

**Sushil Kumar Dutta Vs. the State**

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**Court :** Kolkata

**Decided On :** Jul-05-1985

**Reported in :** 1985CriLJ1948

**Judge :** N.G. Chaudhuri and ;Gobinda Chandra Chatterjee, JJ.

**Appellant :** Sushil Kumar Dutta

**Respondent :** The State

**Judgement :**

**Gobinda Chandra Chatterjee, J.**

1. These three revisional applications have arisen out of three G.R. Cases namely, (1) 3059/751 A). (2) '3059/75(8) and (3) 3059/75.

2. The prosecution case is that Shri Sushil Kumar Datta one of the present petitioners before us appeared in the Indian Administrative Service Examination in 1967 and in the application form of the said examination he mis-represented his caste by falsely declaring himself to be a 'Namasudra' and by such false declaration he claimed to be belonging to a scheduled caste community although as a matter of fact, he actually belonged to 'Barojibi' caste commonly known as 'Baroi' which is not a scheduled caste in West Bengal. By such mis-representation as to his caste he obtained the advantage of the relaxed standard of the examination prescribed for scheduled caste candidates. On the result of the

examination held in 1967, Sri Datta was selected by the Union Public Service Commission for appointment in a Class I Central Service and he was actually appointed by the Govt. of India in Class I Customs and Central Excise Service against a vacancy reserved for the scheduled caste candidates. Grievance of the prosecution is that had Shri Sushil Kumar Dutta not mis-represented his caste he would not have been admitted in the said examination as a scheduled caste candidate by the Union Public Service Commission and also he would not have been appointed in the Class I Customs and Central Excise Service against a vacancy reserved for the scheduled caste candidates. Thus, according to the prosecution by making false representation as to his caste Sushil Kumar Datta cheated the Union Public Service Commission and the Govt. of India as well and is therefore guilty of the offence under Section 420 I.P.C. This is the subject matter of G.R. Case No. 3059/75(B).

3. Similarly, so the prosecution case runs, Shri Sushil Kumar Dutta appeared in the Indian Administrative Service in the year 1969 falsely mis-representing himself to be belonging to the scheduled caste community. On the result of such mis-representation of caste, the Union Public Service Commission, New Delhi admitted him in the Indian Administrative Service Examination in 1969 and issued in his favour an Admit Card for the said examination. On the result of 1969, examination, Shri Datta was selected by the Union Public Service Commission for appointment in the Indian Administrative Service under relaxed standard for scheduled caste candidates. The Govt. of India thereafter appointed Shri Dutta in the Indian Administrative Service in 1970 against a vacancy reserved for scheduled caste candidates and posted him in West Bengal Cadre of the I.A.S. Had the accused not falsely claimed to be a member of the scheduled caste, he would not have been selected in 1969 against the vacancy reserved for scheduled castes. Thus by making false representation as to his caste Shri Datta cheated the Union Public Service Commission and the Govt. of India and as such is guilty of the offence under Section 420 I.P.C. This is the subject matter of G.R. Case No. 3059/75(A). Thus for the alleged cheating on the two occasions that is to say, in 1967 and again in 1969, the abovementioned two separate cases were started against the accused. In both these cases, charges under Section 420 I.P.C. were framed against Shri Dutta. The accused pleaded not guilty in both the cases. His

defence in both the cases was that he belonged to 'Baroi caste' which is a sub-caste of 'Namasudra's in West Bengal and Namasudra is a scheduled caste under the Constitution of India. Shri Dutta denied that he made any false representation whatsoever as alleged by the prosecution. He denied that he cheated the Union Public Service Commission or the Govt. of India. In both the cases, the trial court concerned convicted Shri Dutta of the said offence and sentenced him to undergo R.I. for two years and also to a fine of Rs. 1,000/- in default for further six months R.I. Shri Dutta preferred two appeals before the learned Sessions Judge, Alipore. Shri P. G. Ghatak, the then Additional Sessions Judge, Alipore heard the two Criminal Appeals namely, Appeal Nos. 40 and 41 of 1980 analogously and by his order dated 7-8-82 upheld that conviction and affirmed the sentences as passed by the learned trial Judge.

