

1940

MATHURA
PRASAD
AND OTHERS
v.
SITA RAM
AND OTHERS

suit, to refer it to arbitration and to nominate arbitrators and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself. It was held that the husband had power to take action under sections 8, 9 and 10 of the Indian Oaths Act.

*Radha
Krishna, J.*

Disagreeing with the view of the lower appellate court, I hold that the decision given by the trial court was quite correct. The result is that the appeal is allowed and the order passed by the court below is set aside and the plaintiffs' suit is dismissed, with costs throughout.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr. Justice R. L. Yorke

1940
APRIL 12

SHEO SHANKAR AND OTHERS (APPLICANTS) v. KING-
EMPEROR THROUGH GAJODHAR (COMPLAINANT-
OPPOSITE-PARTY)*

*Indian Penal Code (Act XLV of 1860), section 295 and 295-A—
Ahirs whether entitled to wear "Janeo" or sacred thread—
Another Hindu damaging or destroying the Janeo worn by
Ahir, whether guilty under section 295 or 295-A, Indian Penal
Code.*

An Ahir is not in the ordinary estimation of the Hindu world a person entitled to the wearing of the *janeo* and for whom the wearing of the *janeo* is part of his ceremonial observances under the Hindu religion. Therefore, the damaging or destroying of a thread, worn by an Ahir in assertion of a mere claim to higher rank, could not be an insult to his religion, nor can the assailant be considered to have the knowledge that he was likely so to do, and so he cannot be convicted under section 295 or 295-A, Indian Penal Code. *Domarsingh and another v. Hirondibai and another* (1), and *Dalip and others v. Ganpat* (2), referred to.

*Criminal Revision No. 117 of 1939, for revision of the order of Sheo Gopal Mathur, Esq., Sessions Judge of Unao, dated the 24th August, 1939.

(1) (1919) 54 I.C., 294.

(2) (1886) I.L.R., 8 All., 327.

Mr. *B. N. Mulla*, for the applicants.

Mr. *S. P. Shukla*, for the opposite-party.

Mr. *H. K. Ghosh*, Asstt. Government Advocate, for the Crown.

1940

SHEO
SHANKAR
AND OTHERS
v.
KING-
EMPEROR
THROUGH
GAJODHAR

THOMAS, C.J., and YORKE, J.:—This is an application in revision against the order of the Sessions Judge of Unao dismissing the appeal of the applicants who had been convicted by a Special Magistrate of Unao of offences under sections 295-A and 323 of the Indian Penal Code and sentenced each to pay a fine of Rs.20 under the former section and Rs.5 under the latter; with six weeks' rigorous imprisonment in default of payment of the fines. The learned Magistrate had also acquitted nine other persons charged with the same offences.

The prosecution story was quite simple. The complainant Gajodhar is an Ahir, but presumably in pursuance of the ambition frequently seen in these modern times to obtain a social and religious ranking higher than that which has been traditional for his caste, he has taken to the wearing of a sacred thread or *janeo*, and it is said that he got himself invested with this thread in a religious ceremony conducted by one Brahman and several Ahirs. The members of the opposite-party and specifically the applicants are Brahmans of village Kharauli, the same village of which Gajodhar is a resident. These persons take exception to the wearing of a *janeo* by the complainant because they regard him as a Sudra and not entitled to wear it. It is said that on the 3rd August, 1938, cattle worship was being performed in Kharauli and the complainant came near the place where it was being performed. For the defence it was said that exception was taken to Gajodhar participating in this as he had not paid any subscription, and he was told to go away. The prosecution case on the other hand was that the accused took this opportunity of attacking the complainant and, as it were, taking him down a peg. They pursued him,

1940

SHEO
SHANKAR
AND OTHERS
v.
KING-
EMPEROR
THROUGH
GAJODHAR

Thomas,
C.J., and
Yorke, J.

beat him with kicks and fists, and broke the *janeo* which he was wearing. The complainant alleged that the applicants broke his *janeo* with intent to wound his religious susceptibilities because he was an Ahir and so the accused had taken exception to his wearing *janeo*. The learned Special Magistrate who tried the case accepted the contention of the complainant that the act of the accused persons injured the religious susceptibilities of the complainant and convicted the applicants under section 295-A.

In filing their appeal to the Sessions Judge the applicants spoke of their conviction as one under section 295, and it was while treating the conviction as one under section 295, that the learned Sessions Judge dismissed the appeal. He took the view that "*janeo* is certainly an object which is held sacred and to which a religious sanctity is attached by Hindus." He went on to say, "It is evident from the evidence that Gajodhar had taken to the wearing of the *janeo* with religious ideas and after he had observed the day, he started wearing with an actual ceremony for it, as is stated by him. It is thus evident that the breaking of the *janeo* would certainly have wounded his religious feelings. In my opinion section 295 covers the case of the destruction of a *janeo* also which is undoubtedly an object held sacred by the Hindus generally."

