

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Syed  
Sadakut Hossein v. Syed Mahomed Yusoof, from  
the High Court of Judicature at Fort William,  
in Bengal; delivered December 7th, 1883.*

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Present:

LORD FITZGERALD.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

IN this case some questions of importance have been raised, and their Lordships regret that they have not had the assistance of Counsel appearing for the Respondent. Their Lordships are therefore impressed with the propriety of not going beyond questions which are absolutely necessary for the purpose of their decision.

The real issue in this case, and the only issue upon which their Lordships feel it necessary to decide, is whether Selim,—who was beyond question the actual son of Ameer Hossein by a woman known as Domni,—had been so recognised by Ameer Hossein as to give him the status of a son capable of inheriting. The suit relates to the property of Ameer Hossein. He died in the year 1866; and if Selim is in the position of having the rights of a son in reference to heirship, the Plaintiff in the case, who claims as the assignee of his interest, is entitled to succeed. A question of importance was raised by the Counsel for the Appellant. He contended that Selim could not be treated as having acquired the status of a son capable of inheriting, because he alleged that the intercourse between Ameer Hossein and Domni was an adulterous intercourse,

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as she had been previously married to a person then and still living, and that consequently, whether her connection with Ameer Hossein was preceded by a marriage ceremony with him or not, yet still the intercourse was adulterous, and that, according to Mahomedan law, the issue of that adulterous intercourse could not inherit as heir or acquire the status of a son by recognition. It, therefore, becomes necessary to consider in the first instance whether the alleged marriage of Domni to a man named Jummun has been established by satisfactory proof. Jummun appears to have been a person of somewhat the same degree in life as Domni, whose father's name was also Jummun. This marriage, if it took place at all, would have occurred shortly before or somewhere about the same period as the alleged marriage between Ameer Hossein and Domni. The alleged marriage of Jummun with Domni is said to have been somewhere about 1852 or 1853, and the alleged marriage of Domni with Ameer Hossein must have taken place about the same period. Ameer Hossein died in 1866, leaving Selim his son then about eight or nine years of age, which would have made him born in 1857 or 1858. Another child had been born of the intercourse between Ameer Hossein and Domni about four years before; so that the marriage between Ameer Hossein and Domni, if it ever took place, is referred to about the same period as the alleged marriage between Jummun and Domni.

Now the account given by Jummun is certainly one of an incredible character. The statement is that he became acquainted with Domni when he went to live in this particular village. He gives a description of her. He says that he had illicit intercourse with her; that he kept that illicit intercourse on for about a month. Then he says, "I heard that before I

had intimacy with Domni three children had been born of her." That is his first statement. Domni was then a girl represented on the one side to have been 12, 13, or 14 years of age, and on the other side to have been 15 or 16 or possibly beyond that; but let us take a mean between them, and say that she was then 15 years of age. He says that before he became acquainted with her she had three children by others. That is his first statement. Then, after stating his intimacy with her, he says she came to him,—she who had in this village or elsewhere three children,—and said to him, "The Meahs will reprimand us; let us run away to Bandah." Something of the kind might have occurred with a young girl; but with a shameless prostitute, such as Domni is represented to be, it is very incredible that such a thing would take place. He then describes the flight; getting to a considerable distance, when they are overtaken and brought back by a servant coming from the house of Wahid Ali Khan, who said, "Come back, and I will get you two married." He then says that he went back; and he describes the alleged marriage with minute particularity. He then states these circumstances: that soon after the marriage he found that she had entered upon a course of the most disgraceful prostitution. His story does not bear repetition. He describes her on the bed with four or five men. It is evident from this statement that he intended to lead to the inference that all these persons were having connection with his wife. He then says he is threatened by one of them, who says, "You have no claim over Domni." He then applied to Wahid Ali Khan for aid and protection, who refused to assist him, and in consequence he left. For 25 years afterwards he never revisited the village, and does not appear to have been

