

(1907) 12 MAD CK 0004
In the Madras High Court

Vedammal

APPELLANT

Vs

Vedanayaga Mudaliar

RESPONDENT

Date of Decision : 12-12-1907

Acts Referred:

Citation : (1908) ILR (Mad) 100 : (1908) 18 MLJ 70

Hon'ble Judges : Wallis, J;Sankaran Nair, J

Bench : Full Bench

Judgement

Wallis, J.—It has been decided by this Court that, if the defendant was a party to the murder of her son, she must be excluded from the

inheritance and that the plaintiff, as next reversioner, is entitled to succeed. It is also clear that the fact that the defendant has been acquitted of the

charge of murder is no answer to the present suit. But in order to entitle the plaintiff to succeed, it is, of course, necessary that he should establish

the complicity of the defendant by clear and satisfactory evidence, and it is not enough to raise a case of suspicion against her. In the present case

there can be no doubt that the connection formed by the defendant with the Mahomedan, Sheik Abdul Khader, who has been convicted of the

murder of her minor son, was the original cause of trouble; and it may be that the attitude of the minor in regard to his mother's conduct was such

as to give her as well as the Mahomedan a motive for desiring to get rid of him. But in order to enable the plaintiff to succeed, it is necessary that

he should connect her by satisfactory evidence with the murder, and this, I think, he has failed to do. When the evidence is scrutinised, proof of her

complicity is found to rest almost exclusively on the evidence of the approver Bala Naiken, the plaintiff's 7th witness. According to him, on the day

of the murder, she went with the murderers from Vikramasingapuram to Ambasamudram, and at the latter place she first instigated the others to commit the murder and then expressed her approval after it had been committed. The evidence of instigation was given by the approver for the first time in this case more than five years after the event and after the approver had omitted to mention it in any of the statements taken from him during the criminal proceedings against the defendant; and, as pointed out by the Sessions Judge in his judgment which has been filed as Exhibit RR by the plaintiff, the approver's statement as to the defendant having expressed her approval of the murder after it had been committed did not appear in his earliest statement. There is, therefore, strong reason to suspect that he has lent himself to concocting a case against the defendant, and his evidence connecting the defendant with the crime requires to be clearly corroborated, not only because of his being an approver but also because of the tendency he has shown to add to his evidence against the defendant at successive stages of the case. On examining the evidence, I fail to find any satisfactory corroboration of his statements. The plaintiff's 10th witness, an old man of 73, now comes forward for the first time, five years after the event, and says that he saw the Mahomedan and others arrive in a cart at Ambasamudram on the day of the murder and afterwards went to the Mahomedan's house to ask for payment of a debt of Rupees fifteen and saw the defendant there. I think it would be unsafe to give any credence to evidence of this character. The plaintiff's witness No. 15 corroborates the plaintiff's witness No. 7 by speaking to having met the cart containing the four murderers on the road from Vikramasingapuram, where the defendant lives, to Ambasamudram where the Mahomedan's house was, but does not speak to the defendant's presence in the cart, and his evidence is quite consistent with the defendant's innocence. The new evidence of the plaintiff's witnesses Nos. 13 and 14 that, after the trial in the Sessions Court, as the Mahomedan was being led away, the defendant, in the presence of about 100 people, addressed him in a language which amounted to an admission of guilt is, in my opinion, improbable and unreliable. Besides, the plaintiff's witness No. 13 certainly speaks as if the acquittal of the defendant and the sentence on the Mahomedan took place at the same time and were immediately this incident, whereas the Mahomedan was not sentenced until some days after the

defendant had been acquitted and discharged. With regard to the evidence as to the defendant's behaviour subsequently to the murder, it must be

borne in mind that her conduct had been such as to set people against her and lead them to put the worst construction on her actions, and that

further, supposing her innocent, her position was a very difficult one when it came out that her paramour had murdered her son and then

absconded. She must naturally have been suspected and shunned by every one, and have found it very difficult to know what to do. Under these

circumstances, I think, it would be very unsafe to draw inferences against her from her unwillingness to obey the Tahsildar's summons, or the other

conduct spoken to by the witnesses for the plaintiff. The judgment of the Subordinate Judge, in my opinion, proceeds too much on grounds of

mere suspicion and accepts, and acts on, the evidence of the approver, plaintiff's witness No. 7, which, in my opinion, is not sufficiently

corroborated. I am, therefore, unable to agree with his finding on the second issue as to the defendant's complicity in the murder.

