

Decision No. 8873 - Caste-based Untouchability

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Decision 8863

Supreme Court, Joint Bench
Honourable Justice Shree Tahir Ali Ansari
Honourable Justice Shree Tarkaraj Bhatta
2066-CR-0697
Date of decision: 2012/08/06/02

Case: Caste-based untouchability.

Appellant Plaintiff: Government of Nepal with the FIR of Gopal Suchikar

vs

Opposition Defendant: Tek Bahadur Bista, resident of Dipayal Silgadhi, Ward No. 14, Doti district

First instance decision by:

Honourable Justice Shree Himalaya Raj Pathak

Appeal decision by:

Honourable acting Justice Shree Govinda Kumar Shrestha

Honourable Justice Shree Ram Prasad Khanal

- § **Caste-based discrimination is a criminal act that harms a person's dignity and reputation. Such distortions and inappropriate things should not be allowed to happen.**
- § **Caste-based discrimination will be against the Universal Declaration of Human Rights provision - All human beings are born free and equal in dignity and rights. Such discriminatory treatment and customs prevailing in the society should be ended. With the intention of ending such caste-based untouchability and discrimination, Article 14 of the Interim Constitution of Nepal, 2007 has provided the right against untouchability and caste-based discrimination, and made discriminatory behaviors punishable by law.**

(Paragraph No. 9)

On behalf of the appellant plaintiff : Learned Assistant Attorney General Dharma Raj Paudel

On behalf of opponent Defendant:

Adopted precedent:

Concerned Laws:

§ Muluki Ain (General Code) Chapter on Decency/Etiquette (*Adal*) No. 10 (A)

Verdict

Justice Tahir Ali Ansari: The brief facts and decision of this case which has been received with a petition of appeal from the plaintiff on the decision rendered by the Appellate Court Dipayal on 14 December 2009, and which falls within the jurisdiction of this Court in accordance with the Administration of Justice Act, 2048 (1991), are as below:

On 14 May 2008, Chakra Nepal was going to get married to Velu Auji, a resident of Pakri, when about 20-25 people, including one non-Dalit Tek Bahadur Bista, got into a fight with Gopal Suchikar and other people attending the marriage arguing that Dalit people cannot carry palanquin (*doli*) and heavily assaulted Gopak Suchikar and looted a gold chain of half *tola*, Rs. 4,000 cash and a mobile phone. Application with above details dated 15 May 2008 filed by Jang Bahadur Suchikar to the District Police Office Doti asking for treatment of the injuries and compensation for for the looted cash and a mobile set.

An on-site incident report of 21 May 2008 mentioning that there is a walking road leading from Pakri to the forest in the east, Hark Bahadur Parki's two-storey concrete house in the west, Bhagisingh Parki's two-storey concrete house in the north, farming land in the South where within these four directional periphery, the incident of beatings and caste-based untouchability were reported to have taken place.

On 14 May 2008, my nephew Chakra Bahadur Nepali's wedding procession was going to Pakri, and I was one of the participants. The marriage procession had reached near the temple of the Pakari village, and the attendants were resting by putting the palanquin on the ground when Tek Bahadur Bista and 4-5 others whose names are not known to me came over the site and started beating the bridegroom. When I asked why they were beating the bridegroom, they started shouting at us saying "you *Dum Chamars* (a degrading expression), why are you bringing this marriage procession using the road from our village?". Then Tek Bahadur Bista and those 4-5 strangers came over to me, beat me up and looted from me Rs.4,000 cash, golden chain of a tola and a mobile set. Therefore, let legal action be taken against these offenders and compensation be paid for the loss I have incurred. An FIR dated 14 May 2008 by Gopal Suchikar with above details.