4. Further prosecution case is that the aforesaid mis-representation made by Shri Dutta as to his caste came to the notice of the Govt. of India which issued a notice dt. 14-10-71 proposing to discharge Shri Dutta from the Indian Administrative Service. On 22-11-71 the present petitioner Shri Sushil Kumar Dutta submitted to the Govt. of India a representation reiterating his false claim of being a Namasudra and in respect of such false claim he produced an attested photostat copy of a document purported to be an unregistered promissory note executed on 23-2-61 by the other petitioner Shri Anil Kumar Mukherjee in favour of Smt. Jogomaya Dutta, mother of the petitioner Shri Sushil Kumar Dutta, wherein the caste of Smt. Jogomaya Dutta was shown as Namasudra. In course of investigation, so the prosecution case runs, the petitioner 2 Anil Kumar Mukherjee made a judicial confession disclosing that the promissory note was actually created in 1971 at the instance of Sushil Kumar Dutta for the purpose of supporting his false claim of being a Namasudra. Thus, both Sushil Kumar Dutta and Shri Anil Kumar Mukherjee got hold of a faked and forged promissory note and used the said promissory note knowing it to be fake and forged. All these matters formed the subject matter of G.R. Case No. 3059/75. In connection with the aforesaid case, petitioner No. 2 Anil Kumar Mukherjee, denied that he made the alleged judicial confession. His case was that he made that confession under duress. The defence adopted by Shri Sushil Kumar Dutta was that he belonged to 'Namasudra' caste of West Bengal, that he did not make any false representation as to his caste and

that the promissory note was neither fake nor forged. The trial court after hearing both the sides upheld their conviction. On appeal, the learned Additional Sessions Judge, Alipore upheld that conviction by convicting Sushil Kumar Dutta under Section 471 of the I.P.C. and also under S& 465/109 of the I.P.C. Anil Kumar Mukherjee was convicted by the Appellate court under Section 465 of the I.P.C. For his conviction under Section 465 I.P.C. Anil Kumar Mukherjee was sentenced to suffer R. I. for one year and to pay a fine of Rs. 1,000/- in default to suffer rigorous imprisonment for six months more. For his conviction under Section 465 read with Section 109 I.P.C. Sushil Kumar Dutta was sentenced to suffer rigorous imprisonment for one year and for his offence under Section 471 I.P.C. Sushil was also sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for six months more. The learned Additional Sessions Judge Alipore directed that the two sentences against Sushil Kumar Dutta were to run concurrently. Against this appeal (appeal No. 39 of 1980) the two petitioners, Anil Kumar Mukherjee and Sushil Kumar Dutta have filed one revisional application, namely revisional Application No. 1851 of 1982. Thus, in all we have three revisional applications before us, namely, Revisional Application Nos. 1849, 1850 and 1851 of 1982. We heard all these three applications analogously and the following judgment will govern all the three cases.

5. The question of fact which is common in all the three revision cases before us is whether the petitioner Sushil Kumar Dutta is or is not a 'Namasudra'. Mr. Balai Chandra Roy, the learned Advocate who represents both Sushil Kumar Dutta and Anil Kumar Mukherjee frankly concedes that if this Court too like the two lower courts be of the view that Sushil Kumar Dutta is not a Namasudra, then his client is out of court altogether and that in that case he has nothing more to say. Grievance put forward by Mr. Roy is that the oral and documentary evidence adduced by the prosecution does not prove beyond reasonable doubt that Sushil Kumar Datta is not a Namasudra by caste. Mr. Roy has invited our attention to Sections 48 and 49 of the Evidence Act and has contended thereupon that far from producing the best evidence 'on the record, the prosecution has simply put forth the opinion of some ordinary witnessess and never the opinion of the experts. Mr. Roy has further drawn our attention to the decisions reported in : 1974

