Abdul Hussain Mir vs Shamsul Huda & Anr on 20 December, 1974

Equivalent citations: 1975 AIR 1612, 1975 SCR (3) 106, AIR 1975 SUPREME COURT 1612, 1975 4 SCC 533 1975 3 SCR 106, 1975 3 SCR 106, 1975 3 SCR 106 1975 4 SCC 533, 1975 4 SCC 533

Author: A. Alagiriswami

Bench: A. Alagiriswami, V.R. Krishnaiyer, Ranjit Singh Sarkaria

PETITIONER:
ABDUL HUSSAIN MIR

Vs.

RESPONDENT:
SHAMSUL HUDA & ANR.

DATE OF JUDGMENT20/12/1974

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
KRISHNAIYER, V.R.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 1612 1975 SCR (3) 106
1975 SCC (4) 533
CITATOR INFO :
D 1975 SC1634 (4,9)
RF 1976 SC1599 (6)
RF 1978 SC1162 (5)
R 1985 SC 89 (19)

ACT:
Representation of the People Act (43 of 1951) Ss. 83, 123(1) (2) and (3)-Scope of.

HEADNOTE:
The appellant is a Muslim, whose mother was a tribal Hindu who was converted to Islam on the eve of her marriage to a Muslim. In the election to the Assam Legislative Assembly from a constituency which is a tribal area of Assam with a

heterogeneous composition of tribesmen vaguely Hindu by persuasion, plainsmen Hindus and nearly 80% Muslims, the appellant was declared elected. The respondent filed an election petition challenging the election inter alia on three grounds : (1) that the appellant offered Rs. 2,000/to P.W. 12 a Mulla to collect votes for him, and though P.W. 12 refused the offer the appellant was guilty of the corrupt practice under s. 123(1) of the Representation of the People Act, 1951; (2) that the appellant was guilty of corrupt practice under s. 123(3) because he canvassed for votes on the basis of his religion by asking for votes on the ground of his being the son of a tribal Hindu woman; and (3) that the appellant exercised undue influence by threatening that the persons who might note for the respondent, could be identified and would be subjected to the same treatment as people of Bangladesh were by the Pakistanis. thus violating s. 123(2). The High Court allowed the petition.

Allowing the appeal to this Court,

(Per, Alagiriswami, J.)

(1) Regarding the first charge, P.W. 12 stated that the appellant offered him money if he would work for him in the election in the two villages in which he happened to be the Mulla. Another witness stated that the appellant told him that he had offered money to P.W. 12 for helping him in the election campaign but that P.W. 12 rejected the offer and, requested that witness to make over the money to P.W. 12 and prevail upon him to work for the appellant. These facts do not fall under s. 123(1). Therefore. it is unnecessary to discuss whether, if money is paid or offered as consideration for votes promised to be secured by a person using his influence it is bribery or not. because, the question does not arise out of the facts of this case. [108G109A]

(Per Krishna Iyer and Sarkaria, JJ.)

(1)(a) An appraisal of the evidence and an overall view of it makes it doubtful whether the appellant it even met P.W. 12 and therefore, the offer of the bribe had not been established. [123B; 126E-F]

(b) Section 123(1) requires (i) an offer or promise by the candidate etc., of gratification to any person, and (ii) the object must be directly or indirectly to induce an elector to vote or not to vote at an election. The purpose of the provision is to ensure poll purity and the exclusion of pollution by money power. If the payment is to induce an elector to vote, be it direct or vicariously, it is corrupt. If the money is paid as consideration for votes Promised to be secured by an important person of the locality using his sway it is bribery even though indirectly exercised. But, if the candidate pays money to use his good offices and canvass votes for him it would be a border line case. In the present case, if P.W. 12 had been paid the money striking a bargain for getting the votes in his ambit of influence it is electoral corruption. On the other hand, if

it is money received for the purpose of organising effectively the election campaign by hiring workers, going ground to places in car, meeting people and persuading them to vote for the candidate it is
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proper election _expenses. The touch stone in all these cases of payment or gratification is to find out whether the money is paid in reasonable measure for work to be done or services to be tendered, and whether the services, so offered amount to a bargain for getting votes or merely to do propaganda or to persuade voters to vote for the candidate. The crucial point is the nexus between the gratification and the votes, one being the consideration for the other, direct or indirect. In the present case, the facts as spoken do not even if true, come within the relevant clause namely s. 123(1), because the offer was made only to make P.W. 12 work for the candidate that is, to persuade voters to support the paying candidates. [124B-E, 125B-C, D-F]

(Per Alagiriswami, J.)

(2) As far as the second charge is concerned some witnesses said that the appellant canvassed for votes claiming that he was a Hindu and others said that be claimed votes on the basis that his mother was a tribal woman. In: a constituency where 80% of the voters are Muslims it is extremely unlikely that the appellant would have canvassed for votes on any such basis. The appellant being a Muslim he could not be said to have canvassed for votes on the basis of his religion, he not being a Hindu. [109B-C]

(Per Krishna lyer and Sarkaria, JJ.)

(2) (a) The appellant is a Muslim and his appeal, if at all, is on the basis that he was an inter-caste or inter-racial or inter-religious product and as such a symbol of unity or a less communal Mussalman. An appeal by a candidate that he personifies Hindu-Muslim interplay does not cross the line of corrupt practice. [114G-115B]

(b) The section requires that the vote must be sought by the candidate exploiting his religion. An appeal to Hindus by a Muslim candidate on the ground of his religion is impossible under the present Indian conditions. [115E]

(c) In the particular constituency, if one took up a Hindu posture it would not be an advantage to him, and therefore, it is unlikely that the appellant sougth votes on the ground that he is a Hindu. The ground of religious or communal appeal does not stand in the light of the evidence in the present case and finding of the High Court is. therefore, wrong. The High Court had been far too easily persuaded by unsatisfactory oral evidence each of which is of an ad hoc character, uncorroborated by any testimony of compelling value and is contradicted by the party affected. The criterion of proof beyond reasonable doubt was forgotten although verbal homage was paid to it. [119C-F]

[It is a matter for profound regret that political

communalism far from being rooted out is foliating and flourishing, largely because parties and politicians have not the will. professions apart, to give up the chase for power through politicising communal awareness and religious cultural identity.] [119F]