On 14 May 2008, I was at a tea-shop nearby my house. On that day, there was a *puja* (worship ritual) in the temple to celebrate Vishu Parva. In the evening, 5/6 unknown boys came and said, "Hey man, how are you?". I asked them why they were calling out at me without knowing me, and an argument was ongoing when the *Jaherwala* (the person who submitted the FIR) also came. When he asked why are you quarrelling, a boy calling him uncle, started physically assaulting me, and then he had confessed of having made a mistake. They had consumed alcohol. Various parts of my body were injured due to the beating. I do not who who else beat up the *Jaherwala*. Nobody has brought of the issue of caste-based untouchability. It was also not said, "Dum, chamars cannot ride on a palanquin". Also nobody said "why is the

marriage procession being taken from our village?". That the *Jaherwala's* phone, money and golden chain was looted is a false accusation. I heard about the injury of the *Jaherwala* only the next day. The above statement made by Tek Bahadur Bista, the defendant to the police on 27 May 2008.

On 14 May 2008, Chakra Bahadur Nepali's wedding procession was going to Pakri village, and I was part of the *Janti* (procession). When the procession reached near the temple of the village they sat for a brief rest. Meanwhile 4/5 youths came over and started saying "You Dum, Chamars! Why are you bringing this procession through our village, and how dare you ride on palanquin in front of us?" Then Tek Bahadur Bista and other unknown people beat the bridegroom up and made off with a golden chain, Rs. 4000.00 cash and a mobile phone. A paper signed on 29 May 2008 by Ganesh Nepali with above details.

14 May 2008, Chakra Bahadur Nepali, who is a nephew of mine, was getting married to a woman from Pakri village, and was part of the marriage procession to the village. When the procession reached near a temple of the wedding village, and we were resting, 4/5 youths whose names are not known to me came over and started saying, "you dum chamars, why are you bringing this procession from our village? How dare you ride on palanquin in front of us?" Then Tek Bahadur Bista and those others whose names I don't know assaulted the bridegroom and took a golden chair, a mobile phone and Rs.4,000.00 in cash from him. A document signed by the Shankar Suchikar on 29 May 2008 with above details.

On 14 May 2008, I was one of the persons attending the marriage procession to Pakarai village. It was the marriage of Chakra Bahadur Nepali, who is a brother to me, by relation. When the people reached the temple of the marriage village, the procession attendees decided to rest for a while. When we were resting, 4-5 young children, whose names are not known, came over to us and started saying, "you Dum, Chamars, why are bringing the procession from our village? The village will now be impure". Then they started beating the bridegroom and Tek Bahadur Bista and those others looted a golden chain, Rs. 4000.00 and a mobile phone from the bridegroom. A paper signed by Pushkar Shuchikar on 29 May 2008.

Physical injury report of Gopal Shuchikar and Tek Bahadur Bista dated 14 May 2008 and 17 May 2008.

As my daughter Velu Nepali was going to get married to Chakra Bahadur Nepali on 14 May 2008, I was sitting at the the wedding site. I do not know who from the non-Dalits beat up whosoever from the marriage procession. Everyone was safe when they arrived. At around 11 pm in the night, Tek Bahadur Bista came to my house and assured me by saying "your daughter is our sister, don't worry." I heard about that incident the next morning. A paper with above details made by Sharada Auji.

On 14 May 2008, about 8 or 10 of us including myself were drinking tea at the shop of Harka Singh Bista. At that time 4/5 youths came over and asked if alcohol was available. When we tried to advise them that the alcohol was not available there, Tek Bahadur Bista also

started advising them. Then the four of them started beating Tek Bahadur Bista. Then we did not know what happened. We don't know about the issue of untouchability. A paper with above details signed by Khagendra Bista.

On 14 May 2008, I was in my sister's house in Pakari. In the evening at 7:30, I was returning to my home when I saw 4/5 youths chasing Tek Bahadur Bista and Khagi Bista. They were trying to beat them up, but then left the scene. I heard the next morning that boys from Dipayal beat up and injured Tek Bahadur Bista. The accusation of caste-based untouchability is false. Paper signed by Bhakta Mijar with above details.