CriLJ664 (Sawal Das v. State of Bihar) : [1976]1SCR757 (Pratap v. State of Uttar Pradesh) : 1980 CriLJ459 (Yogendra v. State of Gujarat) : 1974 CriLJ1015 (Onkar Nath's case) and has argued on the strength of these decisions that in a criminal case prosecution must stand on its own legs, that it could not take advantage of the weakness of the defence and that where the accused choses to adduce evidence, he may simply discharge his burden by establishing a mere preponderance of probabilities in his favour with regard to the circumstances available to him. We have carefully gone through the decisions relied upon by Mr. Roy. We shall presently see that the prosecution in the three : cases before us has discharged its burden successfully by producing both parole (oral) and documentary evidence. Before we proceed to discuss the evidence on the record, we must make it clear that we are concerned here with a very peculiar case having a distinguishing feature of its own. We must remember that soon after 1947 a large number of refugees crossed the border of East Pakistan (Bangladesh) and entered into this part of the country in a hopeless condition after leaving their hearth and home and all earthly belongings in East Bengal. The father of Sushil Kumar Dutta was admittedly one of such persons. Very naturally, therefore, the prosecution could not produce any ancestral document of the family of Sushil Kumar Datta to prove as to which caste the ancestors belonged. This is why we hear Sushil Kumar Dutta (D.W. 13) saying that he has not in his custody any document whatsoever to prove that they belong to the Namasudra Caste. Naturally, therefore, the prosecution had to depend to a large extent on the oral evidence on the record. The prosecution produced in all 21 witnessess. All these witnessess were believed by both the learned lower courts. We need not dilate upon the evidence adduced by all these witnessess. It would suffice our purpose to mention that both the lower courts arrived at a concurrent finding of fact. The courts found that Sushil Kumar Dutta is not a Namasudra. Mr. Roy wants us to interfere with this finding of fact. We have, therefore, asked ourselves as to whether that finding of fact regarding the caste of Sushil Kumar Dutta is altogether perverse such (so) that the f hiding cannot be justified by the overall facts, circumstances and materials placed on the record.

6. Prosecution has produced P.W. 1, Binode Babu aged 61 years. This man is himself a Namasudra He is a resident of the locality where Sushil Kumar Dutta

resides. He was acquainted with Sushil Kumar Dutta's father Santosh Kumar Dutta for nearly two decades. Both the lower Courts took him to be a natural and probable witness. Indeed, Binode Babu was a man who was expected to know well to which caste did Santosh belong. Next important witness on the record is P.W. 5, Mat Chand Ram. He is a man of Kanchrapara which is close to the locality where Santosh used to live in this part of West Bengal. P.W. 6 is the next important prosecution witness. He is Abinash Chandra Dutta. He is a 'Barojibi' by caste. His evidence read with the evidence of P.W. 1 makes it clear that he happens to be a distant relation of Sushil. Admittedly, this witness resides in Plot No. 697 of Mallick Bag Colony, Halisahar. On the contiguous plot 696 stands the house of Santosh, the father of Sushil. The evidence of Abinash is that in 1950 both he and Santosh left Bangladesh to come over to West Bengal Dhubulia Relief Camp. His further evidence is that he along with Santosh and others were rehabilitated on the Govt. plots in Mallickbag Colony, Halisahar by executing loan bonds in favour of West Bengal Govt. Exhibit 6 is the registered joint bond given by Santosh Kumar Dutta in favour of the State Govt. for the purpose of taking a House Building Loan from the State Govt. It is not disputed that by taking this house building loan Santosh constructed a house on plot No. 696 of Mallick Bag Colony, Halisahar contiguous to the plot of Abinash. The sworn testimony of Abinash is that they secured the Govt. loan because they were all Barojibis and Barojibi is not a Namasudra. (vide the cross-examination of Sushil himself, D.W. 13).

7. That the petitioner Sushil Kumar Dutta is a Barojibi by caste is also the testimony of P.W. 8 Upendra Sarkar. This man is a Deputy Magistrate. He is himself a Namasudra. Then there is also the evidence adduced by the court witness Shri Gopal Chandra Roy. This man is himself a Namasudra. His family used to live in the district of Dacca (Bangladesh) near Paschimpara. The case of Sushil is that his father hailed from Dacca Paschimpara. The clear evidence of the court witness is that 'there was no family of Namasudra in Paschimpara'. His further evidence is that there in West Bengal Sushil met him sometime in 1970 and expressed his desire to donate Rs. 1,000 /- in favour of their Organisation for the purpose of obtaining a Scheduled Caste certificate to suit his purpose. It should be remembered that by 1970 C.B.I, had already started an enquiry against

Sushil. Sushil was, therefore, very much interested in procuring by hook or crook a Certificate to the effect that he was a Namasudra.

