

Kailash Sonkar vs Smt. Maya Devi on 16 December, 1983

Equivalent citations: 1984 AIR 600, 1984 SCR (2) 176, AIR 1984 SUPREME COURT 600, (1985) JAB LJ 671, 1984 UJ (SC) 262, (1984) 97 MAD LW 28, 1984 (2) SCC 91

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, R.B. Misra, M.P. Thakkar

PETITIONER:

KAILASH SONKAR

Vs.

RESPONDENT:

SMT. MAYA DEVI

DATE OF JUDGMENT 16/12/1983

BENCH:

FAZALALI, SYED MURTAZA

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FAZALALI, SYED MURTAZA

MISRA, R.B. (J)

THAKKAR, M.P. (J)

CITATION:

1984 AIR 600

1984 SCR (2) 176

1984 SCC (2) 91

1983 SCALE (2) 1211

CITATOR INFO :

R 1984 SC1260 (16)

ACT:

Hindu law-Whether a Hindu on conversion to another religion loses the original caste. Converttee loses caste unless new religion accepts caste system and permits converttee to retain his original caste and family laws. During conversion original caste remains under eclipse-Eclipse Disappears on reconversion to original religion. On reconversion to old religion-Whether the original caste revives-Factors which determine revival of original caste.

Representation of the People Act -Person born of Christian parents-Educated and known as Christian-Reconverted to Hinduism voluntarily-Married a member of scheduled caste-Performed shudhikaran ceremony-Accepted and welcomed by member of that community as scheduled caste-Whether such person can contest state assembly election as member of scheduled caste from constituency reserved for

members of scheduled castes.

HEADNOTE:

In the nomination papers filed by the respondent for contesting legislative assembly elections in May, 1980 from a constituency which was reserved for scheduled castes, she described herself as belonging to the scheduled caste 'Katia'. Several persons raised objection that the respondent, being a Christian by birth, could not be treated as a member of the scheduled caste. The Returning Officer rejected the objection and accepted her nomination papers. The respondent won the election defeating the appellant. The appellant having unsuccessfully challenged the election of the respondent in the High Court, alleged in this appeal that the respondent after being born a Christian was baptised according to Christian rites; her mother's name was Elizabeth; her marriage with Jai Prakash Shalwar, who belonged to Katia caste, was not valid and even on marriage her caste could not revive because caste was determined not by marriage but by birth. The respondent stated that she was never a Christian nor was she born a Christian. She also averred that even her father or mother were not Christians. On the other hand, she always remained a member of the Katia caste and was accepted as such by the members of that community because her marriage with Jai Prakash Shalwar was performed according to Hindu rites of Aryasamaj sect and was attended by a number of members of her caste and due publicity was given to the marriage.

Dismissing the appeal,

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HELD: It cannot be said that at the time when the respondent filed her nomination papers, she was not a member of the Katia caste. [199 G]

A caste to which a Hindu belongs is essentially determined by birth and if a Hindu is converted to Christianity or any other religion which does not recognise
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caste, the conversion amounts to a loss of the said caste. In considering whether on conversion the loss of the caste is absolute, irrevocable so as not to revive under any circumstance the guiding principles are: (a) Where a person belonging to a scheduled caste in converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is liberal enough to permit the converttee to retain his caste or the family laws by which he was originally governed. There are a number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retained their caste or family laws and despite the new order they were permitted to be governed by their old laws. But this can happen only if the new religion is liberal and tolerant

enough to permit such a course of action, and (b) In all other cases, conversion to Christianity or Islam or any other religion which does not accept the caste system and insists on relinquishing the caste, there is a loss of caste on conversion. [190C-F; 191 B]

The norms and conditions under which a caste could revive on reconversion to the old religion as laid down by the authorities of the High Courts and this Court are: (1) where the converttee exhibits by his actions and behaviour his clear intention of abjuring the new religion on his own volition without any persuasion and is not motivated by any benefit or gain, (2) where the community of the old order to which the converttee originally belonged is gracious enough to admit him to the original caste either expressly or by necessary intendment, and (3) Rules of the new Order in permitting the converttee to join the new caste. Unless the aforesaid conditions are fulfilled the loss of caste on conversion is complete and cannot be revived. But having regard to the present set-up and the circumstances prevailing in our modern society, it will be difficult to insist on the second condition, viz., the insistence on the members of the community of the caste to admit the converttee on reconversion to the original caste because such a course of action may lead to dangerous consequence and ill-concieved exploitation. [191 C-G]

G.M. Arumugam v. S. Rajagopal & Ors., [1976] 3 S.C.R. 82; Sacred Books of the East (Vol. VIII) by F. Max Muller; Charlotte Abraham and Daniel Vincent Abraham v. Francis Abraham, 9 M.I.A. 199; Chaturbhuj Vithaldas Jasani v. Moreshwar Parashram & Ors., [1954] S.C.R. 817; S. Anbalalagn v. B. Devarajan & Ors., [1984] I.S.C.R. Goona Durgaprasada Rao & Anr. v. Goona Sudarsanaswami & Ors., ILR 1940 Madras 653; G. Michael v. S. Venkateswaran, AIR 1952 Madras 474; Dippala Suri Dora v. V.V. Giri AIR 1958 A.P. 724; Wilson Reade v. C.S. Booth & Ors. AIR 1958 Assam 128; and B. Shyamsunder v. Shakar Deo Vedalankar & Ors., AIR 1960 Mysore, 27 referred to.