2. It is, however, further argued for the respondent that the defendant is debarred from succeeding to her son by reason of her unchastity which,

we agree with the lower Court, has been established by the evidence in the case. The Subordinate judge overruled this contention on the authority

of *Kojiyadu v. Lakshmi* ILR (1882) M. 149 which is directly in point; but in this Court it has been argued that the learned Judges who decided the

case in *Kojiyadu v. Lakshmi* ILR (1882) M. 149 erred in following *Advya v. Rudrava* ILR (1880) B. 104 as that case merely lays down the

law applicable in Western India, and a different rule prevails in Southern India. Although the *Mitakshara* says nothing expressly about women other

than widows being debarred from succession by unchastity, it is contended that it must be read with the *Smriti Chandrika* which is applicable to

Southern India, and that, according to this authority, unchastity is a bar. I am unable to accept this contention. It is true that in Chapter XI, Section

2, pl. 26, p. 190, of Krishnasami's translation, the *Smriti* incorporates the text of Brihaspati as to the qualifications of a daughter to succeed, one of

which is that she is to be "'virtuous and devoted to obedience,'" but in Chapter V. pl. 15, the same authority adopts a text of Brihaspati excluding

sons destitute of virtue from inheritance. It cannot now be argued that a son could be excluded on the ground that he was destitute of virtue, and I

fail to see why a different rule should be applied to daughters. The unchastity of the widow is expressly laid down as a ground of exclusion in

numerous texts, but there is no such clear authority in favour of excluding other females, and in the absence of clear authority such exclusion ought

not, in my opinion, to be enforced. For these reasons and for the reasons given by the learned brother whose judgment I have had the advantage

of reading, I see no grounds for refusing to follow the decision in *Kojiyadu v. Lakshmi* ILR (1882) M. 149. It was further argued that illicit

intercourse with a person not belonging to an equal or superior caste ipso facto produces degradation without any formal exclusion from caste, but,

even if this be so,, degradation does not affect merely proprietary rights of the degraded person since the passing of Act XXI of 1850 *Subbaraya*

Pillai v. Ramasami Pillai ILR (1900) M. 171 and there is no authority for the contention that aggravated unchastity has that effect. In the result, I

think, the appeal must be allowed and the plaintiff's suit dismissed with costs throughout.

Sankaran Nair, J.

3. This is an appeal from the decision of the Subordinate Judge, declaring that the plaintiff is entitled, as the nearest reversioner, to the properties of

Sankaramurthi Mudali in preference to his mother, the defendant, who, it is contended, has forfeited her rights on account of her having been a

party to the murder of her son *Sankaramurthi* "and owing also to her unchastity and loss of caste.

4. It has been already decided by the High Court that the defendant would not be entitled to any beneficial interest in the inheritance, if she is

proved to have been a party to the murder as alleged by the plaintiff. That question, therefore, is not open to us for consideration. We have only to

see whether the facts proved justify the conclusion of the lower Court.

5. *Sankaramurthi Mudali*'s, father died in 1887 leaving a valuable estate to his only son, who was then only two years old. The latter lived with his

mother, the defendant, till 1897 when she appointed a Mahomedan, *Sheik Abdul Kadir Saheb*, as an agent under a general power of attorney.

This agent lived with the defendant in her house. *Sankaramurthi* objected to it, and went to live with his mother's sister's son *Sankaralinga Mudali*

at *Tirupudaimaruthur*, while the defendant, his mother, continues to live with

her Mahomedan agent in his house at Vikramasingapuram.

