as a pauper by the Madras High Court in *Lakshmi* v. *Ananta Shanbaga* (1) and by this Court in *Ganga Gir* v. *Balwant Gir* (2) and in subsequent cases. Further, art. 177 is in the third division of the second schedule to Act No. XV of 1877. The third division contains the articles which relate to applications.

1892

IN THE MATTER OF PETITION OF SITA RAM KESHO.

The articles which relate to appeals, as distinguished from applications for leave to appeal, are contained in the second division of the second schedule and none of those articles apply to appeals to Her Majesty in Council.

Further, even if the second paragraph of s. 5 of Act No. XV of 1877 applied to the application in question here, no sufficient cause has been shown for the applicants not having presented this application within the prescribed period of limitation. No copy of the judgment of this Court was required as a preliminary to the presentation of this application, and, if it had been, the time actually occupied in obtaining the copy was thirteen and not twenty days.

We have no power to extend the period of limitation in this case. We must apply art. 177 of the second schedule of Act No. XV of 1877, and doing so we dismiss this application with costs.

Application rejected.

APPELLATE CRIMINAL.

1892
July 27.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

QUEEN-EMPRESS *v.* NATHU AND OTHERS.

Act XLV of 1860, s. 148—"Deadly weapon"—Lathi.

The question whether or not a *lathi* is a "deadly weapon" within the meaning of s. 148 of the Indian Penal Code is a question of fact to be determined on the special circumstances of each case as it arises.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. *C. C. Dillon* and Mr. *Roshan Lal*, for the appellants.

(1) I. L. R. 2, Mad. 230. (2) Weekly Notes 1881, p. 130.

The Public Prosecutor (The Hon'ble Mr. *Spankie*) for the Crown.

EDGE, C. J. and TYRRELL, J.—Fatta, Taga Brahmin, aged 70 years, and Nathu, Taga Brahmin, aged 30 years, are the appellants. They have been tried and convicted of murder and abetment of murder. They have been sentenced to transportation for life; Nathu having been found guilty of murder and Fatta of abetment of that offence. Nothing has been said to us against the propriety of Nathu's conviction, and it is plain that he has been justly convicted. Full of enmity and malice of long standing he seized the chance afforded by a petty quarrel to make a murderous attack on an inoffensive man, whom he killed by at least three violent blows on the head. The sole provocation was that the unfortunate Idu was moving to the protection of Kuri, bhisti, whom Nathu and his party had just assaulted. On behalf of Fatta it was contended that while his presence during the attack on Kuri and the rescue from his custody of Nathu's mare is admitted, it is not satisfactorily proved that he abetted the murder of Idu. It is proved, and it is hardly disputed, that Fatta accompanied Nathu and the other Tagas with the object common to them all of assaulting Kuri and taking Fatta's mare from him. Referring to the charge that the Tagas were provided with "deadly weapons" the Judges remarked that "a common *lathi* is not a deadly weapon within the meaning of section 148 of the Indian Penal Code." "Deadly weapons," he held, "are swords, pistols, guns, spears and so forth." This is not a sound proposition.

It is a question of fact to be decided in each case whether the *lathi* used or the *lathi* with which the injury is caused, was or was not in itself a deadly weapon. One *lathi* may by reason of its weight, length, or other peculiarities be a deadly weapon: another may not. No general rule can be laid down on the subject. In the case before us it is presumable that the *lathi* which produced such deadly injuries in three blows on Idu was a deadly weapon, or was used with extreme violence. It is not said by the accused who admit being present with their *lathis* that it was not. In support of Fatta's appeal it was argued:—

(1) That he was not accused in the first report at the Tháua and that the report was not promptly made.

(2) That it is not proved that he cried out "*Thaur mardo.*"

(3) That he did not use any words in reference to the assault on Idu.

As to the first point we find that in the first report made by Kuri at four in the afternoon of the day of the crime he named Fatta in connection with the cause of the assault on himself. We would hardly expect him to report, or the Police to record, the facts which might constitute the technical offence of abetment respecting Fatta. Fatta's report an hour later showed that he was present at the assault, and this has been practically admitted throughout. The first report therefore is not false or defective touching the appellant Fatta. The delay in reporting is explained. On the second point the Judge found that "it is sworn consistently that, though Fatta did not himself use any violence in the riot, he loudly incited to the beating of Idu (deceased), the words being "*Thaur mardo,*" which the Judge interpreted to mean "kill him on the spot." The assessors thought the words meant, "beat him on the spot." But it makes little difference, as s. 111 of the Indian Penal Code would make Fatta responsible for the act of Nathu in either case. We believe that Fatta incited the slaying of some one present by the words he used—if he used them. On this point the evidence is not good or consistent. The complainant's witnesses have not only strong village animosity to the accused, but also personal spite of an aggravated character. The Judge animadverted on their manner in the witness-box, thus:—

I. Kuri—"infamous manner."

II. Jiwan—"even worse, the dry cough of the false witness between every too or three words."

III. Alyia—"not so bad."

IV. Jumna—"manner as Alyia."

V. Amir Bakhsh—"helplessly confused, never could name any one straight, always some one else."

1892

QUEEN-EMPRESS v. NATHU.

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—"*Thaur 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.

1892
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.