

Ram Jiwan Singh

Vs

Sis Ram and Another

Civil Appeal No. 1683 of 1973

(M.H. Beg, A.C. Gupta JJ)

22.09.1975

JUDGMENT

GUPTA, J. -

1. The appellant contested unsuccessfully the election to Haryana Vidhan Sabha from Pataudi constituency held in March, 1972. Poll was taken on March 11, 1972, counting took place the next day i.e. March 12 following which the first respondent was declared elected. The appellant presented an election petition in the Punjab and Haryana High Court challenging the election of the first respondent on several grounds of which only three have been pressed in this appeal. All the grounds urged before us related to corrupt practices as defined in sub-sections (2), (3), (4) and 7 (d) of Section 123 of the Representation of the People Act, 1951.

2. Section 123(2) provides that undue influences meaning any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right shall be deemed to be corrupt practice for the purposes of the Act. This clause has a proviso which says inter alia that any person who threatens any candidate or an elector or any person in whom a candidate or an elector is interested, with injury of any kind shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause. The allegations under this head are set out in paragraph 12(i) of the election petition which reads as follows :

That from village Babra, a group of Ahir electors led by Lila son of Makhan including Champat son of Mangal Singh, Hukam Chand son of Mani Ram and Dilip Singh Lambardar went to polling station No. 19 at village Jaraula at about 1 p.m. on March 11, 1972 in order to poll their votes. When Hukam Chand, Lila, Dhanpat and others were standing in the queue for the purpose of exercising their right of franchise, Umed Singh, an agent of respondent No. 1 on being asked and told by Dhanpat that he would vote for the candidate of Vishal Haryana Party, pushed him out of the queue and told him that if Congress candidate, respondent No. 1 is not voted for by him, then he would not be allowed to vote. On altercation between them Sultan son of Ram Bal Jat of village Jaraula, Ram Kala son of Maru, Manhar son of Kanhaya and Ganga Dutt son of Kishan, who were active supporters and workers of respondent No. 1 assaulted Dhanpat and Lila by lathis resulting several injuries on their persons. The polling agent of the petitioner complained of the incident to the presiding officer but to no effect. Then the said two injured persons helplessly left the spot and were medically examined at about 3.15 p.m. at Primary Health Centre, Pataudi on March 11, 1972 and a report was also submitted to the police station

Farrukh Nagar for necessary action in the matter. On being threatened by the agent and supporters of respondent No. 1 in the same manner, quite a number voters of village Babra returned without polling their votes and thus they were directly and indirectly interfered with the free exercise of their electoral rights at the instance of respondent No. 1 had visited the polling station just about half an hour before the incident and had told his agent and there persons to see that Babra voters are not allowed to poll their votes.

It should be mentioned that the polling station at Jaraula served for two villages, Jaraula and Babra : admittedly, Jaraula is inhabited predominantly by Jats and Babra by Ahirs. The appellant is an Ahir and the first respondent is a Jat. Lila Ram who was one of the two injured as a result of the alleged assault by the supporters of the first respondent, deposed as PW 6. He is of village Babra. His evidence is that on the date of poll he came to the polling station accompanied by Dhanpat, Hukam, Dalip who were all witnesses and two or three other voters. After he had fixed his thumb-impression on the counterfoil of the ballot paper but before he could cast his vote, he heard a noise from outside and leaving the ballot paper on the table of the officer ran out without casting his vote to ascertain what the noise was about. He was Dhanpat struggling with Sultan and Ahmed who were workers of respondent No. 1. He tried to disengage them when several persons of whom he named Ram Pal, Ganga Datt and Nauhar hit him with lathis on the head. He fell down unconscious and regained consciousness in Gurgaon hospital. He did not report the matter to the police; on the second or third day of his return to his village he came to know that Hukam Chand had lodged a report with the police. The evidence of PW 7 Dhanpat who is the other person who was injured is that when he was standing in the queue waiting for his turn to vote, Umed Singh, polling agent of the first respondent, came up and enquired of him as to which candidate he was going to vote for. On the witness telling Umed Singh that he would vote for Vishal Haryana Party, Umed Singh pulled him out of the queue and started beating him. The others Nauhar Singh, Ram Kala and Ganga Datt, also joined Umed Singh and beat up the witness with lathis. Hearing his screams his uncle Lila Ram, PW 6, tried to come to his rescue but those persons also assaulted Lila Ram with lathis. Lila Ram fell down unconscious being hit on the head when Umed Singh and his companions ran away. The witnesses and two others, Karan Singh and Dalip Singh, carried Lila Ram who was still unconscious to Pataudi Civil hospital where a doctor gave medical aid to both the victims. Hukam Chand proceeded to the police station to lodge a reported accompanied by Dalip Singh. According to the witness he could not exercise his right of vote. From Pataudi Dhanpat and Lila Ram were removed to Gurgaon hospital and they returned to their village after two days. According to this witness he complained to the policeman on duty when Umed Singh started abusing him but the policeman took no step. The doctor at Pataudi had asked him if they had reported he matter to the police and he told him that this had been done. According to the witness they did not pay any fee to the medical officer who attended him and his uncle Lila Ram at Pataudi.