S. Rajagopal v. C.M. Armugam & Ors., [1969] 1 S.C.R. 254, distinguished.

The main test for determining the revival of the original caste on reconversion should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. It may be added here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste.[192C-E]

Ganpat v. Returning Officer & Ors., [1975] 2 S.C.R. 923, referred to.

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When a child is born neither has he an religion nor is he capable of choosing one until he reaches the age of discretion and acquires proper understanding of the situation. Hence, the mere fact that the parents of a child, who were Christians, would in ordinary course get the usual baptism certificate and perform other ceremonies without the child knowing what is being done but after the child has grown up and becomes fully mature and able to decide his future, he ought not to be bound by what his parents may have done. Therefore, in such cases, it is the intention of the converttee which would determine the revival of the caste. If by his clear and conclusive conduct the person reconverts to his old faith and abjures the new religion in unequivocal terms his caste automatically revives. [192 G-H; 193 A]

Another dominant factor to determine the revival of the caste of a convert from Christianity to his old religion would be that in cases of election to the State Assemblies or the Parliament where under the Presidential Order a particular constituency is reserved for a member of the scheduled caste or tribe and the electorate given a majority verdict in his favour, then this would be doubtless proof positive of the fact that his community has accepted him back to his old fold and this would result in a revival of the original caste to which the said candidate belonged. [193 B-C]

When a person is converted to Christianity or some other religion the original caste remains under eclipse and as soon as during his/her life-time the person is reconverted to the original religion the eclipse disappears and the caste automatically revives. [193 D]

Whether or not the revival of the caste depends on the will and discretion of the members of the community of the caste is a question on which we refrain from giving any opinion because in the instant case there is overwhelming evidence to show that the respondent was accepted by the community of her original Katia caste. Even so, if the fact of the acceptance by the members of the community is made condition precedent to the revival of the caste, it would lead to grave consequences and unnecessary exploitation, sometimes motivated by political considerations. Of course, if apart from the oral views of the community there is any recognised documentary proof of a custom or code of conduct or rule of law binding on a particular caste, it may be necessary to insist on the consent of the members of the community otherwise in normal circumstances the caste would revive by applying the principles of doctrine of eclipse. It may be added that where it appears that the person reconverted to the old religion had been converted to Christianity since several generations, it may be difficult to apply the doctrine of eclipse to the revival of caste. [193 D-G]

In the instant case, on a full and complete appraisal of the oral and documentary evidence, the following conclusions are inevitable: (1) that the respondent was born of Christian parents and was educated in various schools or institutions where she was known as a Christian; (2) that 3-4 years before the election, the respondent was reconverted to Hinduism voluntarily and married Jai Prakash Shalwar, a member of the Katia caste, and also performed the shudhikaran ceremony; (3) that she was not only accepted but also welcomed by the important members, including the President and Vice-President, of the community; (4) there is no evidence to show that there was any bar under the Christian religion which could have prevented her from reconverting herself to Hinduism; and (5) that

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there was no evidence to show that even her parents had been Christians from generation to generation. In these circumstances, therefore, this case fulfils the conditions required for being reconverted to Hinduism from Christianity in order to revive the original caste [198 G-H; 199 A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3118 of 1981.

From the Judgment and Order dated the 25th September, 1981 of the Madhya Pradesh High Court in Election Petition No 2 of 1980.

U.R. Lalit and A.K. Sanghi for the Appellant. G.B. Pai and Vineet Kumar for the Respondent. The Judgment of the Court was delivered by FAZAL ALI. J. By our Order dated October 20, 1983, we had dismissed the appeal. We now proceed to give our reasons for the same.

The victory of our long drawn struggle for freedom from the British Yoke came to us after one and a half century of perpetual and constant efforts soaked in cold blood and dipped in supreme sacrifice. The historical midnight of August 15, 1947, which ushered in a new era, was merely a completion of a phase and not the end of an epoch but only the beginning of the end.

Soon thereafter the wise wizards and the founding fathers of our Constitution set out to devote their wholehearted attention to devise ways, and means to give to our sub-continent a solid and comprehensive Constitution which may solve multifarious and manifold difficulties, fulfil the burning needs of the nation and sort out complex and complicated problems which arose after our hardwon freedom which must have baffled our leaders. There was the question of achieving a secular democracy, the largest in the world, based on a socialist pattern which would taken care of all sorts and kinds of people having different cultures, languages and religions; to confer and guarantee fundamental rights of citizens through mandatory provisions, to lay down directive principles of State Policy which were to be the guiding spirit of the Constitution, the question of

achieving agrarian reforms by displacing the old British bureaucratic system and substituting a new order, the issue of reconciling the irreconcilable and various other thorny and tricky matters. One of the important objectives to be translated into action was to take special care of the backward classes, members of the scheduled castes and tribes by bringing them to the fore through pragmatic reforms and providing adequate opportunities for their amelioration and development, education, employment and the like.

As Mahatma Gandhi, father of the nation, said "India lives in villages" and so do the backward classes, hence the primary task was to take constructive steps in order to boost up these classes by giving them adequate concessions, opportunities, facilities and representation in the services and, last but not the least, in the electorate so that their voices and views, grievances and needs in the Parliament and State legislatures in the country may be heard, felt and fulfilled.