On 14 May 2008, Velu Aauji, a grand-daughter in relation to me, was being married off. So, I was at home that day. I saw all the people attending the marriage procession safe and unharmed. I did not see any treatment of caste-based untouchability onto us the Dalits from the non-Dalits in the area, and that such treatments are not practiced. Paper signed by Gagan Aauji with above details.

On 14 May 2008, Velu Aauji, a sister by relation to me, was being married off, and the marriage procession arrived from Dipayal, Doti at 8 pm in the evening. Everybody who came as part of the marriage procession were safe and sound. Non-Dalits have not committed any untouchability related crimes against us Dalits. I came to hear that there was a fight in the evening between the boys from the marriage procession and the gang of Tek Bahadur Bista. I have no idea who beat up who and why. Paper signed by Baji Singh Aauji with above details.

I was at home on 14 May 2008. I have no idea what kind to behaviour was shown by the non-Dalits. I have heard that the *Jaherwala* was beaten up by defendant Tek Bahadur Bista. I live in the same village. A paper with above details signed by Tika Parki.

On 14 May 2008, I was being married to Velu Auji from Pakari village. We were going to the house of the bride with about 60/65 people with a the marriage procession. At about 7:30 pm in the evening, we reached near the village, and we were resting at a place when about 9/10 non-Dalits including Tek Bahadur Bista came over to where we were sitting and starting insulting us saying "you are Dums and Chamars and you are prohibited to visit our village. you can ride on the palanquin." They even started scuffle and pushed me and other people in the marriage procession. Then my uncle Gopal Suchikar tried to calm them down saying "stop the quarrel. Why do you want to fight?" Then Tek Bahadur Bista and the boys labelled my uncle as "Dum" and "Chamar" and beat him up and injured. A paper with the above details signed by Chakre Nepali on 2 June 2008.

On 14 May 2008, my sister Velu Auji was being married to Chakra Bahadur Nepali. So, I was at home. The marriage procession with the bridegroom arrived at around 8:30 om on the evening. I heard that the people coming for the marriage had an altercation with Tek Bahadur Bista, and that the *Jaherwala* subsequently got injured and so went to Silgadhi for treatment. I did not hear about the participants of the marriage procession being treated with untouchability by naming them as Dum and Chamar. That's false allegation. I don't know

about the loss of the cash and other items of the *Jaherwala*. Statement given by Bahadu Auji, Bir Bahadur Bista and Nara Auji on 3 June 2008.

On 14 May 2008, my nephew Chakre Nepali was getting married, and the procession was going to Pakari, so I was part of the procession. The marriage procession reached to nearby Pakari at about 8:30 in the evening, and took a moment of rest near a temple in the village. At the moment, 5/6 individuals including Tek Bahadur Bista came over and started labelling the people in the marriage procession with obscene epithets such as "Dum" and "Chamar" etc. saying "why are you riding a palanquin in front of the temple, you fool 'dums?"". Then they struck the *Jaherwala* in his head and other parts of his body and made off with a set of mobile, a golden chain and Rs. 4000.00. Statement of the similar content signed by Jag Bahadur Suchikar and Harka Bahadur Nepali on 3 June 2008.

Although the defendant has denied his involvement in the incident, various people have testified that they were present at the scene of the incident in support of the *Jaherwala's* FIR, and the *Jaherwala's* physical injury/wound examination report attached along with the case file also confirms the incident that took place on 14 May 2008 that on that day Chakra Bahadur Nepali, resident of Dipayal Silgadhi Municipality Ward No.7 was marrying a lady who was resident of Ward No. 14 of the same Municipality, and that on the way to Pakari village, when the people attending the marriage procession reached to a near the same Pakari village, they decided to rest. As they were resting by putting down the palanquin on the ground, defendant Tek Bahadur Bista and other 4 - 5 persons whose names were known came over to the people resting and started saying "you *Dums* and *Chamars* why have you come to our village? and why do you ride on a palanquin even as you are Dalits?" When they were trying to assault the groom, the *Jaherwala* went on to intervene, trying to calm them down and asking why they were making the fuss for no reason. However, Tek Bahadur Bista, and those others beat up the *Jaherwala* (FIR filing person) calling him a dum, and looted his mobile phone, a golden chain of one *tola* and Rs. 4,000.00 in cash from him. The incident of beating and looting has thus been confirmed, and therefore the defendant Tek Bahadur Bista has been charged with demand of punishment as under the Chapter on Decency/Etiquette (*Adal*) 10 (A) of the *Muluki Ain* (General Code). A charge-sheet filed with above details dated 06 June 2008.