6. Sankaralinga, early in 1897, applied to the District Court for the removal of the defendant from the guardianship of her son, If "the deceased,

and the appointment of another guardian (Exhibit S). The Court appointed the defendant's brother as guardian (Exhibit U). The High Court on

appeal by the defendant ordered that the defendant should be joint guardian with her brother (Exhibit BB). Subsequently, the brother refused to

act as a guardian, and the defendant then prayed for the appointment of another joint guardian. The District Judge, finding that there was no proper

person to be appointed as guardian, ordered the appointment of a Receiver to the estate. The High Court on appeal held (Exhibit NN) that the

District Judge had exceeded his powers and called for a finding. Among the witnesses examined by the Judge was the deceased who deposed that

he had to leave his house as the Mahomedan agent was living with his mother in that house (Exhibit P). This was on the 14th July 1900. On the

18th July, the District Judge submitted his finding to the High Court in which he recommended that the defendant might be appointed sole guardian.

7. On the night of the 25th August, the deceased left the house of Sankaralinga Mudali and disappeared. On the morning of the 27th, his body was

found lying partly in the water in the river at Athalanallur just south of the village in which he was living. It was buried by order of the Village

Magistrate. But on Sankaralingam's complaint setting out his suspicions against the defendant and her agent, Sheik Abdul Khadur, the body was

exhumed on the 2nd September in the presence of the Magistrate, the Station House Officer, and the Medical Officer. The post mortem showed

that the deceased met his death by strangulation. Sheik Abdul Khadar, his brother Kuppai Rowther, one Manikam, and the defendant were tried,

the first three for murder and the last for abetment thereof. The defendant was acquitted and the others convicted and sentenced to transportation

for life.

8. It is also in evidence that there was proposal, shortly before his alleged murder, to marry the deceased to a girl of an influential family in the

locality.

9. It is now the plaintiff's case that, on account of the bitter feelings she entertained towards her son for his hostility to herself and her paramour,

which led to the various proceedings above referred to and which were intensified by the statement (Exhibit P) in which he openly denounced her for living in open immorality with a Mahotnedan, in a Court of Justice, and alarmed at the consequences to herself of his approaching marriage, which would bring him powerful relatives and deprive her of any chances of succession in case of his death, the defendant conspired with Sheik Abdul Khader and others to compass n-is murder. The main evidence against the defendant is that of the plaintiff's witness No. 7, a cart driver in her employ, who states that after the deceased made the statement, (Exhibit P) already referred to, before the District Judge on the 14th July, there was an altercation between the defendant and her son when she was returning to her village, when she snatched a knife which the witness had in his waist and rushed at her son addressing some threatening words to him. She was prevented from doing anything by himself and other by-standers. On the day of the murder the defendant, Sheik Abdul Khader and his brother left Vikramasingapuram in his cart at about 12 noon and reached Sheik Abdul Khader's house at Ambasamudram in the evening, one Manikam joining them on the way. While they four, shortly after, left the house for the scene of murder, the defendant, according to this witness, told them ""You are going to call my son. If he in compliance with your request comes, it is all right. Otherwise you will do as much as you know to do and come."" The witness further states ""she also added that we need not return if we omit to do as much work as we know to do."" He gives the details of the murder of the deceased by Sheik Abdul Kader and his brother, assisted by himself and Manikam, and deposes that on their return Sheik Abdul Kader told the defendant that they had completed their work, when she replied ""Right. The weed has been got rid of."" These four absconded the same night, while the defendant stayed behind. This evidence of the accomplice received material corroboration so far as his three associates in the murder were concerned and they were accordingly convicted by the Sessions Judge.