(By Full Court)

(3) The election petition is vague in regard to the particulars in support of The averment of undue influence. More than one amendment. was sought and still neither the names of the persons nor of the places so vital to induce credence and to show fairplay have been given, in spite of the appellant urging that the allegation was vague and bold. One cannot pick up witnesses on route and march them into the witness box without running the risk of their apparently consistent evidence from being disbelieved. The charges are quasi-criminal and have serious consequences and all necessary particulars have to be furnished in the election petition as required by s. 83. This being absent and the entire case resting on shaky ipsi dixits the version tendered by the respondent could not be believed. [109C-D; 122A-D]

(Per Krishna Iyer and Sarkaria, JJ.):

(4) Certain basic legal guidelines cannot be lost sight of while adjudging art election dispute. The verdict at the polls wears a protective mantle in a

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democratic polity. The Court will vacate such ballot count return only on proof beyond reasonable doubt of corrupt practices. Charges, such as have been imputed here, axe viewed as quasi-criminal, carrying other penalties than losing a seat and a strong testimony is needed to subvert a Returning Officer's declaration. At the same time, findings reached by the trial judge, will not be reappraised and reversed in appeal unless palpable errors or misappreciation are writ large on them. [111H-112B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 915 of 1973. From the judgment and order dated the 30th April, 1973 of the Gauhati High Court in Election Petition No. 2 of 1973. R. K. Garg, S. C. Agarwal, S. S. Bhatnagar, V. J. Francis and S. N. Chaudhary, for the appellant.

D. N. Mukherjee, Prodyot Kumar Chakravarti and N. R. Chaudhry, for respondent No. 2.

The Judgment of V. R. Krishna Iyer and R. S. Sarkaria. JJ. was delivered by Krishna Iyer, J. A. Alagiriswami, J. gave a separate opinion.

ALAGIRISWAMI, J. I agree with the conclusions of our learned brother Krishna Iyer. But I think it necessary to say something on my own.

The appeal relates to the election to the Assam Legislative Assembly from Dhing constituency. The appellant was declared elected by a majority of 1185 votes. The respondent filed an election petition making three charges of corrupt practices against the appellant. The learned Judge of the Gauhati High Court held that the charges were made out and allowed the election petition. Hence this appeal.

The first charge was the offer of a bribe to P. W. 12. The second ,charge was that the appellant was guilty of a corrupt practice under section 123(3) of canvassing for votes on the basis of his religion. The third charge was that he exercised undue influence by holding out the threat that the people who voted for the respondent would be identified and subjected to the same treatment as the people of Bangladesh by the Pakistanis.

Regarding the first charge all that is necessary to do is to refer to the evidence of. P.W. 12 and 13. P.W. 12 stated that the appellant offered him Rs. 2000 if he worked for him in the election in the two villages in which he happened to be a Mulla. P.W. 13 stated that the appellant told him that he had offered Rs. 2000 to P.W. 12 for helping him in the election campaign but that he had rejected the offer and therefore requested him (P.W. 13) to collect the money and make it over to P.W. 12 and prevail upon him to work for him (appellant). Clearly this does not fall under section 123(1). 1 consider it, therefore, unnecessary to discuss whether if money is paid ,or offered as consideration for votes Promised to be secured by a person using his influence it is bribery or not. It is a good policy not to discuss in a judgment question which do not arise out of the facts of the case.

As far as the second charge is concerned, it is said that the appellant's mother was a 'Kachari', one of the tribes in Assam. But admittedly she was converted to Islam before she married the appellant's father., Some witnesses say that the appellant canvassed for votes claiming that he was a Hindu. Some others say that he claimed votes on the basis that his mother was a Kachari. All that is necessary to say about this part of the, case it that apart from he fact that in a constituency where 80 per cent of the voters were Muslims it is not at all likely that the appellant would have canvassed the votes on any such basis, there is no doubt that the appellant being a Muslim he could not be said to have canvassed for votes on the basis of his religion, he not being a Hindu.

As regards the third charge, in spite of the three amendments made to the election petition material particulars were not given on the basis of which the evidence regarding this charge could have been admitted. I agree with the conclusions of my learned brother on the basis of the evidence which he has discussed that the case of undue influence is not satisfactorily established. I agree that the appeal should be allowed and the election petition dismissed with costs.

KRISHNA IYER, J. In the current Indian socio-geographic context, with its delightfully and distressingly diverse, traditional and complex humanity, we have to appreciate the three grounds of corrupt practice levelled through this election appeal against the Congress candidate who secured a lead of 1385 votes but was allegedly guilty of several malpractices at the polls of which three have found favour with the High Court and have been challenged before us. Briefly, they are

(a)that the petitioner offered Rs. 2,000/- to one Jabbar Munshi (P.W. 12) to collect votes for him which this righteous soul spurned and therefore the preferred payment did not materialise although the corrupt practice under s.123(1) was nevertheless committed;

(b) the petitioner, of the same Islamic faith as his opponent though, canvassed votes using the potency of a queer sort of mulatto religious or communal appeal, thus Petting caught within the coils of s. 123(3) of the Representation of the People Act (hereinafter called the Act, for short); and

(c) he exercised a kind of undue influence to which people of States of our country bordering on Pakistan and a sizeable Muslim population may perhaps be peculiarly susceptible, viz., subjection to the excruciating torture suffered by the East Pakistanis if perchance these voters dared to vote against the Congress thus violating the basic guarantee of free and fair elections contained in s. 123(2) of the Act.

The High Court's holdings on those charges may, at the outset, be set out, to get a hang of the controversy in this appeal "According to the statement of Jabbar Munshi, which is reinforced by that of Sahed Ali the respondent No. 1 had offered Rs. 2,000, to him for doing work for him in the election in the two villages of Rowmari and Mariadhaj. Shri Choudhury laid emphasis on the word 'inducing' used in sub-clause (A) of Clause (1) of Section 123 and canvassed that we cannot spell out inducement by Jabbar Munshi vis-a-vis the voters putting up in Rowmari and Mariadhaj from his statement that he had been offered in the election in the said two villages.