On 14 May 2008, a marriage procession was coming to our village from Dipayal Silgadhi Municipality Ward No. 7 for the marriage of the daughter of Khadke Auji. I have not done anything like verbal abuse, looting and beating as mentioned in the FIR. I have know idea why they filed an FIR against me. Instead, 7-8 people from the camp of the FIR reporter argued with me when I was about to go home, quarreled with me and injured me on my right hand, eyes and left leg. They then preemptively filed this case against me fearing I would file a case against them. I have no idea whoever beat up the FIR reporter. Statement, as above, given by the defendant Tek Bahadur Bista at the court on 06 June 2008.

On 14 May 2008, a marriage procession was coming to Pakari village. The marriage procession was resting at a temple near the village. Defendant Tek Bahadur and some people came over the place and started beating the groom and other people. When I asked why they

were beating us, they used very insulting words like "you *dums*, why did you come to our village riding on a palanquin?" Then they beat me black and blue over my head and back, my index finger is broken and I was taken to the hospital by relatives. Tek Bahadur Bista and others used very insulting words and racial slangs such as "dum", "chamar" against me. Statement given by the *Jaherwala* Gopal Suchikar.

The statement made by Bhakta Mizar that that there was no racial insult and abuse between the plaintiff and the defendants.

Statement given by Shankar Suchikar that he met the informant and the accused at the place but that was after the incident, and that he was not present when the incident actually happened.

Defendant Tek Bahadur Bista did not abuse the *Jaherwala* and other people by using words like *Dum* and *Chamar*. Because I am also a Dalit living in Pakari village. The defendant is not the type of person to do such things. Statement given as above by Waji Auji.

On 14 May 2008, we were taking a marriage procession to Pakari village. We were resting at a temple in the village. The non-Dalits beat up Gopal Suchikar by saying "why do you bring marriage procession in a palanquin in our village?" They hurled stones on to us. They chased us and the grooms a few meters down from the temple. Statement, as above, given by Ganesh Nepali.

On 14 May 2008, we were sitting in the temple. The people there including Tek Bahadur attacked and beat up Gopal Suchikar calling names like *Dum* and *Chamar*. And when Gopal was being brought to the hospital, they again pelted stones. I have no idea what happened after that. Statement, as above, given by Pushkar Suchikar.

On 14 May 2008, I reached the site of the incident in the temple five minutes after the marriage procession had reached there. People were sitting in their respective places. They were seen pushing and pulling the bridegroom, then they began to verbally abuse saying "you *dum chamars* sit in the palanquin here." After that, the *Jaherwala* was also beaten up by saying "why a *dum chamar* groom was carried in the palanquin?" I cannot name the non-Dalits who abused and beat up the *Jaherwala*. Statement given by Jung Bahadur Suchikar, as above.

On the evening of 14 May 2008, I was at Waji Bista's hotel in Pakri village. At quarter to seven, four people including Gopal Suchikar came and inquired whether there was any alcohol. When the *Jaherwala* asked Tek Bahadur Bista why alcohol was not available there, Tek Bahadur then said "Babu, you won't get alcohol here. I am also a club member here". Then the *Jaherwala* got on to Mr Bista asking why he called him "Babu", and there was a quarrel. The four of those people grabbed the defendant and were about to beat him up. There were no insulting words used such as "dum" or "kaami". Statement, as above, given by Hari Singh Bista.