8. In view of the clear evidence adduced by the aforesaid responsible and respectable witnesses, the two courts below were rightly impressed by their testimony. The significant thing to note in this connection is that all the aforesaid witnesses were holding important and respectable status in the society they were living. Thus, P.W. 1 was the President of the Barrackpore Sub-division Depressed Class League, a Scheduled caste organisation recognised by the Govt. of India. P.W. 5 Mati Chand Ram was the then General Secretary of the West Bengal Harizan Kalyan Samity of Kancharapara. P.W. 6, Abinash Chandra Dutta was the President of the Barojibi Colony of Mallickbag. The Court witness again was a member of Kancharapara Namasudra Udbodhoni Samity. It is true that all these witnesses deposed in their individual capacity but the salient fact remains that throughout their deposition the voice of the community or the association or organisation they represented was echoed throughout. Very rightly the learned lower courts were highly impressed by the sworn testimony of these respectable and responsible gentlemen. Indeed there was no reason whatsoever as to why these respectable persons were unanimous that Sushil Kumar Dutta did never belong to their own caste. Indeed, if Sushil would have been really a Namasudra then in all probability of the matter these persons would have been too eager to declare him to be a man of the self-same community.

9. The two learned lower courts not only relied upon the oral evidence discussed above; the two courts below also based their findings on some unassailable documents. The courts first of all relied upon a College Register, Ext. 1. Column 17 of this Register shows that whereas some other students were shown as belonging to scheduled caste, the petitioner Sushil was simply shown as a Hindu Barojibi. The Register is of Rishi Bankim Chandra College, Naihati of the years 1959 to 1961 when admittedly Sushil was a commerce student in that college. Both the Courts below found that this Register was kept in the regular course of official business. Similarly, Ext. 2 is the admission register of the B.Com. Classes of Rishi Bankim Chandra College for the year 1969. This Register shows that Subodh Kumar Dutta, brother of petitioner Sushil was admitted in the first year

B.Com. Class in the said College with a specific declaration that he did not belong to the scheduled caste. Again the attestation form of Sushil relating to his entry into the I. A.S. examination held in 1965 shows that in answer to the question 'Are you a member of the Scheduled Caste'? the word 'No' is found written therein. This took place in the year 1965 and it is significant to note that in the said year Sushil appeared in the I.A.S. examination as a general candidate and , not as a scheduled caste candidate seeking for reservation in his favour. It is the admitted case of Sushil (vide cross-examination of D.W. 13) that it is only in the year 1966 that he had come to know for the first time from his father that they belonged to Namasudra caste. This version of Sushil's, however, difficult to swallow. It is common knowledge that 'caste system is so deeply ingrained in the Indian mind that for a person who is grown up in Indian society, - it is very difficult to get out. of all the coil of the caste system' vide : [1976]3SCR82 , (Arumugam v. Raja Gopal). Even the defence witness, D.W. 8 Bhabalata Dutta had to concede in her cross-examination that even now she does not take her food inside the house belonging to the Namasudras. It is, therefore, difficult to believe that Sushil who was born in the year 1940 could not know until 1966 that he belonged to the class of Namasudra in India. It is almost a truism to say that here in India a boy or girl will not simply know that he is a brahmin, kayastha or a Namasudra. Our social structure is such that at every step that boy or girl would feel that his or her caste is such and such.

10. There are also other documents namely, Exts. 4 and 20. Ext. 4 is Subodh's application dt. 2-8-69 for admission into the first year B.Com. Class, Rishi Bankim Chandra College, Naihati. In this form Subodh was first of all shown as Namasudra and then the word 'Yes' was converted to 'No' by way of interpolation. Similar is the case with Ext. 20 - the attestation form of police verification roll submitted by Subodh (Sushil's brother) on 20-11-69 in connection with his service as a Khalasi in the office of the District Controller of Stores, Eastern Railway, Halisahar. The findings of facts in connection with these two exhibits are that the interpolations were made by Sushil himself who was the guardian of Subodh at that time. It may be recalled that Sushil's father Santosh died in the year 1968, It may also be noted that by the time the interpolations were made, the C.B.I. enquiries had already started. The findings of fact of the two lower courts is that

the interpolations were made by Sushil to strengthen his defence in connection with the C.B.I. enquiry. It is also significant to note in this connection that Santosh was, perhaps, an upright man and that is why he did not swear any affidavit that his son Sushil belonged to the Scheduled caste. We have already discussed that in the year 1965 Sushil did not appear as a scheduled caste candidate in connection with the I.A.S. examination. He failed in that examination. Thereafter it struck to him that he would cut through provided he appeared as a scheduled caste candidate. In the examination held in the year 1967 Sushil showed himself as a scheduled caste candidate by swearing an affidavit himself. At that time his father was alive. In 1969 also he appeared in the I.A.S. examination once again and this time he became completely successful by entering into the .A.S. Cadre straight. Indeed as long as Santosh was alive, no affidavit and nothing of the sorts came from the custody of the father himself. On the contrary we gather from the Joint Register bond, Ext. 6 that Santosh had already described himself as a Barojibi and not as a Namasudra. It is the case of Sushil Kumar Dutta that his father Santosh changed his surname (from Baroi to Dutta) soon after he switched over to India from East Bengal in the year 1950. It does not stand to reason and probability that Santosh would once again change his surname and would go so low as to assume the surname of Namasudra. Perhaps, that is why Santosh did never swear any affidavit.

