Buddhist Law According to the Theravāda Vinaya II: Some Additions and Corrections,
by Oskar Von Hinüber

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1.
In a forthcoming article, Édith NOLOT discusses the Vinaya term nāsanā in great detail. In course of her discussion she briefly draws attention to the fact that paṭīṇṇāya, Sp 582, 30 sqq. does not mean “with the consent”, as I erroneously translated JIABS 18.1 1995, p. 37, 6, but “by acknowledgement”.

As I did not concentrate on the legal side of the relevant paragraph in the Samantapāsādikā in my earlier article, but on the problem of legal texts belonging to the Abhayagiri-vihāra, it may not be out of place to make good for this omission. The Samantapāsādikā here comments on the VIII. Samghādisesa dealing with a monk accusing another monk of a pārājika offence without any reason. This rule is introduced by the story of the monk Dabba Mallaputta who is wrongly and maliciously accused by the nun Mettiyā to have raped her. Consequently, the nun Mettiyā is punished by expulsion from the order (nāsanā): tena hi bhikkhave Mettiyam bhikkhinim nāsetha, Vin III 162, 37 quoted Sp 582, 16.

From the text of the Vinaya it is clear that Mettiyā acts at the instigation of the Mettiyabhummajaka monks, who persuade her to accuse Dabba Mallaputta of rape. The reason is that they want to do harm to Dabba Mallaputta, who is highly respected by laypeople and therefore gets better food than they themselves. Thus there is not the slightest shadow of doubt that Dabba Mallaputta is an innocent victim of the combined viciousness of the Mettiyabhummakaja monks and the nun Mettiyā.

Here, the legal problem starts, at least as the Samantapāsādikā sees it. Once Dabba Mallaputta rightly rejects the accusation, the following sentence quoted by É.NOLOT from a different context and concerning two novices is valid: tatra dūsakassa paṭīṇṇākaraṇam natthi, Sp 269, 9 “there is no acknowledgement by the rapist.” According to the Sārattha-

dipani by Sariputta this means: pucchitabbabhavato. na hi dusako “kena cittena viikkamam akasi, jatiniva akasi, udahu ajatiniva” ti evam pucchhayya arahati, Sp-t (Be 1960) II 94,1-3 “Because there is no questioning. For the rapist does not deserve to be asked thus: ‘With which intention did you commit this transgression, intentionally or unintentionally?’” Obviously, a rapist is expelled from the Samgha at any rate, but not necessarily the person raped. For the Samantapasadikä continues: dusito pucchivat patinñaiva nasetabbo. sace na sadiya na nasetabbo, Sp 269,104 “[the monk, who] has been raped, is to be expelled because of [his] acknowledgement after having been asked. If he did not enjoy it, he is not to be expelled.” The reason for this procedure is given by Kassapa Cola in his Vimativinodani: patinña-karañam naththi sevetuka mata maggena maggapañhipatiiti dvinnam anganam siddhatam. dusitassa pana maggena maggapañhipatti evam ekam siddham, sevetukamatasañkhataam sadiyanam asiddham. tasmå so pucchivta “sadiyin” ti vuttapañhinaya nasetabbo, Vmv (Be 1960) I 147,23-26 “There is no acknowledgement because both parts, the desire to have intercourse and the entering by an (appropriate) way is certain. However, in case of the raped [monk] only the entering by an (appropriate) way is certain, the enjoyment called desire to have intercourse is not certain. Therefore, he is to be expelled because he says in acknowledgement after having been asked ‘I enjoyed it’.” This, at the same time, shows that the Vimativinodani gives a slightly different explanation. For, if sevetukama is considered as certain, ajanivva of the Saratthadipani is of course ruled out.

In the story of Dabba Mallaputta and MettiyA this obviously leads into a dilemma: If MettiyA acknowledges rape, she is to be expelled, but so is the innocent Dabba. This seems to be the underlying reason for the Mahâvihâra/Abhayagirivihâra controversy dealt with briefly in my earlier article: kim pana bhagavata MettiyA bhikkhuni patinñaaya nãsitã apañhinaya nãsitã ti. kiñ c’ettha yadi tava patinñaaya nãsitã thero kårako

2. The VajirabuddhikÄ does not explain this paragraph.
3. Cf. dve ... nãsetabbã, Sp 269, 9.
4. Ee dusito ti pucchiv: has to be corrected into dusito pucchiv with Be.
5. My understanding of this paragraph owes much to criticism and suggestions by the Venerable Bhikkhuni Juo-hsieh.
“Has the nun Mettiya been expelled by the Buddha because of [her] acknowledgement [or] without acknowledgement? For if she has been expelled because of an acknowledgement, the Elder [Dabba Mallaputta] has acted [i.e. has committed an offence] and is guilty. Without acknowledgement [by Mettiya], he has not acted and is not guilty.”

