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RAM SHARAN YADAV

v.

THAKUR MUNESHWAR NATH SINGH AND ORS.

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October 30, 1984

[S. MURTAZA FAZAL ALI AND SABYASACHI MUKHARJI, JJ.]

Representation of the People Act, 1951, Section 123 (2)—Corrupt Practice and undue influence in election law. standard of proof required— Interference by Supreme Court under Article 136 of the Constitution, in election case, when permissible and when benefit of doubt can be given.

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Ram Sharan Yadav, the appellant and a candidate sponsored by the Communist Party of India, was declared elected on 16.6.1977, to the Bihar Legislative Assembly from 241-Goh Assembly constituency, after polling 28,783 votes as against 16,458 votes polled by respondent No. 1 Thakur Muneshwar Nath Singh. An election petition was filed by the respondent No. 1 in the High Court for setting aside the election of the appellant on the ground that he had indulged in corrupt practices as envisaged in sec. 123(2) of the Representation of the People Act, 1951. It was alleged that the appellant through his agents, supporters and other people, duly instructed by him made an attempt to set at naught the electoral process by putting the voters in serious fear as they were threatened, assaulted and even firing was resorted to. The High Court found that the said acts which undoubtedly amount to undue influence had been committed not only at the instance but in the presence of the appellant and therefore allowed the petition and set aside the election of the people. Hence the appeal by Special Leave of the Court.

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Dismissing the appeal, the Court

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HELD : 1 :1. A charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. As the charge of corrupt practice is in the nature of a criminal charge it is for the party who sets up the plea of undue influence to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a Court that a candidate has been guilty of undue influence then he is likely to be disqualified for a period of 6 years or such other period as the authority concerned under section 8A of the Act may think fit. Therefore, as the charge, if proved, entails a very heavy penalty in the form of disqualification the Supreme Court has held that a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate. [1092C-E]

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1 : 2. Another well settled principle is that before the allegation

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A of undue influence can be proved, it must be shown that undue influence proceeds either from the candidate himself or through his agent or by any other person either with his consent or with the consent of his election agent so as to prevent or cloud the very exercise of any electoral right. [1092F]

1 : 3. Where allegations of fraud or undue influence are made while insisting on standard of strict proof, the Court should not extend or B stretch the doctrine to such an extent to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. [1093F]

1 : 4. By and large, the Court in such cases while appreciating or analysing the evidence must be guided by the following considerations:[1093G]

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(1) the nature, character, respectability and credibility of the evidence; [1093H]

(2) the surrounding circumstances and the improbablities appearing in the case ; [1093H]

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(3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behavior, character and demeanor of the witnesses appearing before it, and [1094A]

(4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged. E [1094B]

1:5. There is no ritualistic formula nor a cut-and-dried test to lay down as to how a charge of undue influence can be proved but if all the circumstances taken together lead to the irresistible inference that the voters were pressurised, threatened or assaulted at the instance of either the candidate or his supporters or agents with his consent or with his F agents consent that should be sufficient to vitiate the election of the returned candidate. The state of evidence in the present case, is both complete and conclusive. All the witnesses who appeared to prove the allegation of undue influence have in one voice categorically stated that voters were threatened, assaulted and even a bomb was hurled so that they may not cast their votes. The witnesses have also said that all this was done in the presence of the appellant. [1093D-E ; 1094C-D]

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1:6. The plea of alibi, to the effect that the appellant did not go to the polling booth cannot be accepted, inasmuch as (a) such a plea was not taken in the written statement and (b) such a self imposed restriction not to leave the village and find out what was happening in his constituency is both unnatural and improbable. A close scrutiny of the evidence makes it clear that the appellant was undoubtedly present at the Bhurkunda Polling booth at the time when the voters were going to cast their votes H and his agents or supporters indulged in acts of assault, hurling of bombs

etc. in his presence and he did not stop them from doing so from which a conclusive inference can be drawn that the acts of assault, arosen, etc. were committed with the positive knowledge and consent of the party himself or his agents. Clearly it is not a case where two views were possible so that the appellant could be given the benefit of doubt. [1096A-B, 1097A-B, 1098B]

Daulat Ram Chauhan v. *Anand Sharma* [1984] 2 S.C.C. 64, (p. 73 para 18); *Manmohan Kalia* v. *Yash and Ors.* [1984] 3 S.C.C. 499 (p. 502 para 7); *A. Younus Kunju* v. *R. S. Unni ond Ors.* [1984] 3 S.C.C. 346 (p. 349); and *Samant N. Balakrishna etc.* v. *George Fernandez and Ors.* [1969] 3 S.C.R. 603 (pp. 618-619); followed.