3. PW 14 Roop Chand who was the petitioner's polling agent at Jaraula polling station also claimed to have seen Lila Ram being beaten with lathis and stated that he complained to the Presiding Officer verbally. Of the two other eyewitnesses to the incident, PW 8 Dalip Singh's version is that the sent Lila Ram and Dhanpat to Pataudi hospital in a jeep and then ran away from the place along with others out of fear, thinking that no further polling would be possible; PW 11 Hukam Chand

went to Farukh Nagar police station at 3 p.m. and handed over to the Head Constable a written application narrating the incident. According to him he had to wait for about an hour or an hour and a half before his report was recorded in the daily diary. He then visited the injured at the Civil Hospital, Gurgaon about 8.30 p.m. Hukam Chand told Dhanpat that he had lodged a report about the incident at Farukh Nagar police station. PW 9 Jagir Singh, Head Constable of police station. Farukh Nagar, admitted that Hukam Chand had submitted a written application which was copied out and entered by him in the daily diary report (roznamcha).

4. The fact that Lila Ram and Dhanpat were injured cannot be doubted. But the High Court on a consideration of the relevant circumstances, including contradictions in the evidence of the alleged eyewitnesses, felt serious doubts as to the place and the nature of the occurrence and the persons involved in it, and held that the petitioner had failed to prove beyond doubt that Dhanpat and Lila Ram were assaulted in or near the polling station Jaraula in the manner alleged in the petition. We may refer to some of the circumstances which make it difficult to accept the version of the incident appearing in the evidence of the petitioner's witnesses. The delay in reporting the matter to the police is a circumstance which cannot be ignored. The incident is alleged to have taken place at 12.30 p.m. to 1 p.m. The injured were removed from the spot at 2.30 p.m. It is difficult to see why no information was sent either to the police or to the Polling Officer on duty in the meantime. Hukam Chand's evidence is that when he was on his way to the police station at Farukh Nagar and was only 200 yards away from the polling station, he saw a police jeep arriving at the spot. In reply to a question why instead of travelling all the way to Farukh Nagar he did not inform the police officers there and then, his reply was that it did not just "occur" to him; the explanation does not sound at all convincing. The medical officer at Pataudi who examined Lila Ram and Dhanpat asked Dhanpat whether the police had been informed, and Dhanpat told him that they had already informed the police. This statement contradicts Dhanpat stated earlier in his evidence that he learnt from his co-villagers when he returned to his village on the following day that Hukam Chand had lodged report with the police. Hukam Chand however claims that he had about the incident at the Farukh Nagar police station. No exception can therefore be taken to the observation of the High Court that the delay in informing the police was because time was taken to think out the best possible way to exploit the injuries to Lila Ram and Dhanpat and utilise the incident, wherever it may have happened, for the purpose of a possible election petition, and that the statement Dhanpat made to the medical officer at Pataudi was also to dissuade him from making any report to the police on his own. We also agree with the High Court that the evidence of Lila Ram that when he complained to the policeman on duty about the abuses hurled by the respondent's men he took no steps, and that of PW 14 Roop Chand that he had verbally complained to the proceeding officer who did not pay any heed to it, are both difficult to believe. It is also to be noted that Lila Ram who claimed to have become unconscious after he was assaulted and regained consciousness in Gurgaon hospital, is contradicted by PW 10 Dr. Mittal who said that when he examined Lila Ram at the Public Health Centre in Pataudi at 3.15 p.m. he found Lila Ram fully conscious and able to answer his questions which the doctor noted in his report. All these justify the conclusion that the incident which resulted in injuries to Lila Ram and Dhanpat was shaped and adopted to serve as a ground for the election petition.

