

(1976) 03 OHC CK 0030
In the Orissa High Court
Case No : Criminal Appeal No. 9 of 1974

Narottam Sahu

APPELLANT

Vs

Shyama Barik and Others

RESPONDENT

Date of Decision : 23-03-1976

Acts Referred:

Untouchability (Offences) Act, 1955 — Section 6, 7

Citation : (1976) 42 CLT 834

Hon'ble Judges : K.B. Panda, J

Bench : Single Bench

Advocate : S.K. Mund, for the Appellant; B. Panda, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Panda, J.—This is an appeal filed by the complainant against an order of acquittal passed in complaint case No. 1 C.C. 216 of 1969 wherein Respondents 1 to 3 were being prosecuted u/s 6 of the Untouchability (Offences) Act, 1955 (Act XXII of 1955) and accused 4 to 20 u/s 7 of the said Act, in the circumstances stated hereinafter.

Initially the case of the complainant was that the three Respondents who are barbers did not serve him and his friends who are Sundhis by caste on the ground that they are untouchables. The further case of the prosecution was that the other accused persons 4 to 20 who are of different castes instigated the first three accused persons in not rendering service to the Sundhis on the ground that they are untouchables. The allegation was confined to three instances - once on 1-6-1969, another on 2-6-1969 and thirdly on 10-6-1969, the complaint petition having been filed on 11-6-1969.

2. The defence was various namely, that the Sundhis are not treated as untouchables; that they do take part in all festive occasions of the village; that they contribute for the holding of all the ceremonies of Dola Jatra, Car Festival and Chandan Jatra etc. that some of the Sundhis sold liquor publicly for which

there was some agitation against them; that the complainant and his friends who are said to be studying in colleges while coming to the village create all sorts of disturbances resulting inconvenience for the movement of the village; that they instigated the villagers to fish from the tank of the village Zamindar to which they did not agree; that they kept the funds of the village and did not render accounts for which there has been bitterness and as a result thereof, the present case has been falsely started.

3. The prosecution examined 7 witnesses and the defence 3. The learned lower Court in an elaborate judgment held that the prosecution has miserably failed to establish the case as against the accused persons and so acquitted all of them. The complainant came up in appeal and only the appeal as against the first three accused persons now Respondents was admitted and not as against the rest. Thus we are here confined to the case of the three Respondents, namely, the first three accused persons in the lower Court who are barbers.

4. The plea of barber Shyama was that he did not know how to shave, that of Naran Barik was that on 2-6-1969 he was not at his home and that of Dharmananda Barik was that he is not the usual barber of the complainant, but it was one Shankar who was to serve him and not himself.

5. The question for determination was that if the prosecution had beyond all possibility of doubt established that the three barbers refused to serve the complainant and his associates on the mere plea that they are untouchables. Admittedly Sundhis are not scheduled caste people or scheduled tribe people. It is in evidence that the village Neharkanta to which the parties belong is inhabited by 50 families of Sundhis, 250 families of other castes such as Gudias (that is confectioners), Bauries, Bhois etc.. The witnesses for the prosecution are, barring one, all of Sundhi caste. Out of the seven witnesses, p. ws. 1, 2, 3, 4 and 5 are Sundhis and p.w. 5 is the father of p.w. 1, p.w. 2 is the uncle of p.w. 4. P.w. 3 has admitted that all the villagers co-operate in having festivals. Similarly p.w. 4 has admitted that the villagers conjointly have Dola jatra and Car festival by raising subscriptions. P.w. 5 though a Sundhi has admitted that a Gudia (a confectioner) is in his service. P.w. 6 admittedly has enmity with one accused Satyabadi Sahu who has now been acquitted. The only independent witness was p.w. 7 who is a day labourer and he has admitted that he will take his dues from the complainant's party. When the village is inhabited by people of other castes there was no justification for bringing witnesses who are either interested or belonging to the Sundhi caste itself. Further the consistent evidence of the prosecution is that the barbers were rendering service to these people though secretly. The youngsters demanded their service publicly which according to the prosecution the barbers resented. Admittedly there is no public place where these barbers were shaving the people such as having saloons or some such thing. The prosecution case is that they wanted the barbers to come to their houses and serve to which they declined. Even on that score, the evidence is spread over three occasions, one on 1-6-1969, then another man calling some d

the three Respondents on 2-6-1969 and some on 10-6-1969. I fail to understand how a prosecution case can stand when the cause of action arises on three occasions. The accused persons are to meet a charge of a particular date not of three dates when there are three causes of action. Obviously it would lead to multifariousness and confusion. If the prosecution was aggrieved over the conduct of any of the accused persons on a particular date such as 1.6.1969 or 2.6.1969, independent cases should have been started rather than clubbing them together.

6. This is a case of appeal as against acquittal where the considerations for interference are different. The learned lower Court has elaborately recorded the discrepancies in the evidence of the witnesses and has also pointed out how they are interested. Besides, the legal point that stares on the face is how three causes of action have been put together and the accused persons are made to face three charges. Rightly the learned lower Court has held that the delay in filing the complaint on 11-6-1969, that is, 7 days after the occurrence on 2.6-1969 which appears to be the real grievance having been made up by introducing another occurrence on 10-6-1969. Be that as it may, that does not improve the prosecution case. In this background I see no justification for interference with the order of acquittal much more so when the case as against the accused persons from 4 to 20 has not been accepted and the appeal has been confined to the case as against the three accused Respondents.

7. In the result, the appeal stands dismissed.