In this election appeal which has been filed against the Judgment dated October 25, 1981 of the High Court of Madhya Pradesh, we are really concerned with the last aspect mentioned above. Despite odds and ends our Constitution has made exhaustive provisions for difficult to say, for this is really a herculean task and one cannot expect miracles to be performed within a span of three decades which in the history of nations, is not a very long period. The knotty and difficult, puzzling and intricate issue with which we are faced is, to put it shortly, 'what happens if a member of a scheduled caste or tribe leaves his present fold (Hinduism) and embraces Christianity or Islam or any other religion'-does this amount to a complete loss of the original caste to which he belonged for ever and, if so, if he or his children choose to abjure the new religion and get reconverted to the old religion after performing the necessary rites and ceremonies, could the original caste revive? The serious question posed here arose and has formed the subject-matter of a large catena of decisions starting from the year 1861, traversing a period of about a century and a half, and culminating in a decision of this Court in the case of G.M. Arumugam v. S. Rajagopal & Ors.⁽¹⁾ The Constitution has tried to solve the problem to a great extent by the Constitution (Scheduled Castes) Order 1950 (hereinafter referred to as the '1950 Order') issued under Art. 341, which lays down a list of various castes prevailing in the country and the norms to determine the same. This Order has been amended from time to time. In our opinion, despite a genuine attempt to solve the problem the provisions do not provide a complete answer to the judicial interpretation by this Court which lays down the law of the land. It is true that the controversy has been narrowed down to the minimum by the decision in Arumuga's case (*supra*) still there are some vital question which remain unanswered.

Before dealing with the cases on the subject and starting the chapter of the issues involved in this case, it may be germane to give a short history of the nature, character, origin and background of the controversy. To begin with, the caste system actually came into existence since the dawn of the civilized races in this country, viz., Dravidian followed by Aryan civilization which through Hinduism divided by castes into three clear-cut sub- divisions which started by virtue of the occupational pursuits followed by the various classes. The priests and the scholars were known as the Bhrahmanas and looked after religious ceremonies, education, etc. This Class was supposed to be the highest Class or atleast respected and regarded as such. Then came the Kshatriyas who were the people engaged in fighting wars and ruling and administering the States. Thirdly, there were the Vaisayas who carried on the occupation of trade and commerce. The Sudras were added as the

fourth Class after fusion of the pre-Dravidian with the Dravidian and Aryan civilizations which formed the basic fabric of Hinduism and the Hindu society. This Class was treated as a little inferior and suffered from certain disabilities.

In fact, it seems to us that our large sub-continent was inhabited by a very large variety of peoples and races- indigenous and outsiders-consisting of Scythians, Yavanas, Kirathas, Kambhojas and Persians and others who came to India in ancient times and got mixed up with the old inhabitants of the country and thus completely lost their identity. It appears to us that all these races entered the wide and broad fold of Hinduism, which is not only a religion but also a way or poetry of life, a philosophy, an exhaustive and ethical code of living which adapts-itself to all forms and cultures. In view of this complex intermingling of various kinds of people, as time went by, castes started multiplying, and in this process the avocations and occupations followed by members of such castes from generation to generation were labelled as a separate class to which the people practising various professions belonged and this institution had come to stay. The origin, therefore of the fundamental basis of the castes has now disappeared and given rise to individualism and separa-

tism as a result of which it was duly recognised by all schools of Hindu thought that birth alone would determine the caste and this principle would have to continue unless the concept of caste is banished for ever. In other words, it is now well settled-whether one accepts it or not-that caste is the result of birth and not of choice or volition. Without traversing on any controversial issue and coming back to the origin of the caste system, we would like to refer to the most authoritative pronouncements ordained by Lord Krishna in Shree Bhagvadgita which would demonstrate that the division of castes was made purely on the basis of inherent qualities and avocations of a person and hence the question of superiority between one or the other lay not on the nature of the caste but on their actions and deeds. This would be illustrated by a reference to the actual text of Shri Bhagvadgita as compiled by F. Max Muller in his book entitled 'Sacred Books of the East (Vol. VIII)' and we would like to extract some passages and injunctions of Lord Krishna illustrating the vices and virtues of men where castes also figure. In Shloka 13, Chapter 4 of Bhagvada Geeta, Lord Krishna clearly proclaimed that "Four Varnas, viz., Brahmanas, Kshatriyas, Vaisyas and Sudras were created by him on the basis of inherent qualities and avocations of a particular individual". (Translated into English from the original text in Hindi).

Further said Lord Krishna to the son of Kunti thus:

"Whatever you do, O'Son of Kunti: Whatever you eat, whatever sacrifices you make, whatever you give, whatever-penance you, do that as offered to me...I am alike to all beings; to me none is hateful, none dear. But those who worship me with devotion (dwell) in me, and I too in them. Even if a very ill-conducted man worships me, not worshipping any one else, he must certainly be deemed to be good, for he has well resolved.. (You may) affirm, O son of Kunti: that my devotee is never ruined. For, O son of Pritha: even those who are of sinful birth, women, Vaisyas; and Sudras likewise, resorting to me, attain the supreme goal. What then (need be said of) holy Brahmanas and royal saints who are (my) devotees ?"