Here, again, it is not possible to agree with Sri Choudhury If a priest of a village is pressed into service by a candidate, who has offered to pay him handsomely, to help him in the election work, it becomes patent that the priest is to use his influence as such in winning votes for the candidate who had approached him. Hence all the ingredients of sub-clause (A) of clause (1) of section 123 are proved by the dependable testimony of Jabbar Munshi and Sahed Ali with the consequence that the corrupt practice of bribery attributed to respondent No. 1 is established."

> "In view of the above discussion of the relevant evidence I conclude that Kanak Doimari and Kahiram Deuri have spoken the truth with the consequence that the respondent No. 1 is proved to have solicited votes on the basis of his being the son of a Boro Kachari woman. This appeal was made up him in village which were inhabited by tribals who may or may not be considered as Hindus but they are certainly not Muslims. Therefore, all the ingredients of Clause (3) of s.- 123 are established."

:,The statements of the relevant witnesses of had told them that he is half Hindu and half tribal because of his maternal lineage. I have already held the statements of those witnesses as acceptable. Nothing said by the respondent No. 1 in the witness box has the effect, of robbing the statement of those witnesses of their quality as held by me. of being credible. 'Therefore, I hold that the allegations made in section C9(i) C9(ii) of Part III of the Annexure are proved beyond reasonable doubt and as such the respondent No. 1 is guilty of the corrupt practice mentioned in clause (3) of section 123 of the Act."

It is mentioned in Section B that the respondent threatened the Muslim voters that in case they voted against the Congress, whose nominee be was, it would be possible this time in view of the new system of voting introduced, to detect that fact and that in such an event they shall be severely dealt with. According to the new voting system introduced in 1972, it may be stated, each elector, to whom a ballot paper was issued, had either to make his signature or place his thumb mark on the counter-foil of the ballot paper. That fact, it is mentioned in Section B, was prominently brought to the notice of the electors by respondent No. 1, The threat held out to them, besides that they shall be severely dealt with in case they voted against the Congress, was that they shall be considered and treated as Pakistanis and supporters of Yahya Khan and having worked against the Congress Government which meant and implied that they Were voting against Srimati Indira Gandhi and as such were anti- national. In Section F of Part VI it was stated that the respondent No. 1 and the men working with him had propagated that if the electors voted in favour of a candidate other than that of the Congress 'the Congress would carry out torture amongst the Muslims as was done in suppression by Pakistan".

> "The up-shot of the discussion of the evidence of a large number of witnesses examined by the petitioner and the respondent No. 1 bearing on the allegations set out in Sections B and F of Part VI is that those allegations are proved to the hilt."

Hearing this appeal, we realised that there was an endemic sensitivity to election propaganda and method in certain regions which would be wasted strategy else where because human responses differ according to the socio-political conditioning of groups and communities. Here we are concerned with a tribal area of Assam, a border State with a heterogeneous composition of tribesmen, vaguely Hindu by persuasion, plainsmen Hindus and a 'considerable number of Muslims. A Mulla or Muslim minipriest may have sway over his orthodox flock here while elsewhere his voice may be ignored. A threat of East Pakistan type terror or pro- Pakistan branding is prone to frighten many here while in Central India or the South such a bogey may have less minatory impact. Religious appeal or communal appetite in a bigoted and backward population is stronger than in ail enlightened or indifferent or other area with a long tradition of peaceful co-existence of variegated religious groups or cosmopolitan people. It all depends on the socio- political pathology or sensibility of each province or constituency. We cannot dogmatise universally without being convicted of social inexperience or lack of political realism. Shri Mukherjee, counsel for the respondent, is right in stressing the interplay of divergent kinks making up the mores of the Dhing Assembly constituency. Before we can competently judge human nature we must educate ourselves about the behaviourism of the concerned group avowedly pluralist in this case. Law, after all, is a species of sociology.

Even so, certain basic legal guidelines cannot be lost sight of while adjudging an election dispute, The verdict at the polls wears a protective mantle in a democratic polity. The Court will vacate such ballot count return only on proof beyond reasonable doubt of corrupt practices. Charges, such as have been imputed here, are viewed as quasi-criminal, carrying other penalties than losing a seat, and strong testimony is needed to subvert a Returning officer's declaration. On the other side of the scales, findings reached by the trial Judge will' not be reappraised and reversed in appeal unless palpable errors or misappreciation are writ large on them. Such being our broad perspective, let us

come to grips, with the facts and the law arising in this case.

We will first deal with the second charge-held proved by the High Court but hardly easy of solution in the legal connotation of the provision Ls. 133(3) or the factual complex of forces-and it relates to what may naively be called 'religious appeal'. For an intelligent understanding of this translucent provision the best beginning is to reproduce the subsection and then search for the soul of this wholesome legal man on communalism in elections a ban of Indian politics which dies hard, defiant of law and our secularist creed. Likewise, the voluminous testimony in this case, bearing on the spectrum of appeals attributable to a variety of shades and hues from crude Islamic to plain ancestral kinship and tribal fellowship, baffles identi- fication, being curiously psychic and sociological. In these areas of evidence judicial navigation towards the port of truth is not so simple as the homing instinct or habitual test of judges whereby they break through false and doubtful depositions. Local obsessions and subjective exaggerations have to be kept in leash and objective touchstones and safe Procedures relied on if we are not to get lost in mere bulk of evidence or cynical negation of good and bad. To judge is in part an esoteric art, not a rule of thumb and this case is a real challenge to our ability to feel our way to veracity through university. When elections are challenged on grounds with a criminal taint, the benefit of doubt in testimonial matters belongs to the returned candidate. Section 123(3) of the Act reads "Corrupt practices.-The following shall be deemed to be corrupt practices for the purpose of this Act x x x x x x (3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

The conscience of this clause-and the core of the legal inhibitions to impart penal incarnation to the secular mandate commonly expressed in biblical language "Render therefore unto Caesar the things which are Caesar's; And unto God the things that are God's."