11. From the parole (oral) and documentary evidence discussed so far, one thing is clear, namely, that the findings arrived at by the learned Courts below far from being perverse were strongly based on the materials on the record.

12. It is true that unlike ordinary criminal cases, the accused persons here adduced voluminous evidence both oral and documentary. The defence produced 13 D.Ws. including the two interested petitioners. We have gone through the evidence of the witnesses. These witnesses were neither responsible nor respectable like the P.Ws. They deposed in their individual capacity. Unlike the P.Ws. they had little or no connection with their local organisations or association. Mr. Roy has repeatedly drawn our attention to the evidence of D.W. 8 Bhabalata Dutta and has argued by saying that here at least stands a witness who had on some occasions visited Paschimpara Dacca (Bangladesh) and that her clear

evidence is that the father of the petitioner Shri Santosh Dutta was a Namasudra. The learned Appellate Court has given very cogent reasons as to why he was unable to put his credence upon the testimony of this woman. We choose to adopt his reasonings. We, however, desire to add that Bhabalata's evidence need not be pressed too far inasmuch as her clear version in cross-examination is that 40 years ago the women folk of East Bengal had very restricted movement in their society. Bhabalata wants us to believe that 40 years back at her age of 12/13, she had come to know and still remembers that Santosh 'Baroi' was a Namasudra. It does not stand to reason that a married woman (as she was then) would freely move about and would enquire as to whether ordinary persons - X, Y and Z were or were not Namasudra's at Paschimpara. Moreover, Bhabalata's evidence suffers from serious infirmities. According to her Santosh's father was Hari Charan and Hari Charan had no other brother. The evidence of Abinash, P.W. 6 who is a Govt. servant shows that Hari Charan had other brothers too. Be that as it may, one thing is clear namely, that there was no occasion and opportunity for a house wife like Bhabalata to know about the insignificant family of Santosh.

13. Documentary evidence adduced on the side of the defence also proved nothing. Ext. A is the certified copy of the judgment of this High Court delivered under Article 226 of the Constitution. In that judgment this Court, however, expressed no opinion as to which caste accused Sushil did belong to. Ext. B is a certificate granted by the then local Sub-divisional Officer, Barrackpore. The certificate grantor was, however, not examined in the lower Court. Ext. G is another such certificate from one Shri Das but at the time of granting the certificate Shri Das was no longer the local M.L.A., he being already out. Moreover in the cross-examination he conceded that he no longer knew the names of the persons after hearing whom he granted that certificate. Exhibits Q and R and other documents in the form of affidavits were produced by the defence but all these were not considered very much by the learned lower courts seeing that C.B.I. enquiry had already been started.

14. From all aforesaid documents one thing is quite clear, namely, that the petitioner Sushil could not prove any document worth the name to show that his forefathers were Namasudras. The learned lower Courts, therefore, did nothing

wrong in accepting the evidence adduced by the prosecution as true and reliable. The appellate Court was specially satisfied that the prosecution had duly discharged its burden to prove the prosecution case and it further satisfied itself to see that 'the evidence adduced by the defence side is not strong and good enough to cast even a shadow of doubt on the prosecution case'. We, thus, agree that the prosecution could successfully prove that the petitioner Sushil was not a Namasudra by producing both oral and documentary evidence to everybody's satisfaction. We have already seen that both the Courts below convicted Sushil Kumar Dutta under Section 420 I.P.C. This conviction in our view is not illegal because it is undisputed that by projecting himself as a scheduled caste candidate, Sushil drew out some additional advantages from the Union Public Service Commission and the Govt. of India to which he was not legally entitled as a general candidate. For exempla by the year 1969 Sushil was already age-barred. His age was undisputedly relaxed because he appeared as a scheduled caste candidate. It is also undisputed that he was first of all appointed as a Customs Officer and thereafter in the regular Cadre of the I.A.S. He drew out his salaries from the Govt. of India year to year and so there is little doubt that he duped both the Union Public Service Commission and the Govt. of India. We do not see any reason to interfere with the said conviction nor we see any good reason to interfere with the sentences as passed by the learned courts below. The two revisional applications (1849 and 1850 of 1982) arising out of G. R. Case No. 3059/75(A) and G.R. 3059/75(8) thus fail. We now come to the residual Criminal Revision Case No. 1851 of 1982 which has arisen out of G.R. Case No. 3059/75 corresponding to Appeal No. 39 of 1980.