These passages clearly go to confirm the true philosophy of Mahatma Gandhi that the Sudras or the members of the scheduled castes are Harijans and he condemned untouchability and the habit of looking down upon the scheduled caste people merely because they belonged to the Sudra caste. Further, Lord Krishna goes on to ordain as follows:

"The duties of Brahmanas, Kshatriyas and Vaisyas, and of Sudras, too, O terror of your foes ! are distinguished according to the qualities born of nature. Tranquility, restraint of the senses, penance, purity, forgiveness, straight forwardness, also knowledge, experience, and belief (in a future world), this is the natural duty of Brahmanas. Valour, glory, courage, dexterity, not a slinking away from battle gifts, exercise of lordly power, this is the natural duty of Kshatriyas. Agriculture, tending cattle, trade, (this) is the natural duty of Vaisyas. And the natural duty of Sudras, too, consists in service. (Every) man intent on his own respective duties obtains perfection....Worshipping, by (the performance of) his own duty, him from whom all things proceed, and by whom all this is permeated, a man obtains perfection."

In another chapter, Vidura is quoted as saying thus:

"I am born of a Sudra womb, and do not like to say more than what (I have said'). But the intelligence of that youth, I believe to be eternal. He who has come of a Brahmana womb, even though he may proclaim a great mystery, does not thereby become liable to the censure of the gods. Therefore do I say this to you."

In view of the revealed injunctions in the Shree Bhagavadgita Mahatma Gandhi's dream that all distinctions of castes and creed must disappear and man must be known by his action, to whatever caste he may belong, has been realised to some extent and necessary provisions to this effect have been made in the Constitution in order to safeguard the interests of the backward classes and members of the members of the scheduled castes and scheduled tribes and perhaps, let us hope, a day comes when the distinction between caste and creed disappears completely.

One of the most puzzling question that arises in this case is:

'Is membership in a caste or tribe to be determined solely by birth or by allegiance or by the opinion of its members or of the neighbourhood? Does one lose his caste on conversion or by ex-communication ?

The decisions to which we would we would refer hereafter have thrown flood of light on these questions and the generally accepted view seems to be the one which has been laid down in *Charlotte Abraham and Daniel Vincent Abraham v. Francis Abraham*(1) where the Privy Council observed thus:

"It is plain that no rule as to such use and enjoyment, which the ancestors may voluntarily have imposed on themselves, could be of compulsory obligation on a descendant of theirs; acquiring his own wealth. If a Hindoo in an undivided family

may keep his own sole acquisitions separate, as he undoubtedly may, a fortiori a Christian may do the sameIf the spirit of an adopted religion improves those who become converts to it, and they reject, from conscience, customs to which their first converted ancestors adhered, must the abandoned usages be treated by assort of fictio Juris as still the enduring customs of the family."

So far as this Court is concerned, these questions were clearly answered in *Chaturbhuj Vithaldas Jasani v. Moreshwar Parashram & Ors.*,⁽²⁾ (hereinafter referred to as 'Jasani's, case' where a triple test was laid down thus:

"Looked at from the secular point of view, there are three factors which have to be considered:

(1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or ex-communicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardly matter...On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advanta-

ges which are special to the old order.... The only modification here is that it is not only his choice which must be taken into account but also the views of the body whose religious tenets he has renounced, because here the right we are considering is the right of the old body, the right conferred on it as a special privilege to send a member of its own fold to Parliament."

The observations cited above give the general test that can be applied in judging the question as to when a Hindu on conversion loses his caste. Although the test laid down by this case is fully supported by the original text of Hindu Law, it does not in so many words answer the other side of the picture, viz., if a Hindu after conversion to another religion is reconverted to his original fold, could his caste revive? In fact, the case cited above was not a case of conversion from one religion to another religion or from one sect to another sect. By and large, the test laid down in that case can be usefully applied with alterations and modifications to suit the facts of a particular case in judging the question whether on conversion the caste is completely lost.

The next case which throws some light on the question is *S. Rajagopal v. C.M. Armugam Ors.*⁽¹⁾ In this case what had happened was that the appellant (before the Supreme Court) had filed his nomination papers for a constituency reserved for members of the scheduled caste mentioned under the 1950 Order but he was defeated by respondent No. 1 of that case, whose petition succeeded. The contention in the petition was that the appellant was not a Hindu but a Christian and therefore not qualified to be a candidate for a constituency reserved for scheduled caste. The High Court found as

a fact that the appellant had become a Christian in 1949 and his later reconversion to Hinduism remained unproved. This Courts agreeing with the High Court dismissed the appeal. One important feature of this case may be noted which would at once distinguish this case from the facts of the present case. The question as to whether a Christian on being reconverted to Hinduism would get back his caste did not arise at all in that case because on the facts found, reconversion was not proved. Therefore, the question of caste being acquired or being revived on reconversion to Hinduism did not fall for determination and was left open. Even so, considering Jasani's case and a number of other texts, Bhargava, J. made the following observations:

"Considering the question of entry into the caste, Krishnaswami Ayyangar, J., held that, in matters affecting the well-being or composition of a caste, the caste itself is the supreme judge. It was on this principle that a reconvert to Hinduism could become a member of the caste, if the caste itself as the supreme judge accepted him as a full member of it."

While holding that if a person is reconverted to Hinduism and the community of the caste to which he originally belonged accepts him, his caste would revive; nevertheless the question was left open. Rajagopal's case (supra) merely reiterates what was held in Jasani's case and does not go any further.