The first question is whether section 295-A or 295 was applicable, if either. We are inclined to think in view of the wording of the judgment of the learned Magistrate that he had mixed up the two sections. Section 295-A provides that "Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment etc." No stress has been laid on the words used by the accused in this case and it seems to us clear that this is no case in which either by the words used or by

visible representations (such as caricatures or the like) the accused insulted the religion or the religious beliefs of the complainant. It might have been possible for some one holding a different religion or holding no religion at all to speak slightly of the *janeo* with reference to its religious significance, in the sense of its being a practice observed as part of their religion by members of the twice-born classes, of the Hindus, but this is not what has been alleged in the present case.

The question considered by the learned Sessions Judge and that to which in arguments before us serious consideration has been devoted is whether in the present case section 295 is properly applicable. By that section "whoever destroys, damages or defiles . . . any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment etc."

A point which has not been discussed before us is whether even if the religious susceptibilities of the complainant himself were actually injured by the act of the accused, their act could fall within the scope of section 295 unless it could be further held that it was an act committed with the intention of insulting the religion of a class of persons or with the knowledge that a class of persons would be likely to consider it an insult to their religion. We have grave doubts whether section 295 is really applicable at all to the present case in which not even an attempt has been made to show that the act could be an insult to the religion of a class of persons or had been done with the knowledge that a class as distinct from a particular individual would be likely to consider it an insult to their religion.

On the question whether the act of the applicants could amount to an insult to the religion of the complainant Gajodhar we have listened first to some considerable amount of argument on the question whether

1940

SHEO
SHANKER
AND OTHERS
v.
KING-
EMPEROR
THROUGH
GAJODHAR

*Thomas,
C.J., and
Yorke, J.*

1940

SHEO
SHANKAR
AND OTHERS
v.
KING-
EMPEROR
THROUGH
GAJODHAR

*Thomas.
C.J., and
Yorke, J.*

Ahirs are or are not Sudras. The preponderance of opinion is strongly in favour of the view that they are Sudras and do not belong to the twice-born classes. Reference has been made to Sherring's Hindu Tribes and Castes (as represented in Benares). Chapter XI of this book deals with castes of herdsmen, shepherds, etc. It appears that the word "Ahir" is contracted from the word "Abhira", and it is said that if this be the caste referred to by Manu in his Institutes, it follows that the Ahir is three-fourths a Brahman and one-fourth a Vaisya. On page 334 the author says, "Commonly the Ahirs are regarded as Sudras". He goes on to mention, however, that "in the Bhagwat Purana Nand Ahir is spoken of as a Vaisya".

Reference has been made to Bhattacharjee's Hindu Castes and Sects published in 1896. This book after dealing with Brahmans of Northern and Southern India, Semi-Brahmanical castes, degraded Brahmans, the Military castes, the Scientific castes and the Mercantile castes, comes at Part XI to the artisan castes, generally recognized as clean Sudras. In Part XII he deals with Manufacturing and Artisan castes that are regarded as unclean Sudras. Therafter he comes to the clean agricultural castes, and after them to the cowherds and shepherds. It is clear that in this classification the cowherds and shepherds are reckoned among Sudras. At page 294 Mr. Bhattacharjee classes the Ahirs somewhat low. At page 297 he remarks: "The Rajputs generally repudiate all connections with the Ahirs though it seems very probable that the Yadu Bansi Ksatriyas were originally Ahirs".

Reference has also been made to Steele on the Laws and Customs of Hindu castes. This writer says on page 100 that Kunbis are descended from the pure Sudras of the book and on page 105 that Ahirs are classed lower "in estimation" than Kunbis (Kurmis). On page 23 this author gives an account of the 16 ceremonial observances or "sanskaras" of the Hindus, and he notes that Nos. 12, 13 and 14, of which No. 12

1940

 SHEO
 SHANKAR
 AND OTHERS
 v.
 KING-
 EMPEROR
 THROUGH
 GAJODHAR

*Thomas,
 C.J., and
 Yorke, J.*

is the wearing of the *janeo* or sacred thread, are not permitted to Sudras. It is, we think, quite evident that in popular estimation Ahirs are not in this part of the world regarded as anything higher than Sudras. On the other hand it is very commonly observable in these times, particularly whenever a census is in progress or is about to be undertaken, that many castes not commonly regarded as belonging to the twice-born classes make efforts to claim that they are members of those classes and to get themselves recorded under some particular head or sub-caste of one of the twice-born classes. We are clear in our minds that the complainant Gajodhar has adopted the wearing of the *janeo* in pursuance of this very commonly held ambition, and that he is not in the ordinary estimation of the Hindu world a person entitled to the wearing of the *janeo* and for whom the wearing of the *janeo* is part of his ceremonial observances under the Hindu religion. Two cases have been quoted to us in this connection. In *Dalip and others v. Ganpat* (1), the judgment begins as follows:

“This appeal raises a question as to the rights of inheritance of illegitimate sons of Sudras, the parties in this case being Ahirs,” that is to say it was conceded in this case that Ahirs were Sudras.