In our Vinaya text, which is the one of the Mahāvihāra, no immediate reason for Mettiya’s expulsion is given in the rather neutral formulation: tena hi bhikkhave Mettiyam bhikkhunim nāsetha, Vin III 162, 37 quoted Sp 583, 12, in contrast to the Abhayagiri version: tena hi bhikkhave Mettiyam bhikkhunim sakāya paṭīṇñāya nāsetha, Sp 583, 9. This, however, involves the guilt of the innocent Dabba Mallaputta. We do not know, if and how the Abhayagiri Vinaya experts may have solved this problem7, which was evidently widely discussed.

However, the legal experts of the Mahāvihāra also run into difficulties. If it is not a clear case of rape as the one between Sāmaneras referred to in Pārājika I (Vin III 323, 29 sq. with Sp 269, 9-22), but involving two ordained members of the Saṃgha contradicting each other when asked about the evidence, the situation becomes complicated. In the very beginning of this discussion it is simply stated: Dabbassa ca yasmā imassā ca vacanam na ghaṭiyati, tasmā Mettiyam bhikkhunim nāsethā ti vuttaṃ hoti, Sp 582, 17-19 “because Dabba’s [evidence] and her evidence do not agree, therefore it is said “you should expel the nun Mettiya”.

After the neutral text without sakāya paṭīṇñāya is said to be superior, a detailed discussion of the legal problems follows in the Samantapāsādikā (Sp 584, 15-585, 9): “These are the considerations of the experts in the [legal] commentaries (atthakathācāriya)8: If a monk wrongly accuses another monk of a pārājika offence (antimavatthu), this is a samghādisesa offence [Samghādisesa VIII, Vin III 163,21**]; if he accuses a nun, it is wrong doing (dukkatā)9. On the other hand, it is said

8. According to both, Sp-t B° (1960) II 346, 16 and Vmv B° (1960) I 282, 24, this opinion is found in the Mahāatthakathā.
9. These experts are quoted here, because the latter case bhikkhunim anuddhamseti dukkataṃ, Sp 583, 17 is not provided for in the Vinaya as confirmed by pāliyam anīgatatā, Sp-t B° (1960) II 347, 3. If something is neither found in the Vinaya (sutta), nor in the Mahāpadesas of the Vinaya (sutta āṇuloma), it is possible to resort to the ācariyavāda, which is the Aṭṭhakathā tradition as established by the participants of the first council (Sp 230, 27; 231, 9-11).
in the Kurundi: [here applies the rule:] If there is a lie, it is a pācittiya (Pācittiya I, Vin IV 2, 14**)10.

Here, the following has to be considered:

According to the first interpretation (purimanaye; i.e. of the experts in the commentaries), wrong doing is adequate because of an intentional accusation (anuddhamsana). Although (1.) in case of a lie there is a saṃghādisesa offence for a monk [and not Pācittiya I], if a second monk is involved, [and] although (2.) in case of a lie, it is not a conscious lie, if a monk talks with the intention to offend (akkosa) a [second] monk, who is unclean [i.e. who has committed an offence], but of whom he [the first monk] thinks to be clean [i.e. not to have committed any offence], but a pācittiya offence because of abusive speech (Pācittiya II, Vin IV 6, 5** with Vin III 166, 9), as [in these two cases], in the same way here, too, (i.e. Mettiyā vs. Dabba Mallapututta) a pācittiya offence involving a conscious lie does not apply, because of an intentional accusation. It is correct to assume only wrong doing11.

According to the last (i.e. second) interpretation (pacchimanaye) because of a lie only a pācittiya offence is adequate. For, according to the rule (vacana) there is a saṃghādisesa offence for a monk, if he intentionally accuses a [second] monk (Saṃghādisesa VIII) [and for a monk,] who intends to offend [a second monk] a pācittiya offence (Pācittiya II according to Vin III 166, 9).