In our opinion, there is one aspect which does not appear to have been dealt with by any of the cases discussed by us. Suppose, A, a member of the scheduled caste, is converted to Christianity and marries a Christian girl and a daughter is born to him who, according to the tenets of Christian religion, is baptised and educated. After she has attained the age of discretion she decides of her own volition to re-embrace Hinduism, should in such a case revival of the caste depend on the views of the members of the community of the caste concerned or would it automatically revive on her reconversion if the same is genuine and followed by the necessary rites and ceremonies ? In other words, is it not open for B (the daughter) to say that because she was born of Christian parents their religion cannot be thrust on her when after attaining the age of discretion and gaining some knowledge of the world affairs, she decides to revert to her old religion. It was not her fault that she was born of Christian parents and baptised at a time when she was still a minor and knew nothing about the religion. Therefore, should the revival of the caste depend on the whim or will of the members of the community of her original caste or she would lose her caste for ever merely because fortunately or unfortunately she was born in a Christian family ? With due respect, our confirmed opinion is that although the views of the members of the community would be an important factor, their views should not be allowed to a complete loss of the caste to which B belonged. Indeed, if too much stress is laid on the views of the members of the community the same may lead to dangerous exploitation. Perhaps, this factor was present in the mind of Bhagwati, J., who delivered the leading judgment in a later decision of this Court in *G.M. Arumugam v. S. Rajagopal & Ors.*(1) where, speaking for the Court, he made the following observations:

"It is sufficient to state that originally there were only four main castes, but gradually castes and sub-castes multiplied as the social fabric expanded with the absorption of different groups of people belonging to various cults and professing different

religious faiths. The caste system in its early stages was quite elastic but in course of time it gradually hardened into a rigid framework based upon heredity.....But that immediately raises the question; what is a caste. When we speak of a caste, we do not mean to refer in this context to the four primary castes, but to the multiplicity of castes and sub- castes which disfigure the Indian social scene.....A caste is more a social combination than a religious group.

But from that it does not necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he belonged prior to his conversion.. . If the structure of the caste is such that its member must necessarily belong to Hindu religion, out of the caste, because no non- Hindu can be in the caste according to its rules and regulations. Where, on the other hand, having regard to its structure, as it has evolved over the years, a caste may consist not only of persons professing Hindu- religion but also persons professing some other religion as well, conversion from Hinduism to that other religion may not involve loss of caste, because even persons professing such other religion can be members of the caste..... This is indeed not an infrequent phenomenon in South India where, in some of the castes, even after conversion to Christianity, a person is regarded as continuing to belong to the caste.

There are castes, particularly in South India, where this consequence does not follow on conversion, since such castes comprise both Hindus and Christians.

These weighty observations support the view that after reconversion the caste will normally revive. On the question whether the caste will revive if the members of the community accepts the reconvert, the Judges are silent. Although Bhagwati, J. held that prima facie on conversion to Christianity the respondent would not cease to belong to the Adi Dravida caste, yet he refrained from expressing any final opinion on the point.

In a recent decent decision of this Court *S. Ambalagan v. B. Devarajan & Ors.*(1) (which was also an election case), a three-Judge Bench reiterated the principles enunciated by Arumugan's case (supra) and observed thus:

"Unless the practice of the caste makes it necessary no expiatory rites need be performed and, ordinarily, he regains his caste unless the community does not accept him.....The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deep-rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, it disappears only to reappear on reconversion..... In fact, this process goes on continuously in India and generation by generation lost sheep appear to return to the castefold and are once again assimilated in that fold. This appears to be particularly so in the case of members of the Scheduled Castes,

who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity.

(Emphasis ours) The facts of this case appears to be on all fours with the facts of the present case.

A number of High Courts have also taken a view similar to the one taken in Arumugam's case of 1976 (supra) basing mainly their decisions on the leading case of Jasani. In the case of Goona Durgaprasada Rao & Anr. v. Goona Sudarsanaswami & Ors.,(2) a Division Bench of the Madras High Court observed thus:

"It is hardly right for the Court to erect a barrier which the autonomy of the caste does not see fit to do, simply because in some other caste or some other community it might be considered proper that an expiatory ceremony should be performed. That a Hindu having renounced Hinduism once can revert to it scarcely admits of doubt.

A Similar view was expressed in G. Michael v. S. Venkateswaran(1) which may be extracted thus: "A member of one of the castes or sub-castes when he is converted to Islam ceases to be a member of any caste. He becomes just a Mussalman find his place in Muslim society is not determined by the caste to which he belonged before his conversion. Learned counsel also conceded that generally this is so even when there has been a conversion to Christianity. But he said that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being a member of the caste, but has also been considered so by other members of the caste who had not been converted.....But these are all cases of exception and the general rule is conversion operates as an expulsion from the caste; in other words a convert ceases to have any caste.

Thus, it was clearly hinted that in some cases even converts to Christianity could retain their original caste. In the case of Dippala Suri Dora v. V.V. Giri(2) a Division Bench of the Andhra Pradesh High Court made the following observations:

"Even if they come within the fold of Hinduism, question would arise whether they have formed separate sect among themselves, or they would belong to the 4th class, or to the twice-born class.....In order to prove that he ceased to be a member of that tribe, there should be first of all, evidence of intention, the reactions of the old body and that of the new body. Viewed in the light of these observations, the evidence discussed above, in our opinion, falls short of the test.

This case merely lays down the triple test enunciated in Jasani's case. To the same effect are the decisions in the cases of Wilson Reade v. C.S. Booth & Ors.,(1) and B Shyamsunder v. Shankar Deo Vedalankar & Ors.(2) On a careful consideration of the authorities referred to above and the principles enunciated by them, the position that

emerges may be stated thus:

It is true that caste to which a Hindu belongs is essentially determined by birth and if a Hindu is converted to Christianity or any other religion which does not recognise caste, the conversion amounts to a loss of the said caste.