15. Subject-matter of G.R. Case No. 3059/75 corresponding to Appeal No. 39 of 1980 is the alleged document (Ext. 23) dated 23-2-61 made between Smt. Yogomaya Dutta, mother of Sushil and Sri Anil Kumar Mukherjee wherein the mother's caste was described as Namasudra. A photostat copy (Ext. 26) was produced by Sushil before the Govt. of India when the former was directed by the letter to produce some documents in support of his case that he was a Namasudra.

16. Grievance of the prosecution is that the said document was an ante-dated one that it was out and out a false and fabricated document, that no consideration did pass by the said document and that the same was created only for the purpose of the false representation that Sushil was by caste a Namasudra. Has the prosecution been able to prove that the aforesaid document was an ante-dated forged and fabricated document? Both the trial Court and the appellate Court have laid down very convincing and cogent grounds for upholding the prosecution case.

17. We have already seen that Sushil Kumar Dutta appeared in the I.A.S. examination in the year 1965 not as a scheduled caste but as a general candidate. The result was disastrous. In the next two examinations held in the year 1966-67 he appeared as a scheduled caste candidate and therein any he succeeded in his attempt. In the year 1970 it struck to the Govt. of India as to how was it that Sushil Kumar Dutta had described himself as a general candidate in 1965 and thereafter in subsequent years as a scheduled caste candidate. Then started the C.B.I. enquiry. Sushil was asked to explain the whole matter. In his evidence (vide D.W. 13) Sushil conceded that he had to run to the Writers' Buildings in search of a Govt. Notification for upholding his claim namely, that a Barojibi is a Namasudra. He could find no such document. Ext. 8 is the Govt. Notification relied upon rightly by the prosecution to show that the Barojibi Sampradaya is not included as a Namasudra caste. The Govt. Notification has the sanctity of our sacred Constitution. In his evidence, Sushil also conceded that he could not find any ancestral document describing themselves as a Namasudra. The question arises as to what Sushil would do when he was thus asked to produce some document in respect of his false claim. The answer to this question is very clear. To save his hard-earned service Sushil would simply try to take recourse to the contents of an old document bearing convincing stamp. This time petitioner Anil Kumar Mukherjee came to Sushil's rescue and it was he who saved the situation. One unused and old stamp paper of the year 1961 was available in the custody of Anil. With Anil's help, therefore, a document was created in the year 1971. It was falsely stated and represented in Ext. 23 that a sum of Rs. 500/- had been as if taken loan by Anil Kumar Mukherjee from Yogomaya, the mother of Sushil. Ext. 23 purports to be an agreement. Both the lower Courts have found that the document is in reality a promissory note, and a promissory note does not evidently require a Non-

Judicial Stamp worth Rs. 2/-. Both the Courts again found that no consideration money worth Rs. 500/- did pass through that document. Ext. 1, the Admission Register of Rishi Bankim Chandra College, Naihati of 1959 proves beyond all reasonable doubt that the then income of Santosh babu (Sushil's father) was Rs. 500/- per year. This was nothing strange because admittedly Santosh babu used to earn his livelihood by weighing articles in a Ration Shop. Moreover, the undisputed facts are that in the year 1950 Santosh crossed the border of East Pakistan (Bangladesh) and came to be settled in this part of the country and that it is only by taking Govt. loan that he could construct a small house at Mallickbag Colony, Halisahar. It is just improbable that such a poor family, at that stage would venture to advance a sum of Rs. 500/- as interest free loan to Anil Kumar Mukherjee who again seems to be more well off than Santosh. Moreover, the striking feature of the document is the alleged payment of Rs. 50p/- by Yogomaya when Santosh was admittedly alive. Santosh died in the year 1968 (D.W. 13). Ext. 23 purports to be of the date 23-2-61. We have already seen that Santosh was a straight-forward sort of man and that is why perhaps, he did not swear any affidavit himself in support of the false claim of his son. We have also seen that Santosh switched over to the title Dutta soon after he came to West Bengal from Bangladesh. It does not stand to reason and probability that Santosh would agree to describe himself as a Namasudra in any document so soon after he changed his surname in West Bengal. What would Sushil do then? The only alternative left to Sushil was to have a false document Ext. 23 executed by his mother Yogomaya behind the back of his father. There are also other grounds for denouncing Ext. 23 as an unreal and false document.