5. It may not be altogether improbable that the incident happened in front of the polling station, but there is no convincing evidence to connect the first respondent with it. If it was a sudden quarrel between Dhanpat or Lila Ram and any of first respondent's workers, the ingredients of Section 123(2) would still be missing. The evidence led to implicate the first respondent is not credible. PW 12 Sri. Chand and PW 13 Nathu have disposed that sometime between 11.30 p.m. and 12 the first respondent came to the Jaraula polling station in a jeep and said something to his workers. The

versions of PW 12 and PW 13 however vary as to what exactly the respondent told his workers to do. According to PW 12 the respondent instructed his workers to see that voters from Babra voted in his favour and to threaten them, if it was necessary so to do, for that purpose. PW 13 says that the respondent told his supporters that Babra voters should be scared away. It is significant that in the affidavit accompanying the election petition neither PW 12 nor PW 13 has been mentioned as an informant with regard to the allegation in paragraph 12(i) of the petition. PW 13 Nathu has said in his evidence that he did not inform anyone of what he had heard. The High Court also took note of the improbability that the first expedient should instruct his workers to do something which was wholly illegal in such a loud tone as to enable all, including the petitioner's men, to overhear what he was saying. We agree with the High Court that the attempt to link the respondent with the incident which caused injuries to Lila Ram and Dhanpat is wholly unconvincing. Another circumstance which belies the petitioner's version of the incident is the admitted fact that till the alleged incident had taken place 50 per cent of the voters at the police station had cast their votes and the percentage of votes polled ultimately at the polling station was 90. If the incident happened in front of the polling station as alleged, it would be very difficult to explain the large number of votes polled even after the occurrence.

6. The corrupt practice alleged under Section 123(7)(d) of the Act is based on the allegations contained in sub-paragraphs (a) and (b) of paragraph 12(vi) of the election petition. The allegations sub-paragraph (b) however have not been pressed before us. The material allegations in substance are as follows.

7. Yashwant Singh, Assistant Sub-Inspector of Police who was the Station house officer, Pataudi, and the first respondent, who were both Jat by caste had come to an understanding that the policeman would help the first respondent in all possible manner to further his election prospects. Yashwant Singh was seen, accompanied by the first respondent, openly canvassing for him in villages Hussainka and Gudena on March 8, 1972 three days before the poll. The petitioner who came to know of this on March 9 informed the concerned authorities of the matters by telegram. On the day of election the first respondent was seen in village Dhani Kumbawas "patting" Yashwant Singh on the shoulders and telling him to proceed according to plan and contact the "concerned polling officer". At about 11.45 a.m. the polling officer at the polling station Dhani Kumbawas, Hira Lal was "caught red handed" by the petitioner's polling agent Khushi Ram, cancelling a ballot paper. Being challenged, Hira Lal gave Khushi Ram an explanation in writing. The explanation which is Ext. PW 20/P 8 runs as follows :

I was arranged and posted on duty through Captain Sis Ram so that I may be helpful to him. At about 10.15 Jashwant Singh S.H.O. came to me called me and carried me alone with him, and told as much as may be possible to cancel. I followed his instructions and did act accordingly and started to affix the thumb-impressions of both the thumbs. I was caught by Khushi Ram. On discussion, it has been written with my will.

