

the amount of mesne profits from the date of dispossession of the share of the property: ordered to be recovered to the date of restoration thereof be assessed in execution.

The costs of this appeal must be paid out of the estate of Rajah Narayya Appa Rau, deceased, the original defendant and respondent.

Solicitors for Appellant: Messrs. *Frank, Richardson and Sadler.*

Solicitor for Respondents: *Mr. H. Treasure.*

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## APPELLATE CRIMINAL.

*Before Sir Charles A. Turner, Kt., C.J., and Mr. Justice  
Muttusami Áyyar.*

LINGAM RAMANNA AND TWO OTHERS (PRISONERS) APPELLANTS.\*

1880.  
May 3.

*Abetment—Supplying food.*

The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime: but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it.

THIS was a case referred under Section 263 of the Code of Criminal Procedure by the Sessions Judge of the Godávári Division.

Upon considering this case, Counsel not appearing on behalf of the prisoners, the Court (TURNER, C.J., and MUTTUSAMI ÁYYAR, J.) delivered the following

JUDGMENT:—The prisoners Lingam Ramanna, Miriyala Baladu and Valala Bulleya were charged, firstly, with having, on the 18th November 1879, abetted dacoity which was committed in consequence of such abetment; and, secondly, with having on the same day abetted dacoity which was not committed in consequence of such abetment. The evidence adduced at the trial is the following: that on the night of the 18th November the second and third prisoners were seen proceeding to Marrispoliem with four bullocks laden with grain, wheat, paddy, and cholam; that

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\* Criminal Appeal No. 113 of 1880.

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they were sent for and brought back and were followed by the prisoner Ramanna; that on being questioned by a military officer the prisoner Ramanna stated "Karam Tamman Dora has been to our village twice and has compelled us to give him food . . . . . The grain which I carried was for my own use only." The prisoner Baladu stated "Lingam Ramanna (meaning the first prisoner) and others have been for some time supplying Karam Tamman Dora and his people. Ramanna sent me and Bulleya with 6 rupees to purchase paddy. We went to Kottapalle, bought it, and carried it back to Marripolliem last night. Afterwards people came from Kottapalle and fetched us and the grain back here. The paddy that Ramanna sent us for was intended for Tamman Dora. Salt was also sent out through us for Tamman Dora." The prisoner Bulleya stated "Lingam Ramanna has been furnishing Tamman Dora and his gang with supplies. Recently he sent me and Baladu to fetch more paddy from Kottapalle. We carried it last night to Marripolliem and were fetched back here this morning." In the Sessions Court the prisoner Ramanna stated he sent the other two prisoners with two of his own bullocks and two belonging to one Gangayya to purchase grain for his own use. The prisoner Baladu stated Ramanna had sent him to buy grain for his (Ramanna's) own use, and that he had done so; and the prisoner Bulleya that Gangayya had sent him to buy grain and convey it to Marripolliem and there leave it, and that he took the grain at night as he thought it safer to do so.

The jury acquitted the prisoners.

The Judge considers the prisoners were aiding and abetting the dacoits and that they should be convicted, he does not say on which of the two charges.

Assuming that Karam Tamman Dora intended to commit a dacoity, and that the first prisoner knew it, although he had not conspired for its commission, and that, having such knowledge the first prisoner intended to facilitate the commission of the dacoity by supplying food to Karam Tamman Dora, and would thereby have facilitated it, there would not be sufficient evidence to convict any of the prisoners in reference to the supplies, which are the subject of the charges, even of an attempt to abet the dacoity. No more is shown than this: that the second and third

prisoners were on their way to the house of the first prisoner, and it may be that, on receiving the grain, the first prisoner would have changed his intention, or the first and second prisoners would have refused to set out to deliver the grain to Karam Tamman Dora. They could not be convicted of an attempt until some step had been taken in the actual commission of the offence. The actual transaction which, if completed, might have constituted abetment, the despatch of food to Karam Tamman Dora, is not shown to have commenced. All that is shown (and this only by the statements of the second and third prisoners,) is that the first prisoner was furnishing himself with the intention of supplying Karam Tamman Dora.

Moreover, no evidence was adduced to show that Karam Tamman Dora was about to commit a dacoity, and, had it been established, to convict the accused it must have been further shown that the food was to be supplied to facilitate the commission of the offence and that the commission of the offence would have been facilitated thereby.

The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime. Abetment consists either of instigation or of conspiracy followed by an act or illegal omission pursuant thereto, or of intentional aid in the doing of a thing; and a person is said to aid the doing of an act, who either prior to, or at the time of, the commission of the act does anything in order to facilitate the commission of that act and thereby facilitates it.—I.P.C., Section 107, Example 2. The supplying of necessary food to a person known to be engaged in crime is not *per se* criminal; but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it.

As we hold the evidence on the record is insufficient to warrant the conviction of the prisoners on either of the charges on which they have been tried, we acquit them and order their release.

*Ordered accordingly.*

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