The question that arises for consideration is whether the loss of the caste is absolute, irrevocable so as not to revive under any circumstances ? In considering this question the courts have gone into the history of the caste system and have formulated the following guiding principles to determine this question:-

(a) Where a person belonging to a scheduled caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is liberal enough to permit the converttee to retain his caste or the family laws by which he was originally governed.

There are a number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retain their caste or family laws and despite the new Order they were permitted to be governed by their old laws. But this can happen only if the new religion is liberal and tolerant enough to permit such a course of action. Where the new religion however does not at all accept or believe in the caste system, the loss of the caste would be final and complete. In a large area of South and some of the North-Eastern States it is not unusual to find persons converted to Christianity retaining their original caste without violating the tenets of the new Order which is done as a matter of common practice existing from times immemorial. In such a category of cases, it is obvious that even if a person abjures his old religion and is converted to a new one, there is no loss of caste. Moreover, it is a common feature of many converts to a new religion to believe or have faith in the Saints belonging to other religions. For instance a number of Hindus have faith in the Muslim Saints, Dargahs, Imam-

badas which becomes a part of their lives and some Hindus even adopt muslim names after the Saints but this does not mean that they have discarded the old Order and got themselves converted to Islam

(b) In all other cases, conversion to Christianity or Islam or any other religion which does not accept the caste system and insists on relinquishing the caste, there is a loss of caste on conversion.

The other important question which is to be answered and which is really the controversy in the present case is if after a person is converted to a new religion - in the instant case, Christianity - does his caste revive if he is reconverted to his old religion and, if so, under what circumstances ? As indicated above, starting from the Privy Council to the present-day, authorities of the High Courts and this Court have laid down certain norms and conditions under which a caste could revive. These conditions are as follows:-

(1) where the converttee exhibits by his actions and behaviour his clear intention of abjuring the new religion on his own volition without any persuasion and is not motivated by any benefit or gain, (2) where the community of the old order to which the converttee originally belonged is gracious enough to admit him to the original caste either expressly or by necessary intendment, and (3) Rules of the new Order in permitting the converttee to join the new caste.

Unless the aforesaid conditions are fulfilled the loss of caste on conversion is complete and cannot be revived. In our opinion having regard to the present set-up and the circumstances prevailing in our modern society, it will be difficult to insist on the second condition, viz., the insistence on the members of the community of the caste to admit the converttee on reconversion to the original faith because such a course of action may lead to dangerous consequences and ill-conceived exploitation. The curse and cancer of untouchability despite thirty years of social reforms still persist and no quarter should be given to further persecution of the members of the scheduled castes who, as we often find, are subjected to all kinds of indignities insults and are looked down upon as slaves or vassals, meant merely to serve the members of the higher caste. In the case of *Ganpat v. Returning Officer & Ors* (1) this Court speaking through Alagiriswami, J. highlighted this particular aspect in the following words:

"The monstrous curse of untouchability has got to be eradicated. It has got to be eradicated not merely by making constitutional provisions or laws but also by eradicating it from the minds and hearts of men. For that it is even more important that members of communities who are untouchable should assert their self-respect and fight for their dignity than that members of the other communities should forget about it.

In our opinion, the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste. In order to judge this factor, it is not necessary that there should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste and it would be sufficient compliance of this condition if no exception or protest is lodged by the community members, in which case the caste would revive on the reconversion of the person to his old religion.

Another aspect which one must not forget is that when a child is born neither has he any religion nor is he capable of choosing one until he reaches the age of discretion and acquires proper understanding of the situation. Hence, the mere fact that the parents of a child, who were Christians, would in ordinary course get the usual

baptism certificate and perform other ceremonies without the child knowing that is being done but after the child has grown up and becomes fully mature and able to decide his future he ought not to be bound by what his parents may have done. Therefore, in such cases, it is the intention of the converttee which would determine the revival of the caste. If by his clear and conclusive conduct the person reconverts to his old faith and abjures the new religion in unequivocal terms, his caste automatically revives.

Another dominant factor to determine the revival of the caste of a convert from Christianity to his old religion would be that in cases of election to the State Assemblies or the Parliament where under the Presidential Order a particular constituency is reserved for a member of the scheduled caste or tribe and the electorate gives a majority verdict in his favour, then this would be doubtless proof positive of the fact that his community has accepted him back to his old fold and this would result in a revival of the original caste to which the said candidate belonged.

In our opinion, when a person is converted to Christianity or some other religion the original caste remains under eclipse and as soon as during his/her life- time the person is reconverted to the original religion the eclipse disappears and the caste automatically revives. Whether or not the revival of the caste depends on the will and discretion of the members of the community of the caste is a question on which we refrain from giving any opinion because in the instant case, there is overwhelming evidence to show that the respondent was accepted by the community of her original caste. Even so, if the fact of the acceptance by the members of the community is made a condition precedent to the revival of the caste, it would lead to grave consequences and unnecessary exploitation, sometimes motivated by political considerations. Of course, if apart from the oral views of the community there is any recognised documentary proof of a custom or code of conduct or rule of law binding on a particular caste, it may be necessary to insist on the consent of the members of the community, otherwise in normal circumstances the caste would revive by applying the principles of doctrine of eclipse. We might pause here to add a rider to what we have said, i.e., where it appears that the person reconverted to the old religion had been converted to Christianity since several generations, it may be difficult to apply the doctrine of eclipse to the revival of caste. However, that question does not arise here.