There is no such rule [saying] it is wrong doing, if a monk [offends] a nun [and not another monk]12. However, there is the rule [saying that there is] a pācittiya offence in case of a conscious lie (Pācittiya I). Therefore, a pācittiya offence is adequate.

However, here the following careful considerations [are necessary]: If there is no intentional accusation (anuddhamsana), it is a pācittiya (i.e. Pācittiya II, and not Saṃghādisesa VIII) offence; if this (i.e. the intention) is there what is to be assumed then? Here, although it is correct that there is a pācittiya offence, if somebody lies, there is an indepen-

10. Consequently, the views quoted are contradictory and need discussion.

11. According to the opinion of the Mahāāṭṭhakathā communicated Sp 583, 17, cf. note 9 above, there is wrong doing, if a monk acts versus a nun. This is reverted on purely formal grounds in bhikkhuni ... bhikkhun anuddhamseti dukkatam, Sp 584, 5.

12. As this is what is found in the Mahāāṭṭhakathā [cf. Sp 583, 17], it is likely that Sp 583, 19-25 is a quotation from or rather a paraphrase of the text as found in the Kurundi. Note also the unusual expression vacanappamāṇa.
dent pācittiya offence, if somebody accuses [a monk] of an unfounded samghādisesa offence (Vin IV 9, 9), therefore, because the intention to accuse is there, there is no room for a pācittiya offence because of a conscious lie (Pācittiya I). But it is impossible that there is no offence [at all] for [the monk] who accuses13.

The first interpretation seems to be better: Therefore, if a nun accuses a [second] nun of an unfounded pārājika offence, it is a samghādisesa offence [Samghādisesa II, which is common to both, monks and nuns (sādhāraṇa), Sp 915, 35; Kkh 43, 34], if she accuses a monk, it is wrong doing14. Here, a samghādisesa is [an offence] leading to removal, wrong doing is leading to confession15; neither leads to expulsion (nāsanā).

Because she (Mettiyā) has a bad character by nature, is a wicked nun and says moreover herself “I have a bad character”, therefore the Buddha expells her because of this state of uncleanness.“

So far the Samantapāsādikā. Thus, in the end Mettiyā is simply expelled, because she is “by nature a wicked nun of bad character“ (pākatiyā 'va dussilā pāpabhikkhunī). This indicates that, at least at the time of the Samantapāsādikā, there was no tangible legal argument in the Vinaya by which Mettiyā could have been expelled(!). This might indicate that the verb nāseti is used rather loosely in the introductory story to Samghādisesa VIII, because there is no rule according to which the offence committed by Mettiyā could be handled. The samghādisesa thus introduced is used against the Mettabhummajaka monks who had persuaded Mettiyā to make a false accusation.

2.

The second correction concerns a mistranslated sentence on p. 25, 31sq. of my article mentioned above in the story of the theft occurring in Antarasamudda (Sp 306,29-307,22): When it is said that the value of the stolen object is a penny or even less, the Elder Godha, who

13. This seems to be the consequence because the Kurundī assumes the wrong offence, i.e. Pācittiya I instead of Pācittiya II. Consequently, there is some sort of formal defect in the reasoning of the Kurundī.

14. This follows from the assumption by the experts quoted Sp 583,17.

15. The category desanāgāmin applies to the five lahuka offences (Sp 1382, 14 with Sp 1319,12sq.) that is to all offences except Pārājika and Samghādisesa according to Sp 1334, 30 (ad Vin V 127,22). Only Samghādisesa offences are classified as vutṭhānagamin, cf. also Sp-† B6 (1960) I 168, 16sq. ad Sp 415, 23, because they are “removed” by parivāsa etc.
eventually decides the case, asks (and not states, as translated previously): “Indeed, has the Buddha prescribed somewhere a pārājika with regard to a penny (māsaka) or even less than a penny?” The answer to this question is of course “no“: āpatti thullaccayassa ... atirēkamāsako vā ānapaṃcamāsako vā, Vin III 54, 22, cf. III 47, 3 “it is a grave offence (but no pārājika), [if the stolen goods are worth] more than a māsaka or less than five māsaka.” Thus Godha reverts the earlier verdict that there had been a theft, and rightly so.