10. As against the defendant, the alteration on the 14th is spoken Ho by the plaintiff's 8th witness. The evidence as to the defendant leaving for Ambasamudram on the day of the murder is supported by that of the plaintiff's 10th witness. These are new witnesses not examined at the trial

before the Sessions Judge. The instigation by her before this witness and others left Ambasamudram to commit the murder was not mentioned by

this witness before, to the investigating officers, to the Committing Magistrate, or the Sessions Judge when the facts must have been fresh in his

memory, and is more important to prove the defendant's complicity in the crime than any other incident spoken to by him. He states it now for the

first time five years after. This evidence as to instigation is clearly false. It was argued before us, that the relatives of the defendant who assisted the

prosecution in the Sessions case kept back, or at any rate did not put forward, all the evidence available against the defendant as they did not want

to get her convicted and that this accounts for the omission of the evidence at the previous enquiry and trial. The state of feeling that existed

between the parties does not support this view. What actually happened rebuts any such presumption. In the petition presented on the 1st

September, Sankaralinga Mudally denounced the defendant as a party to the crime. On the 4th, a witness, Pasunkili Tevan, was produced before

the Magistrate, who professed to have been present when the murder was talked of by the defendant and others. His deposition was filed before

the Sessions Judge, but he was not examined either before the Committing Magistrate or the Sessions Judge and was evidently dropped as a false

witness. It also appears from the judgment of the Sessions Judge that a false witness, not now examined, was examined to prove that he was

asked by the defendant and Sheik Abdul Khader to put poison in the food of the deceased. The suggestion that all the available evidence was not

put forward cannot be accepted and the evidence of the 8th and 10th witnesses must also be rejected on the same ground.

11. As to the remark the defendant is alleged to have made on their return after the commission of the murder, the Sessions Judge has pointed out

that this did not appear in the statement. made to the Superintendent of Police. I have already found that he is not a reliable witness. This brief

statement by her is utterly inconsistent with what she is alleged to have spoken to them on their departure when she exhorted them to bring her son

to her, if possible, and suggested recourse to any other step only on failure of that attempt.

12. The defendant's departure for Ambasamudram from her village in the company of the murderers on the day of the murder appears to be so

unnecessary and reckless, and calculated to draw such strong suspicion on herself, that it is incredible she should have gone there on that day if she had any knowledge of the contemplated murder. Without such knowledge, her presence at Ambasamudram is not material, as it appears from the evidence of the Station House Officer that he had seen her there before. Exhibits J and K only show (see the evidence of the plaintiff's 8th witness) that she was anxious to get back her son. I disbelieve the evidence of the 13th and 14th witnesses as it is not likely that after her discharge on the 8th she would again attend the Sessions Court or that she would make the remarks attributed to her in the presence of a crowd.

13. As to the probabilities of the case, there is no doubt the death of the minor would have benefited her, but, on the other hand, he was her son and she was always sure of maintenance at least out of the estate. Sheik Abdul Khader had a stronger motive. He would have been turned out on the minor coming of age.

14. It is possible that the defendant may have been a party to the conspiracy to murder her son. But the evidence is quite consistent with the view that the murder may have been carried out by Sheik Abdul Khader and his three accomplices for his own benefit without the knowledge of the defendant. The evidence of the accomplice does not receive reliable corroboration as to her complicity, and alone, it is suspicious, and therefore insufficient to support a finding in favour of the plaintiff. There is no doubt that when the four assassins disappeared the same night and she was informed of the death of her son, she must have known then that they were responsible for his death. And her subsequent conduct is that of a terrified woman apprehensive of serious consequences to herself.

15. For these reasons, I am unable to hold that the defendant has been proved to have been a party to the murder of her son.