18. Ext. 23 shows that the alleged loan of Rs. 500/- was, as if, satisfied by Anil Kumar Mukherjee within a short time. It also shows that after satisfaction of the loan, the document was given in the custody of Anil by Yogomaya herself. If the document was really a genuine one then in all probability of the matter Anil Kumar Mukherjee would not have retained the document in his custody for long 10 years. Both the learned lower Courts also relied upon the evidence of P.W. 16 Amulya Chandra Das son of deceased scribe of the document when he, Amulya stated that generally speaking his father used to describe the caste of his client's by putting the word 'Hindu' or 'Muslim' as the case might be and never by putting such

words as Namasudra and the like. There was thus no necessity in recording the word Namasudra in the alleged loan transaction. For it would suffice the purpose of the parties to describe Yogomaya simply as Hindu. The learned appellate Court has rightly observed that 'this is an indication that Ext. 23 was drawn up for the ulterior purpose of showing the caste of the parties and not for showing any real transaction between them'. After considering all these facts, circumstances and background of the case as also the nature of the document, Ext. 23 the learned lower Courts came to the finding that the document was unreal and fabricated too. The two courts also did not rightly brush aside the confession (Ext. 22) made by Anil Kumar Mukherjee and recorded by a Judicial Magistrate. The Judicial Magistrate was examined as a prosecution witness. The Courts found that the confession was truthful and voluntary too. It is true that the confession was a retracted one. But the distinguishing feature of the case was that the confession was not retracted for about a year and the same was retracted only when the last prayer of Anil was turned down by the prosecution. His last prayer was that he might be allowed to depose for the prosecution as an approver. We have gone through the confession. It discloses how in his frantic attempt to search for an old document Sushil was helped by Anil in the matter of procuring an unused old stamp paper. The materials on the record show that Anil Kumar Mukherjee acted as his referee in connection with Sushil's application for I.A.S. examination in the year 1965. We have seen that in that year Sushil appeared as a General candidate. This conduct of Anil Kumar Mukherjee appears to be very strange because Ext. 23 shows that by the year 1961 he must have known that Sushil's mother belonged to Namasudra caste. How he could then as a referee in 1965 forward Sushil's application for his examination describing Sushil therein as one not belonging to scheduled caste? The mens rea or guilty knowledge of Anil Kumar Mukherjee is thus manifestly clear from the very beginning. It was he who executed the fabricated document Ext. 23. It was he who anti-dated the document for the cause of his friend. The handwriting expert's opinion on the record was that the signatures appearing on Ext. 23 were of Anil. The appellate Court again took great pains in comparing the signatures of Anil made in connection with his statement under Section 313 Cr. P.C. along with those appearing in Ext. 23. The finding of the appellate Court was that the signatures tallied. The question which

now arises is whether all these findings of facts arrived at by the two courts below should be set aside. Mr. Chaityannya Charan Mukherjee the learned Advocate appearing for the State has repeatedly canvassed before us the argument that the judgment of the appellate Court is full of convincing details and that the judgment should not be set aside. We have been impressed by this argument of Mr. Mukherjee. Indeed, in a case of such type where the facts, circumstances and the background are sufficiently truth revealing and where both the trial and the appellate Courts have concurrently arrived at the truth not perfunctorily but by a process of well-grounded reasonings. We do not think that it would be just and proper for us to interfere with the finding of fact unnecessarily while exercising our powers in revisional jurisdiction matters. All the Revisional applications should thus fail.

19. In the result, the three revisional applications are dismissed. The judgment of conviction and sentence passed by the Appellate Court is confirmed. The petitioners, Sushil Kumar Dutta and Ami Kumar Mukherjee are directed to surrender to their bail bonds and to serve out the sentences imposed upon them.

**N.G. Chaudhuri, J.**

20. I agree.

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