The first respondent admitted that he happened to know A. S.I. Yashwant Singh but denied any intimacy with him or that they had any sort of understanding with him as alleged by the petitioners; he also denied that he was in any way instrumental in having Hira Lal posted for election duty at Dhani Kumbawas. The allegation as to canvassing was sought to be proved by two witness PW 15 Sri Ram, and PW 16 Chhaju. Both of them are residents of village Gundas. Neither of these witness says that Yashwant Singh was accompanied by the first respondent as alleged in the

According to the petitioner the information regarding the alleged canvassing was given to him by PW 15 and PW 16 and one Mehar Chand. Mehar Chand has not been examined and PW 15 denied having informed the petitioner of this fact. In these circumstances the High Court rightly thought it unsafe to rely only on their oral evidence. A.S.I. Yashwant Singh (RW 10) has denied having canvassed for the respondent or helping him in any manner in the election. No copy of the telegrams alleged to have been sent by the petitioner to the authorities concerned has been proved. PW 17, PW 18 and PW 19 were examined to prove the allegation that the respondent had asked A.S.I. Yashwant Singh to contact the Polling Officer. According to PW 17, the respondent told A.S.I. Yashwant Singh to work 'in the proper way' and asked him to go inside the polling booth and talk to the Polling Officer. The version of PW 18 is that Yashwant Singh was asked to go inside and meet the Presiding Officer. The evidence of PW 19 again is somewhat different from either of the two other witnesses. More important, however, is the discrepancy in their evidence about the exact spot where the first respondent had given these instructions to Yashwant Singh. PW 17 said that the first respondent and Yashwant Singh were both inside the compound of the polling station which had no wall, the limits of the compound being marked by a ridge which was not very high. PW 18 in examination-in-chief stated that the meeting between the respondent and Yashwant Singh took place outside the polling station. In cross-examination he denied this and said that the meeting took place inside the compound of the polling station. PW 19 again said something different. According to him, the polling station had a compound wall about 5 1/2 feet high and he conversation between the first respondent and Yashwant Singh took place outside that compound wall. We agree with High Court that it is difficult to believe that in the presence and hearing of so many persons including workers of the rival candidate the first respondent would openly ask A.S.I. Yashwant Singh to proceed according to plan and to see the Polling Officer or the Presiding Officer, A.S.I. Yashwant Singh (RW 10) admitted that he visited Dhani Kumbawas in the morning, adding that he reached only at about 3 or 4 in the afternoon, in connection with his duty of maintaining law and order near about the polling station. He denied meeting the first respondent at Dhani Kumbawas and stated that he did not enter the polling station or go inside the polling station or go inside the polling booth.

8. The next link in the chain of the petitioner's case on this point relates to what has been described by the High Court as 'ballot spoiling incident. Three witnesses have been examined on this point. PW 20 Khushi Ram, who was the petitioner's election agent at that polling booth, PW 31 Surinder Singh, petitioner's son and polling agent, and PW 30 Hiralal, the Polling Officer. According to Khushi Ram, at about 11.45 a.m. he detected Hira Lal putting his own thumb-impression on a ballot paper. Khushi Ram snatched away the ballot paper from Hira Lal and asked the Presiding Officer to stop further polling and polling was suspended for about an hour. He informed Surinder Singh and the latter came to the polling station at about 1.30 p.m. Before the arrival of Surinder Singh, Khushi Ram, had complained to the Presiding Officer whereupon the latter summoned Hira Lal and asked him to make a statement in writing explaining his conduct. Hira Lal then wrote out the document, Ext. PW 20/P 8 which the Presiding Officer made over to Khushi Ram and Khushi Ram passed it onto the petitioner that very day at 3 p.m. when the petitioner visited the polling station. According to Khushi Ram the Presiding Officer did not keep a copy of the document with him. In answer to question as to why the Presiding Officer should make over this writing to him, Khushi Ram said

that he insisted on some proof in writing of the fact that Hira Lal was caught "red-handed" while spoiling the ballot paper. According to Surinder Singh who came to the polling station at about 1.30 p.m. having been informed of this incident, he met the "higher authorities", and that after leaving the polling station he went to Pataudi and sent three identical telegrams, one each to the Chief Election Commissioner for Haryana and the Deputy Commissioner Gurgaon.