The founding faith of our poll process is to ostracise the communal vice from the campaign, having suffered from this virus during the Raj. This great idea must brighten the legal phrases so that the purpose, the whole purpose and nothing but the purpose may be carried into effect. The gravamen of the charge as covered by sec. C(i) and C(ii` of the petition is that the 1st respondent sought support from tribals on the score that he was half-tribal, half-Muslim-his mother was of Kachari tribe-while the petitioner was unmitigated hundred-per-cent Muslim, and amongst Hindus settled from the plains he pleaded that he was after all half-Hindu and so, obviously, more acceptable than are undiluted Muslims like the petitioner. The facts of parentage are that the 1st respondent's mother was a tribal Hindu who was converted to Islam on the eve of marriage to a Muslim, The refutation by the respondent has taken two forms. Firstly, no such half tribal or like propaganda was done and secondly, such a Hindu Muslim hybridisation in parentage, even if urged tactically before the relevant communities, did not fall within the obnoxious provision regarding religious or communal appeal. At best it was a sentimental sop based on ancestry or kinship, religious rivalry in appeal being out of the ring since both candidates were apparently full-blooded Muslims. We are free to agree that, what with mixed marriages and change of religion and the gamut of beliefs and

unbelief and like social phenomena, viewed against the backdrop of a dynamic policy of secularism and national integration, the correct construction of the sub-section is fraught with difficulties.

What is religion? What is communal or caste appeal? (We do not have to deal with the thorny problems relating to appeal to language, in this appeal). Some of the inherent confusion besetting ,appeal to religion' have been indicated by this Court in Rahim, Khan case.(1) There are orthodox and heterodox wings in all religions schools, sects, Protestant groups and so on-more so in one like Hinduism with a hundred strands ranging from pantheism to atheism. We are here concerned not so much with theology as with sociology, not with intra-religious feuds as with the divisive use of religious faith by projecting them into and polluting politics and social life Strangely enough, both the candidates are professing Muslims, speaking, in formal terms, the petitioner being a revolutionary communist to boot. Judicial insight into practical politics, measuring, the degree of contamination, through injection of religious, racial, caste or communal poison, of the blood-stream of healthy electoral processes is a socio-legal essay, as is discernible in this Court's ruling in Kultar Singh v. Mukhtiar Singh(2) that religious appeals can conceivably play even in a situation where both candidates swear by the same denomination or faith. Within the fold, variables operate and blurred areas exist. A fanatic may seek votes castigating his co-religionist (1) [1974] 11 S.C.C. 660.

(2) A.I.R. 1965 S.C. 141.

9-L 379 Sup. CI/75 rival with reforming zeal as a de faco apostate. But to delve meticulously into these dark mines of divergent opinions and clashing practices and hold that 'religious appeal' has been invoked is to overdo legality and hamper social advance. Without being obsessed by procedents and freeing ourselves from theological inhibitions we proceed to interpret s. 123(3) of the Act in the social setting of this case. We cannot countenance, in the name of narrow law, a push back to movements blending of religions, races, castes and communities if it will homogenise the people into national unity, social solidarity and secular mentality. If the rule of law must run close to the rule of life, this sociological view-point stands vindicated, since elections politically expose the social inside in the raw. Taking this stance is to read legal realism into the expression ,religious appeal' used in the relevant provision. To exhort the masses-assuming the appellant's facts to test the legal thrust of his argument-to vote for himself because his mother was a tribal or a Hindu, is perhaps prone to excite the clan feeling in a vicarious way, though the appeal is by a Muslim. Does this sympathy potential of the appeal to the electorate vitiate the election as an appeal to religion to get votes ? To sensitize the voting masses on every politically irrelevant appeal is bad but not yet illegal. Law lays down practical norms, not prohibitions of intangible injuries. In a pluralist society like ours, a certain irremovable residum of 'minority complex' will haunt the polls, as it may, perhaps in a lesser measure, in the United States or even the 'United Kingdom. A Jew, a black, a Catholic or an Indian or woman will, without special appeals in that behalf, rouse prejudices for and against in some countries. Even in India, the religion or caste or community of the candidate may exude through his name, dress, profession or other external indicium. Does it mean that his candidature is imperiled by the inscription of his name or ,caste suffix in posters or pamphlets ? Something more substantial, intentional and oblique is necessary. Similarly, mere reference to ,one's tribe, ancestry or genetic commingling may not be tainted with the legal vice of religious or communal appeal, exceptional situations apart. It may well he that a strong secularist candidate may

plead with the electorate to be non-communal and therefore vote for him ,on the basis that he was an inter-caste or inter-racial or inter-religious product and as such a symbol of communal unity. Indeed, mixed marriages may accelerate national integration and a candidate cannot be warned off by the law from stressing this non-communal merit of his. That would be a perversion, of the purpose of the provision. The substance of the appeal, if at all is-not the delicate, legal concoction for, Court consumption-that being of Hindu and Muslim extraction he is a less communal Mussalman. If some misunderstand, the bulk understand and the masses have an uncanny political sense. Viewed from another angle, the hortative exercise is relatable to parentage, vaguely sounding in a sub-conscious clan feeling-too remote, too attenuated to be a plain, or even indirect appeal on grounds of religion or community. Those who urge, in some roundabout manner 'Hindu Muslim Ek Ho' are doing no violence to law but promote its object. We disagree with any contrary reasoning or inical approach and hold that an appeal by a candidate that he personifies Hindu Muslim interplay does not cross the line of corrupt practice. The sharp edge of the appeal, not its elitist possibility or over-nice implication, is the crucial, commonsense test.

Now to the factual conclusion. Did the 1st respondent project Hindu profile or, more plainly, did he articulate a Hindu communal appeal ? Religious, it could not be. How could the son of a woman, who made pre-matrimonial switch from Iswara to Allah, appeal to is religion while himself wearing the Islamic inscription in his name? to, declare oneself an offspring of a religious renegade is not to appeal to religion. It is unlikely because it does not socially pay. Even Hindu tribals may probe beneath the skin and politically discover he no not a Hindu. Moreover is it strategy in a fevered situation like a hotly contested election, to propagate, in one part of the constituency which is predominantly and backwardly Muslim, that one is a half Hindu ? You cannot insulate such appeals to specified villages as no iron curtain halts election campaigns. Counter-productive would have been the result. Whispers may have succeeded, not public meetings, if the object was discreetly to spread communal propaganda in a secluded area put prudently to prohibit its diffusion into other areas of the same constituency. But here the case is one of public meetings and drama stage with loudspeakers and other publicity and wedding gathering, not nocturnal sub silentia circulation of injurious facts appealing to communal feeling.