16. It is then argued that as the defendant has been proved to have been unchaste before the death of her son, she is not en, titled to succeed to him under the Hindu Law. This question has been decided by this High Court in favour of the appellant, defendant, in *Kojiyadu v. Lakskmi* ILR

(1882) M. 149 which has been approved in *Angammal v. Venkata Reddy* ILR (1902) M. 509. This Court followed a decision of the Bombay

High Court *Advypa v. Rudrava* ILR (1879) 6 Bom. 104. In Allahabad though the

point did not arise directly for decision, the only opinion that has been expressed on the point is in favour of that view - Musammat Ganga Jati v. Ghasita ILR (1875) 1 A. 46. In Calcutta a different view has been taken in Ramnath Tolapattro v. Durga Sundari Debi ILR (1878) C. 550; Ramananda v. Raikishori Barmani ILR (1894) C. 347; Sundari Letani v. Pitambari Letani ILR (1905) C. 871. These cases refer to the daughter's claim. But that does not make any material difference. The learned Judges refused to follow the Madras and Bombay decisions as ""they are all under Schools of Hindu Law other than the Bengal School and were, decided with reference to authorities different from those that are specially followed in the district with which we have now to deal"" - Ramananda v. Raikishori Barmam ILR (1894) C. 347. These decisions therefore form no ground for a review of the decision of this Court. In my opinion, we are therefore concluded by authority.

17. But as the question has been argued at great length before us, I proceed to give my opinion. After giving full weight to the arguments advanced, I see no reason to differ from the conclusions arrived at by the learned Judges of this Court, that un-chastity is not a ground for excluding any female heir except a widow from succession. Mr. Mayne is of opinion that the causes entailing civil disability are reduced to those originally stated by Mann, with the addition of lunacy and idiocy and any incurable disease which is now limited to the worst form of leprosy - § 592. Neither Mauu nor Yajnavalkya refers to "unchastity" as a disability. "Vice" is stated to be a ground of exclusion of heirs by Narada and this is made applicable by Vignaneswara to females also in Placitum 8, Section X, Chapter II of the Mitakshara. But the High Courts in India have refused to treat it as such, and it is only relied upon before us to support the probability of unchastity being regarded as a legal disqualification by the Hindu Lawgivers.

18. "Unchastity" is not mentioned as a bar to succession in the Mitakshara, and the full discussion of several grounds of exclusion including some which are not now recognized as such in Chapter X, Section II, without any reference to unchastity, and the express reference to it as a preliminary condition to succession in the case of a widow in Pl. 6 and Pl. 18, Section I, Chapter II, strongly supports the view that in the case of other heirs,

like the daughter and the mother, no such disqualification exists.

19. That unchastity by itself is not a disqualifying cause has been decided also by the Calcutta High Court in *Nogendra-Nandini Dassi v. Benoy*

Krishna Deb ILR (1902) C. 521 in which it was held that a woman is not thereby disqualified from inheriting *Stridhan*, as in that case inheritance

depends on consanguinity.

20. The rule of exclusion is deduced from the theory of Hindu Law that the heir takes the inheritance for the performance of the ceremonies

essential to the spiritual welfare of the deceased and his incapacity therefore to perform his obligations excludes him from succession. Now what

are the grounds on which the mother's right of inheritance is based?

21. In the Digest the following old texts are cited:

A mother surpasses a thousand fathers, for she bears and nourishes the child in, her womb: therefore is a mother most venerable.

22. Vyasa - "Ten months a mother bore her infant in her womb, suffering extreme anguish; fainting with travail and other pangs, she brought forth

her child." "Loving her sons more than her life, the tender mother is justly revered : who could recite all her merits, even though he spoke a hundred years?

23. Other texts are also cited showing the superiority of one parent to the other.

24. Coming now to the commentaries, the author of the *Mitakshara*, after declaring the right of the parents to succeed to the property of a

deceased son in the absence of nearer heirs, in Sloka (r) which runs thus - "on failure of those heirs, the two parents, (meaning the mother and the

father) are successors to the property" - proceeds to discuss the question of preference of the mother over the father. He draws an inference in

favour of the mother from the compound term *Matapitarau* which has been reduced to "*Pitarau*" and then proceeds thus:

Chapter II, Section 3: (3) "Besides, the father is a common parent to other sons, but the mother is not so : and since her propinquity is

consequently greatest, it is fit that she should take the estate in the first instance conformably with the text : "To the nearest *Sapinda* the inheritance

next belongs.