2. Normally, the Supreme Court in appeal does not interfere on a finding of this type unless there are *prima facie* good grounds to show that the High Court has gravely erred, resulting in serious prejudice to the returned candidate. [1092H; 1093A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 893 of 1980.

From the Judgment and Order dated the 10th April, 1980 of the Patna High Court in Election Petition No. 20 of 1977.

R.K. Garg and *V.J. Francis* for the Appellant.

L.R. Singh and *A. Sharan* for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. The election appeal is directed against a judgment dated April 10, 1980 of the Patna High Court setting aside the appellant mainly on the ground that he had been found guilty of indulging in corrupt practice in the election held on 10.6.77 to the Bihar Legislative Assembly from '241-Goh Assembly constitueney'. The result was announced on 16.6.77 in which Ram Sharan Yadav (appellant), a candidate sponsored by the Communist Party of India, was declared elected after polling 28,783 votes as against 16,458 votes polled by Thakur Muneshwar Nath Singh (the first respandent herein). An election petition was filed by the respondent in the High Court for setting aside the election of the appellent on the ground that he had indulged in corrupt practices as envisaged in s. 123 (2) of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act'). The plea of the respondent found with the High Court which set aside the election of the appellant. Hence, this appeal to this Court.

Serveral decisions of this Court have laid down various tests

A to determine a corrupt practice and the standard of proof required to establish such corrupt practices and it is not necessary for us to repeat the dictum laid down by this Court and the approach to be made in detail because the matter is no longer *res integra* and is concluded by a large number of authorities. To quote a few recent ones : *Daulat Ram Chauhan* v. *Anand Sharma*,[1] *Manmohan Kalia* v. *Yash & Ors.*,[2] *A. Younus Kunju* v. *R.S. Unni and Ors.*[3] as also an earlier decision of this Court in *Samant N. Balakrishna etc.* v. *George Fernandez and Ors. etc.*[4]

The sum and substance of these decisions is that a charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. As the charge of a corrupt practice is in the nature of criminal charge, it is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a court that a candidate has been guilty of 'undue influence' than he is likely to be disqualified for a period of six years or such other period as the authority concerned under s. 8A of the Act may think fit. Therefore, as the charge, if proved, entails a very heavy penalty in the form of disqualification, this Court has held that a very cautious approach must be made in order to prove the charge of undue influence lavelled by the defeated candidate.

Another well settled principle is that before the allegation of 'undue influence' can be proved, it must be shown that 'undue influence' proceeds either from the candidate himself or through his agent or by any other person either with his consent or with the consent of his election agent so as to prevent or cloud the very exercise of any electoral right.

We have heard counsel for the parties at great length and have also gone through the very well-considered judgment of the High Court which has dwelt on various aspects of the matter and has held that the charge levelled by the respondent has been fully proved. Normally, this Court in appeal does not interfere on a finding of

(1) [1984] 2 S.C.C. 64 (p, 73 para 18).
(2) [1984] 3 S.C.C. 499 (p. 502 para 7).
(3) [1984] 3 S.C.C. 346 (p. 349).
(4) [1969] 3 SCR 603 (pp. 618-619).

this type unless there are prima facie good grounds to show that the High Court has gravely erred, resulting in serious prejudice to the returned candidate. A

The facts of the case lie within a very narrow compass and have been fully narrated in the judgment of the High Court and it is not necessary for us to repeat the same all over again. Even so, we would like to point out just a few clinching facts which fully fortify the conclusions of the High Court. B

The main allegation against the appellant is that he had through his agents, supporters and other people, duly instructed by him, made an attempt to set at naught the electoral process by putting the voters in serious fear as they were threatened, assaulted and even firing was resorted to. On the finding of the High Court, it is further proved that the acts mentioned above, which undoubtedly amount to 'undue influence', had been committed not only at the instance but in the presence of the appellant. There is no ritualistic formula nor a cut-and-dried test to lay down as to how a charge of undue influence can be proved but if all the circumstances taken together lead to the irresistible inference that the voters were pressurised, theatened or assaulted at the instance of either the candidate or his supporters or agents with his consent or with his agents' consent that should be sufficient to vitiate the election of the returned candidate. C D E

We would, however, like to add a word of caution regarding the nature of approach to be made in cases where allegations of fraud or undue influence are made. While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation on corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. F

By and large, the Court in such cases while appreciating or analysing the evidence must be guided by the following considerations : G

(1) the nature, character, respectability and credibility of the evidence,

(2) the surrounding circumstances and the impraobilities appearing in the case, H

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(3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behaviour, character and demeanor of the witnesses appearing before it, and

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(4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged.