9. The Polling Officer Hira Lal did not deny that the alleged confession Ext. PW 20/P 8 was in his handwriting and bore his signature. His version of the incident and how the alleged confession came into existence is like this. His duty was to fold ballot papers and to hand over the seal to the voter after rubbing it with the inkpad. Some ink from the pad had smeared his fingers, as a result of which his finger marks were imprinted accidentally on a ballot paper. The Presiding Officer cancelled that ballot paper, made over a fresh one to the voter, and changed the duty allocated to Hira Lal. Hira Lal's explanation of the incident was recorded in a document, Ex. PW 30/R 2, which he submitted to the Presiding Officer immediately after the occurrence. This document also bears an endorsement of the Presiding Officer Mangal Sain which reads :

Only one ballot paper was spoiled by the polling officer, and the same ballot paper was cancelled by me, and spoiled ballot paper was field at another place, and then the work was done properly and rightly.

According to Hira Lal his alleged confession was forcibly taken from him sometime towards the end of June, 1972, more than three months after the incident by Khushi Ram, Surinder Singh and two or three other persons. Hira Lal's story is that at about 8.30 in the night Surinder Singh, Khushi Ram and several other persons threatening him with gun forced him to get into a jeep which was driven into a jungle and he was made to write out the 'confession' to the dictation of Surinder Singh, and after this was done, they left him there alone and sped away in the jeep, and that before leaving they warned him that he would be killed if he disclosed the incident to anyone.

10. The Presiding Officer Mangal Sain deposed as RW 5. He supported the version of the incident given by Hira Lal as to how the ballot paper in question came to be spoiled. According to this witness Hira Lal himself brought to his notice that the ballot paper had spoiled accidentally. He then asked Hira Lal to give him statement in writing. Hira Lal then wrote out the report, Ex PW 30/R 2 in the presence of Khushi Ram and others. The witness then read out the statement loudly and endorsed his own comments on the same paper, to which we have already referred. The witness stated that Surinder Singh who visited the polling station at about 1 p.m. made no enquiries from him regarding the incident, and denied that the polling was suspended for any time. In the course of cross-examination of this witness, a document was produced on behalf of the petitioner Officer. This document, marked Ext. RW 5/P 14, reads :

#To The Returning Officer, Gurgaon.Sir,Ballot Paper No. 061511 was shown to me by Shri Khushi RamAgent as V.H.P. there was a thumb-impression on the ballotpaper at the symbol of Shri Sis Ram one of the candidates.Shri Khushi Ram Agent reported that it was done by ShriHira Lal son of the Polling Officer the case caught at 11.45a.m. and polling was restarted 12.45 p.m. it was also noticedin the early hour. I warned to Shri Hiralal to be more careful.I have taken the ballot paper in question from Shri KhushiRam Agent. Yours faithfully, Sd. Mangal Sain 1-3-72, 11-3-72 P.O. 79, Govt. Pry. School. Dhani Khumbhawas Bhorakalan.##

Seeking to explain this documents the witness said :

I had written this document also. I was coerced to write this document 3 or 4 days after this incident a Gurgaon by Khushi Ram and Surinder Singh son of the petitioner.

According to the witness, Khushi Ram and Surinder Singh had threatened him that unless he agreed to write as he was told he would not be allowed to live in Gurgaon, and out of fright he obliged. Mangal Sain added that he made over this document RW 5/P 14 to the General Assistant to the Deputy Commissioner a few days later but was told that nothing could be done with regard to his complaint at that stage.

11. Ranjit Singh, General Assistant to the Deputy Commissioner, Gurgaon and Returning Officer for Pataudi assembly constituency, was examined as RW 4. He enquired into the circumstances leading to the spoiling of the ballot paper. His evidence is that he made enquiries from the Presiding Officer Mangal Sain and also from the polling staff and the polling agents of the candidates. The Presiding Officer handed over to him a report which he had prepared containing his version of the incident. According to the witness no one complained to him that the polling officer had deliberately spoiled the ballot paper. On the basis of the report submitted by the Presiding Officer which, on enquiry, he accepted as correct, he prepared his own report on the same day immediately on reaching his headquarters. That report is Ext. PW 4/P 14, which according to Mangal Sain, he was coerced to write and which he later made over to Ranjit Singh.