(5) "Therefore since the mother is the nearest of the two parents, it is most fit

that she should take the estate. But on failure of her, the father is successor to the property.

25. The author defines Sapindaship to arise ""between two people through their being connected by particles of the one body,"" without any

reference to the capacity to offer religious oblations. Thus the mother's right of succession is not made to depend upon her capacity to perform any

ceremonies, or on the ground she may have a son to offer oblations as a condition precedent to succession. There is no reference to her chastity. It

is based on the ground of her having borne and nourished the son in the womb. The author of the Mitakshara bases her right to take her place

before the father upon her nearer relationship to the deceased. The Smriti Chandrika also has no reference to the capacity of the mother to confer

spiritual benefits on the son.

26. This view of Vignaneswara that the mother's claim to inherit is based on consanguinity is in harmony with his doctrine which prefers family

relationship, to efficacy of religious offerings as pointed out by Mr. Mayne ¹/₂ 512 p. 692 and 510, 511, 512, 513, and ¹/₂ 521 at p. 708 and

also in various decisions of this Court.

27. Jimutavahana, no doubt, introduces the religious element. Dayabhaga, Chapter XI, Section IV, Sl. 2, contains the following reasons for her

succession:

It is necessary to make a grateful return to her for benefits which she has personally conferred by bearing the child in her womb and nurturing him

during his infancy, and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will

participate."" The additional ground here given would not apply to the widowed mother of an only son, who is, nevertheless, acknowledged to be an

heir, or, as Mr. Mayne observes, "" to the mother of an only son or of a son whose brothers had died before him without leaving issue."" The birth of

other sons is clearly not indispensable for a recognition of the right, and religious efficacy is not the main cause even according to the Dayabhaga.

In fact Jimutavahana was only trying to justify by spiritual consideration in accordance with his principle that the test of heirship is religious merit, a

right of succession already well established. This will also appear from the principle of succession with reference to daughters laid down in the

Dayabagha.

28. If we now compare the case of the daughter with that of the mother, it will be found, as in the case of the mother, that while the Mitakshara,

Chapter II, Section 2, § 2, bases such right on the simple ground of consanguinity, the Bengal lawyers put it on the ground that she produced

sons who could present oblations, and Jimutavahana accordingly, unlike Vignaneswara, lays down that no daughter could inherit unless she had, or

was capable of having, male issue, with the result that daughters who are widows or barren or who appeared to have an incapacity for bringing

any but daughters into the world were excluded--Dayabhaga Chapter XL, Section 2, § 1. The failure of Jimutavahana to push to its natural and

logical conclusion his theory in the case of the mother by similarly excluding widowed mothers and those who only had the capacity for bringing

daughters into this world, is remarkable, and shows that in his opinion it is only, as pointed out already, an additional argument advanced in support

of the mother's claim. The Smriti Chandrika follows this doctrine of religious efficacy in this respect and similarly excludes barren daughters, and

insists upon the daughter being "virtuous and devoted to obedience." This is only a moral precept. Further, this Court has, after a full consideration,

rejected the authority of the Smriti Chandrika with reference to the principles on which the daughter's right of succession is based, and has held,

subsequent to the decision in Advyapa v. Rudrapa ILR (879) . C 4 that consanguinity alone is the cause of her succession - Simmani Ammal v.

Muttatmmal ILR (1880) M. 255. This comparison with the daughter's right of succession shows very strongly that the mother's claim rests on

consanguinity and not on religious merit, and incapacity to inherit, due to inability to perform sacrifices cannot therefore be presumed.

29. This view receives confirmation from the texts relating to the widow's right of succession.

30. The texts which are relied upon to exclude the unchaste widow are the following:

Mitakshara, Chapter II. Section I, Pl. 18 and 6.