Coming now to the facts and evidence of the present case the position may be briefly stated as follows:

The appellant, an M.A., LL.B. from Jabalpur University had contested election from the Madhya Pradesh Vidhan Sabha (here-

inafter referred to as 'Vidhan Sabha) from Legislative Assembly constituency No. 195 in the general election of 1977 as a Janata Party Candidate which was reserved for

Scheduled Caste under Art. 332 of the Constitution being item No. 30 of Part IX-Madhya Pradesh of the 1950 Order. He was declared elected defeating his nearest rival candidate, one Ramprasad Choudhary, a Congress candidate. The Vidhan Sabha was, however, dissolved in February 1980 after which general elections for all the constituencies were to be held afresh, as notified in the Gazette, in the month of May 1980. The last date for filing nomination papers was

2.5.1980, the date of scrutiny was 3.5.80 and the polling took place on 31.5.80. The results were declared on 2.6.80. In this election, the appellant submitted his nomination papers as an Independent candidate from constituency No. 195 (Jabalpur East) and was opposed by Smt. Maya Devi Shalwar (hereinafter referred to as 'Maya Devi') who filed her nomination papers as a Congress (I) candidate. She described herself as belonging to the scheduled caste 'Katia' which is mentioned at serial No. 29 of Part IX-Madhya Pradesh of the 1950 Order. In view of the short and narrow compass of this appeal we are not concerned with other candidates.

It may be mentioned that originally the caste 'Katia' was not included in the list of scheduled castes till the year 1977 but by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Act No. 108 of 1976) the schedule was amended and replaced by a new Schedule in which Katia caste was included as a scheduled caste and shown at serial No.29.

It appears that at the time of the scrutiny of the nomination papers of Maya Devi, several persons raised objection that she, being a Christian by birth, could not be treated as a member of the scheduled caste and therefore her declaration as a scheduled caste candidate was false which merited dismissal of her nomination papers. The case of Maya Devi was that she was a member of the scheduled caste by birth and her husband, Jai Prakash Shalwar, also belonged to the Katia caste. She denied that she was a Christian by birth and averred that her father's name was not John Wesley as alleged by the appellant. Her plea found favour with the Returning Officer who accepted her nomination papers. After the poll, Maya Devi received majority of votes, having secured 16,770 votes, and was declared elected, and the appellant lost the election.

It was further alleged by the appellant that Maya Devi after being born a Christian was baptised according to Christian rites and her mother's name was Elizabeth. The appellant also averred that Maya Devi's marriage with Jai Prakash Shalwar was not a recognised form of marriage and, therefore, not valid. A number of other pleas were also taken by the appellant in his petition but Mr. U.R. Lalit, appearing on his behalf, confined his arguments to two important questions:

(1) whether Maya Devi having been born of Christian parents lost the katia caste to which she or her ancestors originally belonged ? and (2) that after being baptised she continued to be a Christian and was shown as such in various documents.

In this view of the matter it was contended that even if she married Jai Prakash Shalwar who belonged to Katia caste, her caste could not revive because caste is determined not by marriage but by birth.

In proof of his pleas, the appellant adduced both oral and documentary evidence. The allegations made by him were denied by the respondent who categorically stated that she was never a Christian nor was she born a Christian. She also averred that even her father or mother were not Christians. On the other hand, she always remained a member of the Katia caste and was accepted as such by the members of that community because her marriage with Jai Prakash Shalwar was performed according to Hindu rites of Aryasamaj seet and was attended by a number of members of her caste and due publicity was given to the marriage.

Both the parties have adduced evidence in support of their cases. One important fact which may be noted here is that the father of the respondent John Wesley who according to Maya Devi was. John Wesley singh, in spite of being cited as a witness did not enter the witness box to throw light on the origin of the religion of the respondent and a huge capital has been made of the non-appearance possible circumstance to discredit the case of the respondent.

It is true that the father of the respondent was not examined as a witness but having regard to the nature of the documents produced by the parties the mere fact that John Wesley was not examined as a witness is not sufficient to throw the case of the respondent aboard. It is also true that the respondent was ill-advised to deny the entire case of the appellant by making an averment that she was not born of Christian parents at all. We would, therefore, take it as established that the respondent was undoubtedly born of Christian parents. That by itself does not advance the case of the appellant any further because if it is proved that she was voluntarily reconverted to Hinduism then according to the law referred to us and applied to the facts of the present case on reconversion her original caste would automatically revive. We would give a brief summary of the nature of the evidence produced by the parties on this limited question.

To begin with the appellant has relied on the birth certificate (Ex. P-21) which shows that a female child was born to John Wesley's wife on 4.6.1947. It is also clearly mentioned therein that John Wesley was a Christian. This was followed by a baptism certificate which shows that she was baptised according to the religious ceremonies of the Christians. The appellant also produced a Church membership certificate to show that Maya Isabella John Wesley (respondent) was baptised and admitted as a member of the City Methodist Church in Southern Asia at Jabalpur, Madhya Pradesh. The school transfer certificate dated 6.6.1956 shows that Maya Isabella John Wesley was a Christian and remained a student of Peeli Kothi Girls Primary School, Jabalpur from 1.7.1952 to 30.4.1956, and her date of birth in this certificate has been shown as 4.6.1947 which fully tallies with her birth certificate. In view of the overwhelming evidence referred to above, it is not necessary for us to consider the oral and documentary evidence which conclusively proves-(1) that the parents of the respondent were Christians and (2) that after her birth she got baptised and remained a Christian, and therefore it cannot be denied that the respondent was born a Christian and in this view of the matter the moment she entered the fold of Christianity, her original caste was completely lost. The respondent in her anxiety to succeed has overstated her case by wrongly alleging that she was never born of Christian parents or that her parents were not Christians, a fact which is completely falsified by the oral and documentary evidence produced by the appellant.