Before we proceed directly to deal with the evidence we shall refer to one more dimension of the law of corrupt practice based on communal and allied appeals. The vote must be sought by the candidate exploiting his religion. Here the 1st respondent is avowedly a Muslim. An appeal to Hindus by a Muslim candidate on the ground of his religion is impossible under the Indian Sun, things as they stand. Nor is there any religion or tribe for hybrids, something like 'Hinduslim'. The finer shades, minor tenets or avant garde movements present in all religions are not the target of the sub-section which seeks to strike at the cruder, baser, divisive trends being fostered by casteism, communalism and the like. All great religions speak basically the same truth and converge towards the Religion of Man. Science itself is tending to be spiritual and religions are turning towards science. Man and his Maker are the profound theme of the major religions but some men pervert this deeper urge to make gods go to war against each other by forming hostile camps. Indian history, particularly under the British, is tainted with godly blood of humans and the cunning manoeuvres of candidates to resurrect that spirit during electoral battles is anathema for the law. We have no hesitation in taking the view that here was no religious exploitation by the candidate of his religion or community,

legally or factually. Tribalism may perhaps be stretched to embrace communalism but the accent in the evidence is on half-Hindu bias, not tribal identity. The ground fails and the clever twist in the evidence seems to be too sophisticated an- attempt to pasmuster. It is not out of place to point out that if we stretch semantics out of context the appellant may, by calling his rival a revolutionary communist (which he claims to be), commit a corrupt practice be cause to be a communist, nearly means, as a good Marxist, to be materialist disawoving all religious faiths. Such obviously cannot be the connotation. Words of wide and vague import, like appeal to religion, must receive restricted construction lest law run riot and up set accepted political standards. For, certain political parties-an(therefore, their candidates-have mild communal overtones and Court must confine themselves to clear mis- direction of voters grounded on plain religious or communal appeal. Again, to claim to be a) Assamese or Bengalee is not necessarily a communal appeal-may even be declaration of minority status of the group. In certain circumstances such a vote-catching technique may be violative of Article 123(3). It all depends on the over-all factors and setting.

THE FACTS If the appellant had placated the Hindus by a communally pala table version of his ancestry, the news of the meeting would have taken wings and the Muslim voters would have avenged themselves on him--a risk he was unlikely to take, the contest being close and damage by inflammatory recoil from the Islamic and being incalculable. We are inclined to think that the probabilities are against the alleged half Hindu story.

Let us examine the oral evidence bearing on this issue. But since this branch of the case is built on lip testimony, judicial scepticism has to be activised before upholding this species of alleged corrupt practice. Witnesses may lie with counterfeit candour, and judicial hunch. may not successfully X-ray the unveracity of apparently disinterested persons. While it may be hazardous to stake a conclusion on so serious and undetectable a matter as an election result because a single witness or more swears that way, no rule of thumb wit work, since Courts weigh, not count, witnesses. Broad probabilities, corroboration, circumstantial or oral, the non-production of the best evidence and a host of like factors have to be taken note of, even if not elaborately, documented in the judgment. The screening and testing processes will also give due weight to the trial Judge's sense of credence. Ultimately the appellate Court has to have an appraisal of the witnesses' truthfulness and accuracy, the Judge's experience of men and matters and careful reflection being the lie- detector.

The pleadings of the petitioner leave much to be desired from the point of view of precision and particularity, especially specification of persons and places so essential to fair-play in the legal process in such matters. Even if one winks at this blemish. there must be strict proof otherwise. The general criticisms made by Mr. Garg, counsel for the appellant, have force and we will deal with them in the light of the explanation offered by Shri Chatterjee for the petitioner.

The appellant has denied having made any such Hindu or tribal appeal to the voters and the burden of proof rests on the respondent petitioner. We may also discard the new case casually set up through some witnesses that the Congress candidate had declared himself a Hindu (not half but full) and asked at public meetings for support on that footing. Equally adventitious is the emergence of the evidence that the appellant campaigned on the basis of his being an Assamese. While absence of particulars does not stand in the way of the Court considering the evidence led on a ground of

corrupt practice if such evidence had been admitted without objection and no prejudice has been caused (vide A.I.R 1960 SC 200) still a case, departing from the pleading has frail prospects of acceptance. The failure to plead is a blow to the credibility of after-thought testimony. In the present instance, although some witnesses have lent up support to the story that the appellant urged that he be regarded as Hindu and other P.Ws. that, being Assamese, the voters should back him, we do not give credit to such belated ipse dixits. May be, as earlier observed, the Assamese appeal, or tribal sentiment, may in certain situations savour of communal appeal and on other occasions be a request by a member of a weaker or backward or minority section to the people for voting help a democratic gesture- we need not examine such possibilities here, the evidence on the point being naked assertions unfounded in pleadings and unconvincing on probabilities. The Hindus or Assamese or tribals were small numerically, about 80% of the voters being Muslims and the balance sheet would show more loss than gain if one took up a Hindu posture. Nor is there any force in the submission that witnesses R. Ws. 30, 8, 9 and 12 themselves had admitted the holding of the alleged meetings because they do not agree on the religious or communal appeal at all.

The heap of half-Hindu evidence may be analysed, not meticu- lously but applying commonsense tests. P. Ws. 53, 54, 55, 57, 65, 66, 67, 68, 79, 80 generally testify to the case of public appeal in tribal and non-Muslim areas that the petitioner has part-Hindu blood flowing in his veins and must be voted for on that basis. Impressive in numbers they are but the phalanx breaks down on closer examination. We will eshew the impressionistic approach to the credibility of witnesses but look out for interestedness, lack of corroboration and other unnatural features. By a similar token we will examine the half-tribal appeal. The learned trial Judge has generally chosen to believe these witnesses and we will have that in mind while appraising their testimonial worth. P.W. 53 testifies to the appellant's visit to a village library and asking for votes pleading that he may be taken as a Hindu 'because his mother is a Kachari Hindu'. He admits that the appellant is a Mohammedan and still states that 'nobody raised any objection to what he said'. From his evidence it is seen that there were three persons Puran, Padmaram and Dharani who were workers of the present respondent sitting in the library. Although they are interested witnesses their corroboration could have added some weight to the testimony of P. W. 53. Moreover the same witness deposes 'A polling Officer was also sitting with us when respondent No. 1 'talked'. Obviously the evidence of such a witness would have reinforced the credibility of P. W. 53. We are unable to take at its face value the testimony of this easy witness particularly because he goes beyond the half-Hindu theory trotted out in the pleadings.