More than this we would not like to say anything at this stage. We have already pointed out that the learned High Court Judge has very carefully marshalled the evidence and in doing so has faithfully followed the aforesaid principles enunciated by us.

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The state of evidence in the present case appears to be both complete and conclusive. All the witnesses who appeared to proved the allegation of undue influence have in one voice categorically state that the voters were threatened, assaulted and even a bomb was hurled so that they may not cast their votes. The witnesses have also said that all this was done in the presence of the appellant. In rebuttal, the appellant has produced himself and two witnesses to support his case that he did not indulge in any corrupt practice. In other words, his evidence is just a bare denial of the allegations made against him. The High Court has very thoroughly scanned and weighed the evidence and pointed out that the respondent has produced independent witnesses to show that undue influence was practised with the direct connivance of the appellant.

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Without, therefore, going into further details we would just indicate the dominant features of the findings of the High Court with which we entirely agree. The evidence led by the respondent consists mainly of PWs 1, 27, 32, 35, 39 and 41. Out of these witnesses, PWs 27, 32, 35, 39 and 41 are independent voters, not belonging to any party. Their evidence stands corroborated by the FIR lodged in the police station soon after the occurrence as a result of which the police reached the spot of occurrence and found that there was a lot of trouble in the Bhurkunda booth where the voters were pressurised and intimidated. As a sample, PW-39 (Kamta Prasad Singh), who was a voter in the aforesaid election, has stated that he had gone to cast his vote at about 11.30 a.m. and was standing in the queue alongwith 20-25 other voters. He further testifies that he saw the respondent at the booth and that he also knew the appellant (Ram Sharan Yadav). He goes on to narrate that he saw one Ram Prased Yadav of Ibrahimpur at the booth; the

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appellant appeared on the scene and asked Ram Prasad Yadav as to how the polling was going on, to which he was informed that the polling did not appear to be favourable to him. Thereupon, the appellant ordered Ram Prasad Yadav to capture the booth and after giving this instruction he left the place. It is clear from the evidence of this independent witness that the threatening and obstructing of the voters was done at the orders of the appellant himself which amply proves the allegation of undue influence. The witness goes on to state that after the appellant had left the place, about 300-400 men of the appellant surrounded the booth and removed the voters, including the witness, from the queue and therefore they could not cast their votes. Among the persons who had acted in such a fashion, the witness identified, Babu Chand, Ram Chandra Mahto, Bisheshwar Yadav, Ram Prasad Yadav and Surajdeo Yadav. In cross-examination, the witness clarified that he made an oral complaint to the Presiding Officer that he was not allowed to cast vote and a written complaint was given by the sarpanch of the village. He could not inform the respondent because he was himself surrounded by the mob.

After perusing his evidence, it seems that the witness (PW 39) has given a very starightforward evidence which bears a ring of truth and does not appear to have been shaken in cross-examination on any vital point. The witness being an independent voter had no axe to grind against the appellant and there is no reason why he should have come forward to depose falsely. Similar is the evidence of PWs 27, 32 and 35 which has been fully scanned and considered by the High Court. Another independent witness, PW 41, has also fully corroborated the evidence of other independent witnesses indicated above. To the same effect is the evidence of PW 62, Ramdeo Singh, who has also stated that he was informed that men of Ram Sharan Yadav had snatched away the ballot papers and torn them and created all sorts of disturbance. He further stated that Mukhlal Singh, Advocate, who was the polling agent of Ram Sharan Yadav, had led the mob of miscreants at the booth. Similar is the evidence of other witnesses who have not been in any way broken of shattered in cross-examination. The High Court has rightly pointed out that the FIR clearly gives the details of the incidents soon after they had happened.

