

Ram Sharan Yadav

Vs

Thakur Muneshwar Nath Singh and Others

Civil Appeal No. 892 (NCE) of 1980

(Syed M. Fazal Ali, Sabyasachi Mukharji JJ)

30.10.1984

JUDGMENT

FAZAL ALI, J. -

1. This election appeal is directed against a judgment dated April 10, 1980 of the Patna High Court setting aside the election of the appellant mainly on the ground that he had been found guilty of indulging in corrupt practice in the election held on June 10, 1977 to the Bihar Legislative Assembly from '241-Goh Assembly constituency'. The result was announced on June 16, 1977 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 respondent herein). An election petition was filed by the respondent 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 Section 123(2) of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act'). The plea of the respondent found favour with the High Court which set aside the election of the appellant. Hence, this appeal to this Court.

2. Several decisions of this Court have laid down various tests 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 but is concluded by a large number of authorities. To quote a few recent ones : Daulat Ram Chauhan v. Anand Sharma ((1984) 2 SCC 64, 73 (para 18), Manmohan Kalia v. Yash ((1984) 3 SCC 499, 502 (para 7), A Younus Kunju v. R. S. Unni ((1984) 3 SCC 346, 349) as also an earlier decision of this Court in Samant N. Balakrishna v. George Fernandez ((1969) 3 SCR 603, 618-19 : (1969) 3 SCC 238, 248 : AIR 1969 SC 1201).

3. The sum and substance of these decisions is that a charge of corrupt practices 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 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 six years or such other period as the authority concerned under Section 8-A 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 levelled by the defeated candidate.

4. 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.

5. 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 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.

6. 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.

7. 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, threatened 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.

8. 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 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.

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

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

(2) the surrounding circumstance and the improbabilities appearing in the case.

(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 demeanour of the witnesses appearing before it, and

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

10. 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.

11. The state of evidence in the present case appears to be both complete and conclusive. All the witnesses who appeared to prove the allegation of undue influence have in one voice categorically stated that he 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.

12. 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 along with 20-25 other voters. He further testifies the 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 Prasad Yadav of Ibrahimpur at the booth; the 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 the 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.

13. After perusing his evidence, it seems that the witness (PW 39) has given a very straightforward 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 or 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.

14. 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 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 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 :

I am, therefore, of the opinion, that the aforesaid alibi has been invented by respondent 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 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, etc. was recovered from the arrested persons at Bhurkunda booth.

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

In view of the overwhelming evidence adduced on behalf of the petitioner, which I have already discussed above, I am not prepared to place any reliance on the aforesaid feigned ignorance of respondent 6.

16. As regards the evidence of Kailash Yadav (RW 12), he has 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.

17. After a close scrutiny of the evidence we are fully satisfied 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 conclusive 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 same ground all over again. The final finding arrived at by the High Court may be extracted 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. respondent 6 Ram Sharan Yadav, had arrived at Bhurkunda booth in his jeep and had 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 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 booth and the

petitioner, and, after giving the said order, he left the booth 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 6 in this regard. Therefore, it is held that respondent 6 and his workers, with his consent, did commit the 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.

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

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

20. 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 High Court so as to take a different view. In our opinion, it is not a case where two views were possible so the appellant could be given benefit of doubt.

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

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