heard of or seen by anyone there. That statement appears on the very face of it to be exceedingly improbable. There are other circumstances connected with it which lead further to the belief in its improbability. He himself appears to be a person of not very moral character; for he says, "I kept several women without nika." But he says, notwithstanding all this, "I have never been divorced, and I still consider her as my married wife." The circumstances that he is detailing, if true, must have been notorious in this village: the marriage with Jummun; her profligacy, her wandering about the village, and being what may be called the commonest of common prostitutes. Those are things that must have been perfectly public; and yet the case is, that with that publicity, Ameer Hossein, a person of superior degree, knowing, as he must have known as an inhabitant of the village, of the profligate course of this woman, took her to live in his house as if she was his wife. Undoubtedly he did take her to his house, and cohabited with her as his wife, and she became the mother of his children; but it is exceedingly improbable that he would have done that if there had been this previous marriage and this course of open profligacy on the part of this young woman.

Several witnesses are called to prove the marriage; and their evidence is examined with critical accuracy by the Judge of the Court below. It is necessary for their Lordships now to come to a determination upon it; and their Lordships are of opinion that in dealing with that evidence the criticisms pronounced by the learned Judge of the Court below who tried the case, and who saw the witnesses, are well founded, and that there is no reliable evidence, in confirmation of that extraordinary story which Jummun tells, upon which their

Lordships can now say that this marriage with Jummun ever took place; and, on the contrary, they have come to the conclusion that it did not take place.

Domni has been examined; she had been called as a witness for the Appellant. The first question of importance put with a view to establish her marriage with Jummun was: "Do you know a person of the name of Jummun?"—that happens to be her father's name; and she at once affirms, "I never knew anyone of the name of Jummun but my father." The examination is immediately dropped. There is no attempt to confront her with Jummun, or to ask her this question, "Do you see that man there? He is the Jummun alluded to. Were you married to him, or is he your husband?" She contradicts the statement brought forward to establish this marriage by deposing that she never knew a person of the name of Jummun save her father; and upon her subsequent examination she says, "I was married once, and once only, and that marriage was to Ameer Hessein."

Their Lordships have then come to the conclusion that the parties fail to establish this marriage between Jummun and Domni. That relieves them from offering any opinion upon the very important question of law which was raised by the Counsel for the Appellant; namely, whether, if there had been this marriage, the offspring of an adulterous intercourse could be legitimated by any acknowledgement. The absence of reliable proof, such as their Lordships could act upon, of the marriage of Domni and Jummun, appears to their Lordships to relieve the case from further difficulty. They do not intend in the least to depart from the statement of the law upon an Appeal to the Privy Council in the case of *Muhammad Anwar Ali Khan v. Mussamat Lalli*

*Begum*, which is as follows:—"Their Lordships are relieved from a discussion of those authorities, inasmuch as the rule of Mahomedan law has not been disputed at the bar; viz., that the acknowledgement and recognition of children by a Mahomedan as his sons gives them the status of sons capable of inheriting as legitimate sons, unless certain conditions exist, which do not occur in this case." Their Lordships do not intend at all to depart from that rule, or to throw any doubt upon it. The Judge of the primary Court who saw and who heard the witnesses, and the Judges of the Supreme Court who examined into the evidence, afterwards concur in opinion that there was sufficient evidence of the acknowledgement by Ameer Hossein of Selim as his son, from which an inference is fairly to be deduced that the father intended to recognise him and give him the status of a son capable of inheriting. Upon that point both the Courts come to one conclusion; and that conclusion their Lordships adopt. They think that the status of Selim as son has been sufficiently established by recognition so as to enable him to claim as heir. Other questions have been raised in the case; but, in accordance with what has been stated as their Lordships' view, they think they ought not in a case of this kind to go beyond what is necessary for the decision.

Their Lordships will, therefore, humbly advise Her Majesty to dismiss the Appeal, and to affirm the decision of the Court below. There will, of course, be no costs in this case.