On the evening of 14 May 2008, I was at the hotel of local Lal Bahadur Bista. On that evening of the day, when the informant and others inquired about alcohol, I had told them that

alcohol was not available. When the defendant was with me, at a place called Bange Vimal, the *Jaherwala* and four others grabbed defendant Tek Bahadur Bista by his neck and started beating him. Together with Hari Bista, I had separated the quarrelling parties. The statements in the FIR is false. The defendant has not used any abusive words like *dum*, assaulted or robbed the people including the *Jaherwala*, and he should not be punished as per the demand in the charge sheet. A statement, as above given by Mahadev Bista.

Tek Bahadur Bista is in denial of the offense and his denial is supported by the statement of Mahadev Bista and Hari Bista. The groom is said to be the victim but his wound/injury examination report is not included case file, not has the plaintiff side been able to make him appear before court. It is seen that Bajji Auji and Bhakta Mijar have given written statements that there were no humiliating conducts or treatment committed against the people including the *Jaherwala*. Similarly, the mother of the bride, Sharada Auji, also is seen to have expressed, in her written statement, her ignorance about the fact that there was caste-based untouchability. As there is seen dissimilarity between the merits of the incident and the merits in the case, and as the evidences included in the case files do not establish the defendants committed the offense as claimed in the charge-sheet, it is established that the defendant deserves to be acquitted of the alleged offense. The decision of Doti District Court, as above, on 13 June 2008.

The people including Pushkar Suchikar, Shankar Suchikar, Jung Bahadur Suchikar, who were also directly present at the scene of the incident, have said in their statement that when the defendant and the people in the marriage procession were resting at the temple near the village, the gang of defendants came to the place and abused with verbal and racial epithets beating up the *Jaherwala* to the point of death, and looted his money, mobile phone and golden chain. This establishes that the offense of caste-based untouchability was committed and therefore the decision by the Court of first stance to not establish the crime is flawed, and therefore let this erroneous decision be nullified and the defendant be served punishment as demanded in the charge-sheet. A petition of appeal filed by the Government of Nepal, as above, in the Appellate Court Dipayal on 6 September 2008.

In view of the fact that the incident in the case does not attract the legal provisions of Chapter on Decency/Etiquette 10 (a) of the General Court, the decision of the Doti District Court on 13 June 2008 that the claims in the charge-sheet cannot be reached, appears to be consistent and, is therefore herewith upheld. The verdict of the Appellate Court, Dipayal on 14 December 2009.

In this case, the offense has been established by the FIR and the statements from the received in its confirmation. The defendant's denial has been refuted. The FIR has been filed claiming that an offense of caste-based untouchability has been committed against the FIR complainant Gopal Suchikar and the bridegroom Chakra Bahadur Nepali who where insulted with castiest slurs including by restricting them and then excluding from riding on the palanquins for their belong to the Dalit castes when they were in a marriage procession to Ward No. 14, Pakari of Dipayal Silgadhi Municipality. Defendant Tek Bahadur Bista, while

giving his statement in court, did not deny that he was at the scene of the incident and that he had a conversation with the people. Petition filed by the plaintiff in this court requesting for the review of flawed judgment of the Appellate Court of Dipayal to acquit the defendant as the documents of the victims and eyewitnesses of the incident, including Ganesh Nepali establish the offense of the defendant.

