Present : Schneider A.J.

1921.

SIVAPRAKASAM *v.* VEERAGATHY.

671—P. C. Mallaka, 7,893.

Stolen property found in room occupied by accused and another—Exclusive possession—Evidence that accused did not protest to police officer, when he made search, that property was introduced by another.

A stolen gold chain was found by a constable hidden in a bag of paddy in the room of a house occupied by a third party in which the accused was a lodger. Evidence was also adduced that accused did not protest at the time of the search that some one had introduced the stolen article into the house.

Held, that the conviction was bad, as the accused was not in the exclusive possession of the stolen article, and as inadmissible evidence (which amounted to a confession to a police officer) was admitted.

H. J. C. Pereira, K.C. (with him *Rajakarier*), for the appellant.

Illangakoon, C.C., for the Crown.

August 1, 1921. SCHNEIDER A.J.—

The evidence accepted by the Magistrate is that a gold chain stolen from the house of the complainant was found by a police constable hidden in a bag of paddy in the room of a house occupied by the second accused, in which the first accused was also a lodger. There is evidence that the first accused is not on the best of terms with the complainant about the latter's sister, who is the wife of the first accused. The Magistrate thought that the first accused, the appellant, had exclusive possession of the stolen article, and he also thought this accused guilty, as he took no steps at the time of the discovery of the article to protest that it had been introduced. Considering that the house was in the occupation of both the accused, upon the state of the facts which were proved I do not understand how the Magistrate can come to the conclusion that the article, or the bag of paddy in which it was found, was in the exclusive

1921.

SCHNEIDER A.J.

Sivaprakasam v. Veeragathy

possession of either one of the accused. That it was more probable that the one of them was more likely to have concealed it than the other is not legal justification for the conclusion that, therefore, it was in his exclusive possession. The facts proved are insufficient to establish exclusive possession. The conviction of the first accused on that ground is bad. But there is another reason why that conviction should not be sustained. The Magistrate has acted upon inadmissible evidence. He has allowed evidence to be led that the accused did not protest at the time of the search that some one had introduced the stolen article into the house. This is evidence which leads to the inference that the accused by his conduct confessed his guilt. That such evidence is inadmissible has been pointed out in the cases of *King v. Kalu Banda*[1] and *Sinha v. Rengasamy*.[2]

I would, therefore, set aside the conviction, and acquit the accused.

My attention has been drawn to a letter on the record signed by some person whose name I am unable to read, and who describes himself as C. O. This letter sets out what the accused had stated. That statement may, according to the facts to be proved, be tantamount to a confession of guilt. It appears to have been made to a police officer, and therefore inadmissible. It is very undesirable that such inadmissible evidence should be put before a Judge before he has decided a case, for it is bound to prejudice his mind.

Set aside.

[1] *(1912) 15 N. L. R. 422.*

[2] *3 Bal. N. C. 45.*