P. W. 54 is no better. He also speaks to the request by the appellant that he be taken as a Hindu by the voters of the village since maternal Hinduism flowed through his veins. However, he agrees that the appellant bears a Muslim name and it is unlikely that he would have visited a Hindu wedding to claim himself a Hindu. The surprising thing about this witness is that he swears 'I took the respondent No. 1 to be a Hindu as well as a Muslim'. That a unanimous decision to vote for the election-petitioner was reversed unanimously the next day after the aforesaid appeal to vote on the basis of a Hindu maternity is liable to be rejected even by the gullible. We feel P. W. 54 is speaking with his tongue in his cheek.

P. W. 55 also fares ill although he apparently corroborates P. W. 54. Strangely enough this gentleman admits that notwithstanding the Hindu appeal 'the respondent No. 1 gave out his name

as Abdul Hussain Mir which is a Muslim name and so we take him as a Muslim'. He proceeds to state that he met the candidate on a later occasion but 'on this last mentioned occasion, respondent No. 1 asked me cast my vote in his favour and nothing more'. He hardly convinces us. It is significant that P. Ws. 54 and 55 do not speak of any corroborating persons apart from Sri Neog, the supporter of the appellant. A communal appeal made at a wedding party could easily have been corroborated by the bride's father or other important persons of the village. This is a lacuna and the story itself can easily be woven without fear of contradiction.

P. W. 57 repeats his predecessors, but the very appeal made is self-contradictory because the words attributed to the candidate are ,that though he is a Muslim ... his mother is a Kachari Hindu and so he may be taken as a Hindu'. He mentions the names of certain others who were present on the occasion as 'leading persons viz. Buddheswar, Bhogram and Baliram'. But they have not been examined. P. Ws. 67 and 68 depart from the type, design by asserting that the appellant asked for votes as he happened to be an Assamese. The former continued 'I joined issue with him for the reason that he bore a Muslim name' and whent on to assert 'I told the respondent No. 1 that he is a Bengalee and not an Assamese . . . Today also I consider the respondent No. 1 as a Mymensinghia of East Bengal, that is, a Muslim. P. W. 67's evidence cannot carry conviction. Nor are we impressed with the testimony of P. W. 68. We have perused the deposition of P. Ws. 79 and 80 and for the sake of brevity we may say that their testimony is weakened by improbabilities and much oral evidence, served in heapfuls, cannot help induce judicial certitude.

P. Ws. 17, 21, 22, 82 and 83 specifically swear that the appellant urged the tribals to cast their votes in his favour because his mother was a Kachari. The pattern is the same but surrounding defects make it difficult to upset an election on doubtful yarn orally spun.

There is a mix up regarding the communal appeal spoken to by P. W. 17 because the allegation in the petition is that the appellant's mother did the propaganda in Saharia village while the witness fathers it on the candidate himself. Of course, he is a polling agent of respondent-petitioner and is willing to swear as directed. Not only is there no corroboration but R. Ws. 7, 8 and 15 deny the imputation.

P. Ws. 21 and 22 speak to communal representation soliciting votes on the strength of maternal Hinduism, the propaganda being done in Batabari village. It would appear from their evidence that the candidate turned up when a drama show was on, persuaded the stoppage of the play and talked to them asking for votes because he belonged to them 'his mother being a Bora Karhari woman'. The evidence is vague, unlikely and denied by the appellant RW 1 and by RW 5 another man of the village. In this state of dubiety, it is a high risk to run to rely on the testimony of these two witnesses.

P. Ws. 82 and 85 speak to a similar propaganda in village Nijdhing. Both of them go beyond the case in the pleadings and put forward the story that the appellant urged that the villagers 'should vote for him as he is a Hindu'. This evidence is contradicted by R. W. 8, the candidate. We are far from satisfied that such glib oath of casually picked up witnesses speaking to circumstances more, ambitious than the pleading sets forth should from the basis for proof of corrupt practice.

To sum up, the ground of religious or communal appeal hardly commends itself to us in the light of the evidence in the present case and we are constrained to reverse the finding of the High Court. We are inclined to observe that the learned Judge has been far too, easily persuaded by unsatisfactory oral evidence each of which is of an ad hoc character, is uncorroborated by any testimony of compelling value and is contradicted by the party affected. Proof beyond reasonable doubt seems a forgotten criterion, although verbal homage is paid at the start by the Judge. The dictionary research into the meaning of religion, race, caste and community and the ethnic enquiry into tribal life launched by the tribal Judge may be useful but not conclu- sive and is legally elusive. Myriad forms of rubbing home communal appeal exist but if intangible, has to be ignored in the work-a-day world, law being pragmatic, not perfect. It is a matter for profound regret that political communalism far from being rooted out is foliating and flourishing largely because parties and politicians have not the will, professions apart, to give up the chase for power through politicising communal awareness and religio-cultural identity. The Ram-Rahim ideal and the secular ideology are often the Indian politicians election haberdashery, not his soul-stuff. Micro- and mini-communal fires are stoked by some candidates and leaders whose over-powering love for seats in the Legislature is stronger than sincere loyalty to secular electoral processes. Law can efficiently regulate and control if wider social legitimation is forthcoming. And this key factor is absent, so much so wrong methodology becomes rampant. Small wonder, even revolutionaries, imbued with realism, often prove 'boneless wonders' when pitted against communal politics in elections. Courts can act only if cogent proof is adduced. The charge fails. We now move on to the terrorising tactic allegedly resorted to by the appellant. We have earlier noticed that the politics and practices of electioneering may vary from area to area and what is good in Tamil Nadu may be foolish in Nagaland, such being the cultural mosaic that is India. We will transport ourselves to this constituency, respond to its sensitivity and seek the truth of the charge of threat of voters in that milieu. The pleading in this behalf casts the net too wide and vague and the complaint of the appellant that particulars have not been forthcoming is not without force. The trial Court itself has negatived some of the grounds relied on by the petitioner under the broad head of undue influence, tabooed by s. 123(2) of the Act. What has survived and has been upheld is all that falls for our consideration. The drift of the charge is that the Congress candidate who, undoubtedly, had the propaganda backing of even Central Ministers who landed in helicopters, that the voters were told about a change in the method of voting which required the affixture of signature or thumb impression on the ballot and the likelihood of detection of the identity of the votes cast, with reference to the voter. The next step in the threat is that if anyone was found to have voted for the communist-petitioner he would be subjected to the same torture the East Pakistanis suffered under the Pakistan regime. The macabre picture of the blood-bath in Bangladesh before it was born was perhaps the psychic content of the threat held out against anti-Congress electors. Making a margin for the ultra sensitive nature of the constituency to this grim threat we have to see whether this awesome propaganda has really been made. Proof must be clinching, before grave charges can be made good. Oral evidence, ordinarily, is inadequate especially if it is of indifferent quality or easily procurable.

