

1954

Present : Sansoni J.

L. A. LEWIS SINGHO *et al.*, Appellants, and P. D. P. A.
LIYANAGE (S. I., Police), Respondent

S. C. 738-742—M. C. Colombo South, 55,427

Unlawful possession of house-breaking instruments—Several accused—Possession of implements by one accused—Inference of common possession—Penal Code, s. 449.

Where several persons are charged under section 449 of the Penal Code with having in their possession without lawful excuse instruments of house-breaking, evidence of possession of the implements by one of them is evidence of possession by each if there can be no doubt as to their common purpose of using the implements for house-breaking.

APPEALS from a judgment of the Magistrate's Court, Colombo South.

E. D. Cosme, with *O. M. da Silva*, for the 1st accused appellant.

Ian de Zoysa, for the 2nd and 3rd accused appellants.

4th and 5th accused appellants in person.

M. Kanagasunderam, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 16, 1954. SANSONI J.—

The five appellants were charged and convicted of having committed an offence under section 449 of the Penal Code, in that they were found having in their possession without lawful excuse instruments of house-breaking, to wit:—a jemmy, a crowbar, a saw, a pair of gloves, four masks, three swords, a dagger, a clasp knife, an electric torch and a bunch of seventeen keys. The evidence of the Police Officers who arrested the 1st to 3rd accused at 4 a.m. established that four or five persons armed with swords got into car bearing No. Z 8108 near the house of the 5th accused. The car drove off. Five Police Officers later waited in ambush at a point on the High Level Road and when this same car approached they stopped it by placing the Police car across the road. When the occupants of car No. Z 8108 got out, the 1st accused who was armed with a sword and dagger, the 2nd accused who was armed with a sword and the 3rd accused who was carrying a bunch of 17 keys were arrested. Two other occupants ran off but they were identified as 4th and 5th accused. They were identified by the head-lights of the Police car and the witnesses say that they were carrying swords. All the accused gave evidence denying that they travelled in this car or that they were arrested when they were together. They stated that the various weapons and instruments and other productions were never in their possession. The learned Magistrate rejected the evidence of the accused and accepted the evidence of the Police Officers.

The only matter urged before me was that none of the articles found on the persons of the accused were instruments of housebreaking and they were therefore wrongly convicted. I agree that the swords and dagger found on the 1st and 2nd accused are not instruments of house-breaking; and they must therefore be acquitted if they are liable only for such weapons as they had on their persons. The bunch of seventeen keys bears a neutral character and the onus was on the prosecution to prove that their possessor had the intention of using them for house-breaking. Such intention can, in my opinion, be established by evidence of the surrounding circumstances and the circumstances proved in this case speak only too eloquently. None of the seventeen keys, I might mention, was found to fit any almirah in the 3rd accused's house. One

should also consider the objects found on the floor and the seats of the car—a sword, a jemmy, a crowbar, a saw, four masks, a torch, a clasp knife and a pair of gloves. No explanation was offered by the accused for the presence of this collection.

But the question still remains whether all these accused can be convicted of having all these articles in their possession. They cannot if the offence charged is one which renders a person liable only to the extent of the instruments he himself has in his possession; but they can if the possession of one or more of them can be held to be possession of all of them. This very point was considered in the case of *R. v. Thompson*¹. Two accused named Thompson and Jones were charged with committing an offence under section 58, 24, 25 Vict. C. 96, which is framed in very similar terms to our section 449. The evidence was to the effect that both accused were found together, Thompson having on his person a candle and twenty lucifer matches while Jones had a crowbar and a knife. Jones pleaded guilty. It was contended for Thompson that a candle and matches were not housebreaking implements, and he could not be said to be in possession of the implements found on Jones. The jury had been directed that if they were of the opinion that both accused were together with the same object and for the purpose of housebreaking, Thompson would be guilty. Thompson was convicted. The Court of Crown Cases Reserved considered, in appeal, whether the possession of housebreaking implements by one of two persons for a common object is the possession of each. Kelly C. B. in delivering the unanimous judgment of the Court of five judges affirming the conviction said:—“The possession of one is the possession of all”. Archbold (32nd Edition) at page 665 cites this decision as still authoritative. There can be no question as to the common purpose actuating these accused when they were travelling in the same car on the night in question with all these instruments lying in it.

For these reasons I dismiss the appeals.

Appeals dismissed.

