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Of these witnesses Kuri swore that Fatta said:—"Beat Idu, I will see to the consequences." Jiwan swore that Fatta incited to the beating of Kuri; this witness would say the worst he could against Fatta, for he was wounded by his party and he attributed his father's death to their malice.

Alyia was silent on this point, he apparently heard no inciting word from Fatta.

Jumna made Fatta cry—"*Thanr maro,*" after Idu fell, when he and the other witnesses said the accused went on beating Idu, which the Judge disbelieved.

Amir Bakhsh deposed that "Fatta was there, but did not beat any one; he went away; he cried out to the men to beat." This is no doubt a case of grave suspicion against Fatta, but the evidence is not such as to afford a safe basis for conviction of abetment of the murder of Idu. We dismiss the appeal of Nathu. We allow in part the appeal of Fatta. We set aside the conviction and sentence of Fatta under ss. 302 and 114 of the Indian Penal Code, and we convict Fatta of the offence punishable under s. 147 of the Indian Penal Code, and we sentence Fatta to be imprisoned rigorously for two years.

The appeals of Ram Prasad and Sarjit were not pressed and are dismissed.

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August 6.

Before Mr. Justice Tyrrell.

QUEEN-EMPRESS *v.* RAGHUNATH RAI AND OTHERS.

Act XLV of 1860, *ss.* 24, 147, *and* 391—*Dacoity—Riot—Dishonest intention a necessary ingredient of dacoity.*

Where several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Muhammadan, not for the purpose of causing "wrongful gain" to themselves or "wrongful loss" to the owner of the cattle, but for the purpose of preventing the killing of the cows:—

Held that they could not properly be convicted of dacoity, but only of riot.

The facts of this case sufficiently appear from the judgment of Tyrrell, J.

Mr. *A. H. S. Reid* and Mr. *C. C. Dillon*, for the appellants.

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The Government Pleader (Munshi *Ram Prasad*) for the Crown.

TYRRELL, J.—Mr. *Reid* on behalf of Raghunath Rai, who has been convicted of dacoity and sentenced to two years' rigorous imprisonment with a fine of Rs. 5-0-0, has pointed out that the Court below disbelieved all the evidence implicating Raghunath Rai in the offence for which he was tried, with the exception of the evidence of Karim-ud-din and Kutban. I have read the evidence of these two men. I have seldom heard a more unlikely, if not absurd, tale than Karim-ud-din's. He said before the Magistrate that he was badly assaulted with *lathis*, but finding himself unequal to take the cows from the so-called dacoits he returned to his house. In the Sessions Court he said that he fell on the spot senseless. The witness Kutban, village chaukidar, supported the story saying he saw Karim-ud-din prostrate on the ground in consequence of his wounds. Now these wounds were the following :—

a small scratch on the small of the back;
a simple bruise and swelling on the back of the left elbow;
a very small abrasion at the back of the root of left index finger; and
a small abrasion on the inner knee.

The falsehood of the story of these two witnesses is sufficiently exemplified by this list of hurts. I do not believe anything that Karim-ud-din and Kutban said. It is admitted that Raghunath Rai was not mentioned in the first police report, and Asalat, the owner of the cattle, did not name him before the committing Magistrate. The evidence is insufficient to prove any offence against Raghunath Rai. He is acquitted and will be released, and his fine, if paid, will be restored.

Mr. *Dillon* appeared on behalf of Rup Narain and Udit, who have received the same sentences as Raghunath Rai, on conviction of dacoity. Their learned counsel admitted that the evidence is sufficient to establish the fact that they went to Asalat's premises and joined in forcibly removing an ox and two cows, the property of Asalat. But Mr. *Dillon* contended that this offence is limited to the crime

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of rioting punishable under s. 147 of the Indian Penal Code, and that they were wrongly convicted of dacoity. Theft is a necessary component of the offence of dacoity. If there was no element of dishonesty in the conduct of Rup Narain and Udit there would be no theft, and therefore no robbery, and therefore no dacoity. The Sessions Judge found, and no doubt rightly, that there was no intention on the part of Mr. *Dillon's* clients to cause wrongful gain to themselves or wrongful loss to Asalat.

While it is admitted that their conduct may have resulted in wrongful loss to Asalat, though deprivation of the possession of his cattle was not the object of the appellants, they claim the benefit of a finding by the Judge that their intention was to prevent the butchery of the cattle, which their religion taught them to be a grossly outrageous act. By s. 24 of the Indian Penal Code, the word "dishonestly" which appears in s. 378 is defined thus:—"Whoever does any act with the intention of causing wrongful gain to one person or wrongful loss to another is said to do that thing dishonestly."

Now, if there was no intention to cause wrongful loss to Asalat, the fact that the removal of the cattle for a time might, in effect, cause him wrongful loss would not suffice by itself to make the appellants' conduct dishonest. Intention is essential, and it has been found below that the intention of the assailants was confined to preventing the slaughter of kine. On these findings of fact the appellants' conviction for dacoity is unmaintainable. On the facts in evidence they are guilty of the offence of rioting, and for that offence they must be sentenced. I set aside the conviction, and sentence under s. 395, and in lieu thereof I sentence Rup Narain and Udit to rigorous imprisonment for three months each. The appeal of Aklu upon the merits is dismissed, but his conviction and sentence under s. 395 are set aside and he also is sentenced under s. 147 of the Indian Penal Code to three months' rigorous imprisonment. The orders of fine will stand over in respect of Rup Narain, Aklu, and Udit.