P. Ws. 3, 5, 6, 7, 8, 9, 14, 56 and 58 have been relied on by the petitioner to press home the charge of threat of torture or undue influence by that means. Of course, the villages' assigned to the witnesses vary and the appellant has not only denied by his testimony but has pressed into service other witnesses to repudiate the intimidatory im- putation. They are R. Ws. 28, 31 and 35 in regard to

Salkathi Pathar village, R. Ws. 30 and 35 in regard to Palastholi village; R. Ws. 9, 12, and 38 relating to the alleged meeting at Rowman; R. W. 28 in regard to palaswli Panbari village; R. W. 36 with reference to Jarabari and R. Ws. 38 and 42 negating the story in relation to Doomdoomia. A brief and insightful survey of all this testimony may now be undertaken. P. W. 3 swears that the appellant visited his house on March 10, 1972 accompanied by R. Ws. 31 and 35 and others. When asked he mentioned that as before he intended to vote for the petitioner-respondent whereupon the appellant told him that according to the latest system of election 'my thumb mark shall be taken on the ballot paper and if it was found that I had voted for a candidate other than a nominee of the Congress, I shall be killed in the manner of East-Bengalees. I was also apprised that all those voting against the Congress nominee shall be set up in a line and killed in the way the East Bengalees had been done to death by the West Pakistanis'. This threat turned his vote towards the Congress candidate, says the witness. He had kept this terrible fact a secret till after the defeat of the election petitioner. The gruesome version is too terrifying to be true in the conditions prevailing in India in 1972. It must be remembered that the election- petitioner is a man of consequence being the President of the Managing Committee of a Madrasa in that area and former M.L.A. Of course, the substantial vote he has polled also shows the poor deterrence the alleged threat has had on the constituency. P. W. 5 encores this case of threat and mentions the names of R. Ws. 30 and 35 as having accompanied the appellant. The witness admits that at the 1967 General Elections he voted for the communist candidate, i.e., the election-petitioner, and that he never disclosed the present frightful threat having been made to him to any- one before the election. A perusal of the evidence of these witnesses just referred to, in the light of the contradiction by the concerned R. Ws., makes us extremely hesitant to act on their deposition. Indeed we discount their credibility.

P. W. 6, the headman of a village and President of a Madrasa, deposes to a public meeting in the Madrasa compound at which the appellant and his supporter Shri Neog spoke. The theme was the same except the ruddy embroidery that if anyone voted for the communist candidate everything would be bloodied like the communist flag. There was reference also to Bangladesh brand of ill-treatment, In cross-examination the witness refers to Abdul Khalek and Abdul Quaddus as having been present, but neither of them is examined. It is surprising that till the poll was over this witness did not divulge the threat of violence for getting votes to any one and this strikes us as improbable remembering that the witness is a headman of a village. The appellant as well as Shri Neog have contradicted this version. R. Ws. 12 and 38 have also denied the holding of threats at that meeting. Of course, their evidence by itself may not be compelling. P. W. 9 speaks in the same strain as P. W. 6. So also P. W. 14 who claims to be a Congressman while deposing anti- Congress, not a surprising phenomenon in election case evidence. It looks odd that this witness should say that 'excepting Shri Neog aforementioned, no other Hindu participated in the meeting. Such an open threat is likely to counter-productive in a predominantly Muslim area, parti- cularly when we remember that the petitioner-respondent is also a man of considerable influence. There is reference by P. W. 14 to ' some bustle in the meeting', when the threat was uttered 'but I cannot say whether it was one of approval or disapproval' says P. W. 14.

P. Ws. 7 and 8 have given evidence of domestic delivery of the threat. Both of them speak to the visit at night of the appellant and his revealing the change in the election rules which would require thumb impression or signature to be appended to the ballot paper and 'the further shock to those

who voted for the communist party that they would be shot dead. The possible corroboration could have come only from one Abdul Ghani and Isomuddin Master neither of whom is examined by the petitioner but the latter figures as R. W. 28 to deny the story.

P. W. 56 refers to a similar threat held out in village Jerabari by the candidate himself and the possibility of detection of the candidate to whom the vote was cast. This Homeopathic Doctor owns the presence of Sahed and Anwar but neither of them has entered the witness box to corroborate this case.

P. W. 58 was not even mentioned in the witnesses' list although he repeats the true-to-type case of threat. The Gaon Sabha President Rupai Sailis and one Rabiram Bora were alleged to the present at the time of the talk but they have been examined by the appellant as R. Ws. 38 and 42 and have denied the whole case of threat.

We have to remember in assessing the evidence of these witnesses that the election petition has been blissfully vague in regard to the particulars in support of the averment of undue influence. More than one amendment was sought and still neither the names of the persons nor of the places so vital to induce credence and to show fairplay have been given. We need hardly emphasize that one cannot pick up witnesses en route and march ;them into the witness box without running the risk of their apparently consistent evidence from being disbelieved. After all we are dealing with a quasi-criminal charge with serious consequences and all necessary particulars have to be furnished in the election petition. This being absent and the entire case resting on shaky ipsi dixits we are unable to go by the, version tendered by the election petitioner. The upshot of the discussion is that we are far from satisfied about the conclusive veracity of the case of undue influence and have therefore to find against the election petitioner respondent.