12. The High Court on examination of the evidence found that the report of the Polling Officer, Ext. PW 30/R 2, and the endorsement thereon made by the Presiding Officer contained the authentic version of the incident regarding the ballot paper, that Exts. PW 20/PW 8 and RW 5/P 14 containing different versions of the incident must have come into existence subsequently as the suspicious circumstances surrounding the execution of these two documents suggested. The High Court did not fail to notice that the Polling Officer's story of threat and coercion seemed somewhat exaggerated but in view of the other circumstances did not attach much importance to those exaggerations; among the circumstances that weighed with the High Court were that there was no possible reason why notice of the Returning Officer was not drawn to Hira Lal's alleged confession contained in Ext. PW 20/P 8, the fact that no mention was made about Hira Lal's alleged confession in the telegraphic complaint made by Surinder Singh to the election authorities regarding the ballot paper incident, and the circumstances that the document, Ext. PW 20/P 8, did not contain any endorsement of the Presiding Officer or any other Polling Officer which was only natural for Khushi Ram to obtain, if the allegation had been true. Considering the circumstances ourselves we think that the conclusion reached by the High Court is right and the version appearing from the report of the Presiding Officer Mangal Sain represents the correct account of the incident concerning the ballot paper.

13. As for the document, RW 5/P 14, this document was not referred to in the election petition, nor was it mentioned in the list of reliance, and, as stated earlier, Returning Officer Ranjit Singh was not asked any question regarding the document which was addressed to him. It was brought out for the first time when Mangal Singh Sain was confronted with it in cross-examination, it is also difficult to explain how this document, addressed to the Returning Officer, came to be produced from the petitioner's custody. For all these reasons the High Court declined, in our opinion rightly, to place any reliance on it.

14. The only other ground that was urged in this appeal, rather halfheartedly, is built on the allegations in paragraphs 7, 8, 12 (ii) and 12 (iii) of the election petition. It is stated that the first respondent got printed a handbill, Ext. PW 1/P 2 in the name of his agent and supporter Shiv Narain Chauhan from M/s. P. K. Press, Delhi, which, contains an appeal to the voters on the ground of castes and includes a wrong statement of fact, which the first respondent and his agent Shiv Narain both knew to be false, regarding the candidature of the second respondent, Shri Mangtu Ram, that he was a figurehead set up by the petitioner for this own benefit. It is further alleged that the first respondent and his agent Shiv Narain distributed copies of the handbill a few days before the polling in the meetings held in several villages in the Pataudi constituency with the intention of furthering the election prospects of the first respondent. The contents of the handbill distributed in these meetings constitute, according to the petitioner, corrupt practices within the meaning of sub-sections (3) and (4) of Section 123 of the Act.

15. The evidence as to the distribution of handbills, as found by the High Court, is vague and unconvincing. Khairati Lal (PW 1), proprietor of the press where the handbills are said to have been printed, had not met the person who placed the order for printing. The manager of the press who was best person to fix the identity of the person who placed the order was not examined. The manuscript of the handbill has not been produced, to which the explanation given by Khairati Lal that it had been destroyed was not found believable by the High Court. The register, Ext. PW 1/P 1, produced by Khairati Lal, discloses that it was not regularly kept in the course of business, and the entries therein have not been proved by independent evidence. We therefore, agree with the High Court that the petitioner has failed to prove the charge of corrupt practice under sub-sections (3) and (4) of Section 123 of the Act.

16. It is well settled now that unless the findings of fact recorded by the High Court suffer from any serious infirmity, this Court would not disturb such findings. On the evidence, the conclusions reached by the High Court, seem to be perfectly legitimate and reasonable and we find no case to take a different view. The appeal is accordingly dismissed with costs.

</html