It is found from the physical injury and wound examination report and the written statements given by Pushkar Suchikar, Ganesh Nepali and Shankar Suhcikar that there was an offense of beating and caste-based discrimination and untouchability with the pronouncement of casteist slurs such as "Dum" and "Chamar" for the simple reason that the *Jaherwala* Gopal Suchikar' s nephew Chakra Bahadur Nepali was riding a palanquin in his marriage. In the Appellate Court Dipayal' s decision of 14 December 2009 to acquit the defendant, on the basis of a statement given by the bride's mother who was inside the house when the incident took place, it appears that there is inherent in this decision a serious flaw of the Chapter on Decency/Etiquette (*Adal*) No. 10 (A), Chapter on Court Proceedings No.184 (A) of the *Muluki Ain* (General Code) and Section 3 and 54 of the Evidence Act, 2031 (1974); and therefore, the request to review this case is granted in accordance with Section 12 (1) part (a) of the Administration of Justice Act, 2048 (1991). The Order of this court, as above on 17 May 2010.

The case file of this case - which was on the daily cause list as per rule - was studied together with the petition of appeal. The learned Assistant Attorney General Mr. Dharmaraj Paudel, who was present on behalf of the plaintiff Government of Nepal, argued that Sharada Auji's statement, which the District and the Appellate Court used as the basis for its decision, was not the one obtained by the Court. It was merely a paper collected during the course of the the investigation, and hence, it cannot be taken as evidence. The case file shows that the people suffered physical injuries and wounds. Gopal Suchikar is injured. There is no denying that were cross-beatings. He also presented the argument that the case should be overturned and the defendant should be punished as per the claim as the case was established with the statement of the witnesses from the side of the plaintiffs.

After listening to the above-mentioned debates, this Court is now required to look into, and decide therewith, whether or not the judgment of the Appellate Court of Dipayal was appropriate and consistent and whether or not the plaintiff's appeal can be satisfied.

2. Now while considering about the decision - on 14 May 2008, Chakra Bahadur Nepali of Dipayal Silgadhi Municipality Ward No. 7 was in his marriage procession towards Ward No. 14, Pakari village of the same Municipality. After reaching Pakari village, the marriage procession participants put the palanquin used to carry the groom on the ground and sat for a rest when the defendant Tek Bahadur Bista and other people came over the place where they were resting and started shouting racial slurs saying "you *dum chamars* now ride on a palanquin in our village". Then, they assaulted the groom to the point of death, and looted a mobile phone, a golden chain and Rs. 4000.00, thus committing an offense as per No. 10 (a) of the Chapter on Decency/Etiquette (*Adal*) of the *Muluki Ain* (General Code). The charge-sheet was filed demanding that the defendant must be punished in accordance with the same No. 10

(a), to which the Court of first instance, the District Court, decided to acquit the defendant of the charges, and the Appellate Court Dipayal decided to uphold the District Court's decision.

3. This case has come forward at this stage for decision after this Court granted the right to review acting on a petition filed asking to review the flawed decision of the Appellate Court and punish the defendant as the FIR and the statements of the victims and eyewitnesses establish the defendant's offense.

4. It is seen that the case has been raised since an FIR was filed at District Police Office, Doti on 15 May 2008 requesting for compensation, stating that while on the marriage procession of Chakra Nepali on 14 May 2008, some non-Dalit people including Tek Bahadur Bista started a fight saying that Dalits cannot ride on the palanquin, and then physically assaulted the people in the procession including beating Gopal Suchikar to the point of death and then looted a golden chain, mobile phone and cash. The incident site report mentions that an incident of physical assault and caste-based discrimination took place on the way nearby Hark Bahadur's house. Gopal Suchikar again appears to have filed a complaint on 22 May 2008 mentioning that Tek Bahadur Bista and five other people whose names were not known, assaulted the bridegroom and called out insulting slurs like "Dum" and "Chamars" and then beat him to the point of death and took the golden locket, cash and mobile phone.

5. The defendant Tek Bahadur Bista was testifying before the Investigating Officer, he said that 5-6 unknown boys came over to him saying "yaar" (friend), and as there arose some dispute over the word "yaar", they beat him up and injured his eyes, neck and chest. The defendant is found to be in denial of the alleged offense arguing that nobody in the marriage procession was dealt with in an insulting, and racially untouchable manner, and words like "dum and chamar" were not uttered, and that could be verified from the Dalits from the Pakari village itself.