As against the overwhelming evidence adduced by the respondent, the evidence of Ram Sharan Yadav (appellant) himself is one of a plea of alibi who stated that he did not go to Bhurkunda polling booth at all and that on the date of poll he was at his village

A Haspura in his party's election office. It is difficult to believe that being a candidate himself why did he choose to impose a self-made restriction not to leave the village and find out what was happening in his constituency. Such a conduct is both unnatural and improbable and speaks volumes against the defence of the appellant. It is interesting to note that this plea of alibi, viz., that he did not B go to the polling booth was not taken in his written statement. He seems to have given a very lame explanation for his absence from the polling booths and the High Court has rightly pointed out that this is an afterthought. In this connection, the High Court observed thus :

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> "I am, therefore, of the poinion, that the aforesaid alibi has been invented by respondent No. 6 for the first time when he came in the witness box with a view to controvert the evidence adduced on behalf of the petitioner that on the date of poll he had gone to Bhurkunda Booth at D about 11.30 a.m..... In his cross-examination he has pleaded ignorance if his workers had surrounded the petitioner on the date of poll at Bhurkunda Booth, and he has further pleaded ignorance if any criminal case concerning the incident at the Bhurkunda Booth was instituted by Shri Ramesh Chandra Raman, the Magistrate-in-charge of the striking force, or if any weapon like lathi, grasa, E etc. was recovered from the arrested persons at Bhurkunda Booth."

Having regard to his evidence, the High Court concludes as follows :

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> "In view of the overwhelming evidence adduced on behalf of the petitioner, which I have already discussed above, I am also not prepared to place any reliance on the aforesaid feigned ignorance of respondent No. 6."

As regards the evidence of Kailash Yadav (RW 12), he has G merely stated that when he reached the Bhurkunda booth at 11.30 a.m. he found the poll to be peaceful. In order to explain away the exact happenings at the said booth he stated that after casting his vote he left his village at about 3.00 p.m. and remained out for about a month.

After a close scrutiny of the evidence we are fully satisfied H that the appellant was undoubtedly present at the Bhurkunda polling

booth at the time when the voters were going to cast their votes and his agents or supporters indulged in acts of assault, hurling of bombs, etc., in his presence and he did not stop them from doing so from which a couclusive inference can be drawn that the acts of assault, arson, etc. were committed with the positive knowledge and consent of the appellant himself or his agents. As the High Court has very carefully considered the evidence of each witness, it is not necessary for us to tread the some ground all over again. The final finding arrived at by the High Court may be extrated thus :

> "Thus I have examined and discussed above the oral and documentary evidence adduced by the parties with regard to 79-Bhurkunda booth, from which it is clear that there is abundance of reliable evidence on the record to prove the petitioner's case that on the date of poll. at about 11.30. a.m. Respundent No. 6 Ram Sharan Yadav, had arrived at Bhurkunda Booth in his jeep and enquired about the trend of the poll from his man, Ram Prasad Yadav of village Ibrahimpur, who told him that the poll at the booth was poor in his favour and thereupon Respondent No. 6, Ram Sharan Yadav, ordered his men and supporters, who were standing at the polling booth, to capture the booth by scaring away the voters and also to surround the both and the petitioner, and, after giving the said order, he left both and, thereafter his workers and supporters surrounded the booth and scared away the voters and prevented them from exercising their right of franchise and also surrounded the petitioner and held him up there, and the same is nowhere shaken by the merger and unbelievable evidence adduced on behalf of Respondent No. 6 in this regard. Therefore, it is held that respondent No. 6 and his workers, with consent, did commit that corrupt practice of undue influence at Bhurkunda booth by interfering with the free exercise of the electoral rights of the voters to cast their votes according to their choice."

We might mention here that the High Court has rejected all the allegations regarding other grounds and his confined its attention only to Bhurkunda booth which, if proved, is by itself sufficient to prove that the appellent was guilty of indulging in the corrupt practice of 'undue influence'.

Mr. Garg, appearing for the appellant, submitted that the allegation of attacking or harassing the voters or driving them out

A is a make-believe story but he has not been able to show as to why the allegation deposed to by the witnesses should be disbelieved particularly when the independent witnesses examined by the respondent have positively proved the presence of the appellant.

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After a careful perusal and discussion of the evidence we entirely agree with the conclusions arrived at by the High Court and hold that there is no reason to interfere with the judgment of the C High Court so as to take a different view. In our opinion, it is not a case where two views were possible so that the appellant could be given benefit of doubt.

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

S.R. *Appeal dismissed.*