Dayabhaga, Chapter XI, Section 7.

Vridha Manu

The widow of a childless man, keeping unsullied her husband's bed, and

persevering in religious observances, shall present his funeral oblation and obtain his entire share.

Katvayana

Let the childless widow, keeping unsullied the bed of her lord and abiding with her venerable protector, enjoy with moderation the property until her death.

31. It will be observed that chastity is made a preliminary condition in the case of the widow while it is not referred to in the texts relating to the

mother. Further, it seems to be also clear that they are not intended to apply to the mother succeeding to her son. Accepting the view that

prevailed in Bengal that an unchaste mother or daughter is excluded, their Lordships of the Judicial Committee of the Privy Council say : ""It seems

clear that such exclusion is not by virtue of either of the abovementioned texts of Vridha Manu or that of Katyayana. These texts have reference to

the deceased owner of the estate. The words "his funeral oblation" and "his share" and "the property" have reference to the oblation, the share and

the property of the lord, or husband mentioned in the preceding parts of the texts, whose estate is to be inherited, and not to the husband or lord

whose estate is not to be inherited, such as the husband or lord of the daughter or the mother, as the case may be, of the deceased owner, who in

default of a widow may be next in succession to inherit an estate.

32. These verses, though not applicable to the succession of the mother in so far as they impose the condition of chastity, it is contended, are

extended to the succession of females generally by Verses 30 and 31 of Chapter XI, Section II, of the Dayabhaga. But the Privy Council have

held that they so extend only the rule applicable to a wife that a gift, sale, or mortgage of the estate is not to be made, and that after her death the

heirs of the deceased owner are to take, and not that part of the rule, which is included in the words ""keeping unsullied the bed of her lord.

Moniram Kolita v. Keri Kolutani ILR (1880) C. 776.

33. The theory of religious efficacy is thus only extended to other female owners to restrict their powers of alienation and to make their succession

only an interposition to pass the estate to the next heir of the last male owner. It is not so extended by these texts as to impose the obligation of

chastity as a condition precedent to succession. This is admitted by the Calcutta High Court, but they hold that it is the commentary of

Raghunandana "'a high authority in the Bengal School'" according to that High Court, read with the other texts that leads to the exclusion of the

unchaste mother and daughter.

34. When the texts and the Dayabhaga according to their Lordships of the Privy Council do not lead to that conclusion, their extension by a recent

commentator - for Raghunandana is believed to have lived in Bengal in the 16th century - cannot be followed unless he has been accepted as an

authority in this Presidency. He wrote for a different state of society under Mahomedan rule or influence, while Southern India was under Hindu

rule, and I am not aware that his sole authority has been accepted on any questions in this Presidency. I see therefore no reason to differ from

Kojiyadu v. Lakshmi ILR (1882) M. 149.

35. The only other ground of exclusion alleged in the plaint is loss of caste. That the defendant is expelled from caste is not found by the lower

Court, nor is it proved by any evidence in this case.

36. It was then argued that though adultery with a person of the same or higher caste might not cause degradation, yet in its aggravated form, that

is, with a person of a lower caste or with one not a Hindu, it makes the person "degraded" according to the Hindu Law and is, therefore, a legal

disqualification.

37. For this proposition no authority has been cited. It was not apparently raised in the lower Court and no evidence adduced to show that the

defendant has been treated as one "degraded" by her caste on account of her unchastity; and evidence of "degradation," if true, should have been

forthcoming, as her son appears to have left his house in 1897 on account of her criminal intimacy with Sheik Abdul Khader, which seems from the

plaintiff's evidence to have been open and notorious.

38. Further, when this case came before this Court for decision on the preliminary questions, it was held that the rules regarding loss of proprietary

rights as incident to degradation cannot now be treated as otherwise than obsolete. I agree in that view and in the reasoning that led to it.

39. I would, therefore, reverse the decree of the lower Court and dismiss the suit with costs throughout.