Accepting, therefore, the evidence led by the appellant, the vital question for determination in this case remains as to whether or not the respondent was voluntarily reconverted to Hinduism and thereupon her caste revived. There is clear and unimpeachable evidence to show that the respondent had reconverted herself to Hinduism voluntarily and with full publicity, making no secret of this fact. A letter appearing at page 22 of the Paperbook shows that she accepted Hindu religion with all its customs and rites voluntarily. The relevant part of the letter reads thus:

I am prepared to own Hindu religion with all sincerity and to follow all its customs and rites. Today, on 6.11.76 I am fully major. Hence the above decision is of my own wherein no external interference exists."

Immediately thereafter she was married to one Jai Prakash Shalwar and the marriage certificate dated 14.11.76 fully corroborates this fact (page 24 of the Paperbook). The Marriage certificate states that the marriage of Maya Devi with Jai Prakash was performed on 6.11.76 in Arya Samaj Gorakhpur according to vedic rites. Another certificate issued by the Secretary of the Arya Samaj, Gorakhpur is also to the same effect. The aforesaid documents are amply corroborated by the oral evidence led by the respondent.

The evidence of Darshanlal Dharmak deserves special mention because this witness was a prominent member and President of the Katia community for the last two-and-a half years. The witness goes on to state that the marriage was celebrated in the presence of 80 persons of his community, including elderly people and his presence at the marriage clearly indicates that the community had fully accepted the respondent back to her caste. The marriage was followed by a reception 3-4 days later which was attended by this witness also and at that time nobody raised any objection about Maya as not belonging to the Katia community. The witness further states that he had gone to the house of the respondent and that members of the community had come to celebrate the birthday of her child.

It would appear from the evidence of Bhaiyalal Nag, another witness produced by the respondent, that there was a Katia Samaj Sanstha in Madhya Pradesh which was registered under the Societies Registration Act and the witness was the Vice-President of this organisation. He states that Jai Prakash was known to him and belonged to his caste and that he was married to Maya Devi. He further states that no objection was raised in the Organisation about this marriage. He further stated that Maya Devi had been attending number of marriages in his caste. He makes a very stark statement which is fully supported by the Abhinandan Patra and his statement may be extracted thus:

"We mentioned her in this Abhinandan Patra as belonging to Katia caste as we were proud as she was the first M.L.A. in our caste.

Ex. D-1A is the Abhinandan Patra given to Maya Devi some time in the year 1977-78, i.e. 3 years before the elections. Furthermore, there is the evidence of Keshav Prasad Pathak which is rather important. His evidence shows that a joint application was made by the respondent and her husband regarding their consent to the marriage. He further stated that before the parties are married, if either of them is not a Hindu then he is first converted to Hinduism (Shudhikaran) by religious rites performed in accordance with the Arya Samaj rites. He proves the applications given by the respondent and her husband (Ex. P-8 and 9). He has further stated that the marriage ceremony is usually performed before the members of the Executive Committee of the Arya Samaj. He further defines the term 'Shudhikaran' to mean "Convert non-Hindu to Hinduism. He goes on to say that the marriage was celebrated at the Arya Samaj according to vedic ceremony which included Sapta-padi and Havan.

The appellant himself in his statement admitted that in Jabalpur there are five-six thousands people of Katia caste. He further admitted that he did not make any enquiries about the parents or the place of residence of Elizabeth, mother of the respondent. He further admits at page 87 of the Paperbook that in 1978 he was taken by Shri Dharmak as Chief Guest in the Conference of Katia Samaj. A suggestion was made to him that he was present when the Katia community honoured the respondent on her victory in the election. Reading in between the lines of his evidence it is clear that he was fully aware that the respondent had been reconverted to Hinduism and had been accepted by the Katia community.

On a full and complete appraisal of the oral and documentary evidence, the following conclusions are inevitable:

(1) That the respondent was born of Christian parents and was educated in various schools or institutions where she was known as a Christian, (2) that 3-4 years before the election, the respondent was reconverted to Hinduism and married Jai Prakash Shalwar, a member of the Katia caste, and also performed the Shudhikaran ceremony, (3) that she was not only accepted but also welcomed by the important members, including the President and Vice-President, of the community, (4) there is no evidence to show that there was any bar under the Christian religion which could have prevented her from reconverting herself to Hinduism.

(5) that there was no evidence to show that even her parents had been Christians from generation to generation.

In these circumstances, therefore, this case fulfils the conditions required for being reconverted to Hinduism from Christianity in order to revive the original caste.

Under cl. (3) of the 1950 Order only two conditions are required for being eligible for election to a reserved constituency-

(a) that the candidate should not profess a religion different from the Hindu or the Sikh religion, and

(b) that the candidate is a member of scheduled caste as shown in the schedules.

In the instant case, it is not disputed that the Katia caste is mentioned as a scheduled caste in part IX of the 1950 Order and shown at serial Number 29.

Having regard to the circumstances discussed above, it cannot be said that at the time when the respondent filed her nomination papers, she was not a member of the Katia caste.

For the reasons given above, the judgment of the High Court is affirmed and the appeal is dismissed but in the circumstances without any order as to costs.

H.S.K.

Appeal dismissed