6. Gagan Singh Auji, who gave a written testimony and who was also in the same marriage, and the bride's mother Sharada Auji mentioned that they did not know how the non-Dalits treated the people. In the same way, Bahadur Auji, Bir Bahadur Bista, Nari Auji appear to have testified in the incident report that they did not hear or know that Tek Bahadur Bista and others verbally abused with an intention of committing caste-based untouchability.

7. When this defendant Tek Bahadur Bista appeared in the court to give testimony, he said that he did not use the words "Dum Chamar" etc. to the people at the marriage in the village including the *Jaherwala*, on the other hand, 7-8 people from the *Jaherwala* party came to argue with him when he was about to go to his house and injured him on his right hand and eye. He also said that the case was preemptively filed against him, and he did not commit the crime, he did not deserve any punishment.

8. *Jaherwala* Gopal Suchikar and the people including Ganesh Nepali and Puskar Suchikar testified to the the Court stating that the non-Dalits had physically assaulted. But Baji Auji and Bhakta Mijar, who were understood to have been at the site of the incident, appear to

have testified to the Court that they were also at the incident site, and that the defendant Tek Bahadur Bisht did not verbally abuse the people by uttering words like "Dum" and "Chamar", and that they were also the Dalits living in the same Pakari village, and that no action was committed with an intention to insult the people including the *Jaherwala*.

9. Caste-based discrimination is a criminal act that harms a person's dignity and reputation. Such distortions and inappropriate things should not be allowed to happen. Caste-based discrimination will be against the Universal Declaration of Human Rights provision - All human beings are born free and equal in dignity and rights. Such discriminatory treatment and customs prevailing in the society should be ended. With the intention of ending such caste-based untouchability and discrimination, Article 14 of the Interim Constitution of Nepal, 2007 has provided the right against untouchability and caste-based discrimination, and made discriminatory behaviors punishable by law.

10. In this case, it is seen that the defendant is accused of having committed an offense of caste-based discrimination, and therefore punishment as per No. 10 (A) of the Chapter on Etiquette (*Adal*) of the General Code is sought against him. Jung Bahadur initially appears to have submitted a complaint stating that 20 - 25 persons had committed an act of caste-based discrimination. It is seen that later only one Tek Bahadur Bista was named as having committed such an act, while the investigation also was not able to reveal the names of other persons. In addition, even though it is mentioned in the charge sheet and the FIR that along with the physical assault, a golden chain, a mobile phone and cash were looted, but no claim has been made in this regard.

11. Only the defendant has been named in the charge of committing racial discrimination against the people of the marriage procession. This complainant is also said to have suffered beatings and received injuries, but no case has been filed thereto. The defendant is in denial of having committed an act of racial discrimination as claimed in the charge sheet and appellate petition in his statement with both the police and the court. The witnesses present at the marriage incident site from the camp of the plaintiffs Baji Auji and Bhakta Mijar have testified to the court that such an incident of discrimination was not committed. The bride's mother herself has testified in a paper that such discrimination was not committed. This shows the people supplying evidences from the side of the plaintiff are in controversy. Thus, there is no evidence to establish that the the defendant committed the offense of racial discrimination and untouchability as per the Chapter on Decency/*Etiquette (Adal)* No. 10 of the General Code.

11. Therefore, the decision of the Appellate Court, Dipayal dated 14 December 2009 which upheld the initial judgment that the indictment claim was not sufficient due to the above-mentioned grounds and reasons, appears to be consistent and therefore is deemed to be upheld. This Bench could not agree with the ground taken by this Court while granting the space for the review. Plaintiff's prosecution claims and appeals cannot be reached. Deduct the registration fees as per the rule and submit the case file as per the rule.

I agree with the above decision.

Justice Tarkaraj Bhat

Dated: Monday, 06 August 2012.

Bench Officer: Churaman Khadka