently proved. The police evidence should be received with caution in a case where there are previous convictions against an accused.

Garvin, Acting S.G., for the Crown.—The case *Queen v. Oldham*[2] covers a case of this kind, and that was followed by Wendt J. in *Punchirala Korala v. John.*[3]

June 13, 1913. WOOD RENTON A.C.J.—

The accused-appellant was charged in the District Court of Colombo with having had in his possession without lawful excuse an instrument of house-breaking, namely, a bunch of nineteen keys, and also with having been armed with a dangerous or offensive weapon, namely, a sword. The learned District Judge has convicted him on each count of the indictment, and has sentenced him to undergo concurrent sentences of one year's rigorous imprisonment, and also, in view of previous convictions, four years' police

[1] *(1896) 2 N. L. R. 164.* [2] *(1852) 2 Den. C. C. 472.*
[3] *(1909) 12 N. L. R. 198.*

supervision after his discharge from jail. There can be no doubt but that a bunch of keys is capable of being an instrument of house-breaking within the meaning of section 449 of the Penal Code. That point is covered by the authority of the case of *Queen v. Oldham*,[1] which was impliedly followed by Mr. Justice Wendt in *Punchirala Korala v. John*.[2] Section 449 of the original Penal Code was amended by section 2 of Ordinance No. 12 of 1906. The effect of the amendment is to make the mere possession of an instrument of house-breaking without lawful excuse, the proof of which lies on the person charged, a criminal offence. It is no longer incumbent, under the new section, on the prosecution to prove an intention on the part of the accused to break into a particular building. The decision of the Supreme Court in *Silva v. Charles*,[3] which the appellant's counsel, Mr. E. W. Jayewardene, tells me was followed in an unreported case in 1905, is, in my opinion, no longer law under section 449, as re-enacted by section 2 of Ordinance No. 12 of 1906. So much for the first count of the indictment. There can be no question but that a sword is a dangerous and offensive weapon, and the accused-appellant has been properly convicted of having been armed with it, if the circumstances of the case point to the conclusion that he intended to use it for the purpose of committing an unlawful act. The burden of establishing that special intention is on the prosecution. The evidence, which the District Judge has implicitly accepted, shows that some time after midnight the appellant, in company with another man, was found in possession of the sword and the bunch of keys. His companion was armed with a jemmy. When the police approached they both moved aside. The accused-appellant has offered no explanation of how he came to be in possession of the bunch of keys, or in the company of a man who was carrying a jemmy. His defence is that he was not the person arrested at all, and that the charge is the result of a police conspiracy. The District Judge has seen the witnesses for the prosecution, and has heard the appellant's evidence. He has believed the two police officers, and I see no reason to differ from his conclusion on the facts. It was suggested by the appellant's counsel, although he was careful not to put the point too high, that, in a case of this kind, where there are previous convictions against an accused person, of which account may have to be taken in dealing with the question of police supervision, the evidence of police officers should be received with the greatest caution. I entirely agree with that argument so far as it goes, and I am sure that the learned District Judge, although he has not touched upon it in his decision, kept it in view in arriving at his conclusion on the facts. If the argument were to be put higher, and the suggestion were to be made that some kind of presumption exists against police evidence, unless it is

[1] *(1852) 2 Den. C. C. 472*

[2] *(1909) 12 N. L. R. 198.*

[3] *(1896) 2 N. L. R. 164.*

1913.

WOOD RENTON A.C.J

The King v. Perera

corroborated by that of independent witnesses, the results would be highly unsatisfactory. Persons of position and respectability would be extremely loath to enter the police service of the country if they were to be treated, when they came forward to give evidence in a court of justice, on the footing that such a presumption would be expressly or tacitly recognized by the Courts. But, as I have said, Mr. Jayewardene did not put his argument on a higher level than one at which I should have been prepared to state it myself.

The appeal is dismissed.

Appeal dismissed.