In a case of the Nagpur Judicial Commissioner's Court, *Domarsingh and another v. Hirondibai and another* (2) it was held that “Ahirs, whether of the Nandvansi or any other sub-caste, are Sudras.”

It appears to us clear that if Ahirs are Sudras and therefore not entitled to wear the sacred thread, it cannot be said that wearing the sacred thread is a part of their religion and therefore the damaging or destroying of a thread, worn by them in assertion of a mere claim to higher rank, could not be an insult to their religion, nor could an Ahir be supposed likely to regard such an act as an insult to his religion. But even supposing for the sake of argument that Ahirs are entitled

(1) (1886) I.L.R., 8 All., 387.

(2) (1919) 54 I.C., 294.

1940

SHEO
SHANKAR
AND OTHERS
v.
KING-
EMPEROR
THROUGH
GAJODHAR

*Thomas,
C.J., and
Yorke, J.*

to wear the sacred thread we do not think that the applicants by breaking the sacred thread or thread regarded as sacred by the complainant brought themselves within the scope of section 295 of the Indian Penal Code. In our opinion it is clear that the accused could not by any means be supposed to have had the intention of insulting the religion of the complainant. Although of different castes the parties are all persons holding the same religion. The act of the applicants was intended rather to teach the complainant not to be presumptuous and pretend himself to be something that he was not. The question then is whether it could be said that they had the knowledge that the complainant would be likely to consider the destruction, damage or defilement by them of the thread which he was wearing as an insult to his religion. We think it conceivable that if a Muhammadan or a Christian or an atheist tore off the sacred thread which was being worn by a Hindu entitled to or even claiming to be entitled to wear it, and the assailant at the same time indicated disrespect for the thread, such a person might be conceived to know that the person whose thread was so treated would be likely to consider it an insult to his religion. We find great difficulty in supposing that in the circumstances of the present case where persons observing the same religion broke the thread of someone whom they regarded as an upstart wearing something which he was not entitled to wear, either the victim of assault would be likely to consider that act an insult to his religion or the assailants could be considered to have the knowledge that he was likely so to do. The truth of the matter is that it was not the religious susceptibilities of the complainant Gajodhar which were injured but his dignity, and therefore, we do not think that a conviction under section 295 of the Indian Penal Code is sustainable.

We accordingly set aside the conviction and sentences of fine passed under section 295 (or 295-A) of the

Indian Penal Code and direct that the amount of fines, if paid, be refunded.

As regards the conviction and sentence under section 323 of the Indian Penal Code we have not been shown any reason to suppose that this conviction is not justified. Even if the case was not one of hurt, it clearly came within the scope of section 352 of the Indian Penal Code and the sentences inflicted were suitable for the conviction under either section. So far as the conviction under section 323 is concerned this application fails and is dismissed.

1940
SHEO
SHANKAR
AND OTHERS
v.
KING-
EMPEROR
THROUGH
GAJODHAR

Thomas,
C.J., and
Yorke, J.

Application dismissed.

APPELLATE CRIMINAL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

MST. RAJ KUMARI (APPELLANT) v. KING-EMPEROR
(COMPLAINANT-RESPONDENT)*

1940
APRIL 22

Criminal Procedure Code (Act V of 1898), section 421—Oudh Chief Court Rules, Chapter XX, rule 7—Jail appeal summarily dismissed—Judgment signed and dated but not sealed—Appeal through counsel filed afterwards, if maintainable.

The sealing of the judgment is not what creates finality in the judgment. It is a ministerial act and its object is not to secure finality which is already present, but merely to authenticate the judgment. Hence as soon as the order in a jail appeal is signed and dated by the Judge he becomes *functus officio* and the order passed by him dismissing such appeal summarily becomes final though the judgment be not sealed and a represented appeal filed through counsel at a later date is therefore, not maintainable. *Hulai and another v. Emperor* (1), *Ram Jas and others v. King-Emperor* (2), *Emperor v. Khiali and another* (3), *Queen Empress v. Lalit Tiwari and others* (4), *Emperor v. Kallu* (5), *Emperor v. Gobind Sahai* (6), *Emperor v. Kunji Lal* (7), *Emperor v. Abdul Rahiman Akram*

*Criminal Appeal No. 33 of 1940, against the order of D. Padmanabhan, Esq., I.C.S., Sessions Judge of Sitapur, dated the 15th December, 1939.

(1) (1915) 36 I.C., 133.

(2) (1936) O.W.N., 194.

(3) (1922) I.L.R., 44 All., 759.

(4) (1899) I.L.R., 21 All., 177.

(5) (1904) I.L.R., 27 All., 92.

(6) (1915) I.L.R., 38 All., 134.

(7) (1934) I.L.R., 56 All., 990.