

[4 Mad. 243]

APPELLATE CRIMINAL.

The 22nd November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

*The Queen against Marimuttu.***Criminal trespass, charge of, by Hindu against wife excommunicated from caste.*

Excommunication from *caste per se* does not deprive a Hindu wife of her right of joint enjoyment of her husband's house, so as to make her a trespasser if she enters the house to claim maintenance.

THE facts of this case, the records of which were called for by the High Court, are sufficiently set out, for the purpose of this report, in the Judgment of the Court (INNES and KERNAN, JJ.).

Counsel were not instructed.

Innes, J.—The Second-class Magistrate of Udumalpetta convicted a wife of house-trespass for entering the house of her husband to ask for maintenance. The wife had been excommunicated by her caste for alleged misconduct.

The Head Assistant Magistrate confirmed the conviction on appeal.

The law does not, however, recognize the loss of social status arising from excommunication from caste as of itself depriving a wife of the right to joint enjoyment of her husband's property. The wife is found to have been excommunicated and to have been living separately from her husband, but she is not found to have been expelled from the house by her husband for any misconduct legally established. In these circumstances it seems to me that she had a right as a wife to go to the house, and that as she had, and had never been deprived of, joint enjoyment, she cannot be regarded as a trespasser, civil or criminal.

I set aside the conviction and sentence, and direct the return of the fine.

Kernan, J.—I agree.

* Revision Case No. 107 of 1881 in the matter of the proceedings of J. W. Welsh, Acting Head Assistant Magistrate of Coimbatore, dated 13th September 1881.