Before taking leave of this part of the case it is necessary to emphasise that the wisdom of the law of pleadings bearing on election petitions has set down strict provisions to ensure that fairness of opportunity is given in fastening corrupt practices on the successful candidate. Section 83 significantly insists on all material facts and full particulars being set forth at the earliest stage. To avoid this duty is to play foul and we as umpires will not easily reckon the goal scored. The rules of the game, in this decisive democratic game where power corrupts even the techniques of proof, will be enforced in Court. Precedants are a profusion on this issue and the law is so settled that we do not cite case-law in support. Here, three amendments were sought and made, of the petition by the election petitioner and objection about bold, vague, twilight allegations were urged by the opposing party. And yet the election petition remains bereft of specificity on vital matters. The penalty will, in any case, be a stricter, more sceptical scrutiny of the testimony brought by the delinquent party. We frown on tactics of keeping material particulars up one's sleeves. That is neither cricket nor court process. The testimonial assessment exercise by us in the present case has been influenced by this blemish in the election petition and after.

The last surviving corrupt practice of bribery may now be examined from the legal and factual angle. The former, simpliutic on the surface,, is blurred and beffling in certain practical situations. Briefly, the charge is that the appellant offered to P. W. 12, Jabber Munshi, a mulla or mosque functionary

with religious influence over his fold, the expressed object being 'to collect votes' for him. In evidence, the mulla crystallised the case thus :

> "The respondent No. 1 approached me and said that he wanted to have a talk with me. Then respondent No. 1 took me inside one of the rooms of Johuruddin's house and there offered me Rs. 2,000/- if I worked for him in the election in the two villages of which I happened to be the Mulla. I turned down the proposal since it was unbecoming of me and then came out of the room."

A critical appraisal of the evidence on this part of the case has lead us to conclude that the facts deposed to are altogether untrustworthy. Facts failing, law becomes otiose. Even so, having regard to the importance of the subject and largely out of deference to the counsel who have addressed long arguments and highlighted the High Court's reasons on the point we think it proper to express our opinion. For an incisive understanding of the import of s. 123 (1) we Will assume the facts to be correct. Precision in thought being essential, we will set out the provision itself :

> "123. Corrupt practices.-The following shall be deemed to be corrupt practices for the purposes of this Act (1) 'Bribery, that is to say,-
>
> (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person, whomsoever, with the object, directly or indirectly, of inducing-
>
> (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or
>
> (b) an elector to vote or refrain from voting at an election, or as reward to-
>
> (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or
>
> (ii) an elector for having voted or refrained from voting;
>
> (B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward-
>
> (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
>
> (b) by any person whomsoever for himself or any other person for voting or refraining from voting or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.-for the purposes of this clause the term gratification' is not restricted to pecuniary gratification or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 75."

One thing is clear. A mere offer is enough, given the other ingredients. An attempt to commit crime is as bad as the commission, if proved infallibly. To pay money 'to work for him in the election' does it become illegal gratification of the corrupt species ? We may slur over the minor gap between 'collecting' votes as Pleaded and working' for the candidate, as deposed, since what counts is the evidence. A break down of the sub-section yields the following com- ponents :

(i) An offer or promise by the candidate etc., of gratification to any person,

(ii) The object must be directly or indirectly to induce an elector to vote or not to vote at an election.

The purpose of the provision is to ensure poll purity and exclusion of pollution by money power. All elections involve expenses and that is why s. 77 sets a ceiling on such expenses and impliedly contemplates expenditure on election work. Such lay-out of money may be for legitimate items. Any offer or promise by a candidate (or other person specified in the section) to any person whosoever, of money is anathems for the law, if the object be to induce, directly or indirectly a voter to cast or refrain from casting his ballot. Here there is the offer by the candidate to a person viz., P. W. 12. What is the specific object ? To make him work for the candidate, viz., to persuade voters to support the paying candidate. There is a legal line to be drawn here, which is fine but real. The payment of offer as the case may be, may be to any person, but it must be linked with the object predicated in the section. If the payment is to induce an elector to vote, be it direct or vicarious it is corrupt. If it is any other oblique object, it may be evil, not necessarily corrupt in the eye of the law. The language of the provision can be stretched wide to cover even payments to do propaganda or print posters or hire transport since they are calculated to induce voters to vote. A narrow connotation is conceivable where only payments to the voters is hit by the legal stick. A pragmatic construction, inhibiting corruption but permitting electioneering expense is the right one, although many tricky projects may get through the legal mashes which law cannot help and only public vigilance can arrest. Reading s. 77, dealing with the ceiling on election expenses and s. 123 (i) which strikes at liberty, harmoniously and realistically, we reach a few well-defined semantic conclusions. To widen is to be idealists and ineffectual. To shrink is to fail in the goal of the law. Mr. Garg rightly emphasised that in the light of the precedents of this Court what the law aims at is a blow on the purchase of the franchise by direct or indirect methods. You may buy influence of important persons which is bad in morality but not yet in law. You may over-spend to create enthusiasm to the workers which produces professional electioneers waiting for the season to please candidates and parties. This vitiates the smooth wheels of the democratic process but cannot be stanched by the tourniquet of the law. The rulings in Ghasi Ram v. Dal Singh (1) and the one at Om Prabha Jain v. A bnash Chand(2) have been cited at the bar and they make out that the vice is the bargain for the ballot and what is obnoxious in the quid pro qua for the vote, however accomplish.

If the candidate pays money to a V.I.P. of the locality to use his good offices and canvass votes for him, it is a borderline case, but if the money is paid as consideration for votes promised to be secured by him using his sway, it is bribery even though indirectly exercised. If the Mulla had been paid the money striking a bargain for getting the votes in his ambit of influence, it is electoral corruption. On the other hand, if it is money received for the purpose of organising effectively the election campaign by hiring workers, going round to places in car, meeting people and persuading them to vote for the candidate, it is proper election expense. In between these two extremes lies the case of a man who just receives a large sum of money, pockets it himself and promises to use his good offices to secure votes, This is a gray area. We are not called upon to pronounce on it in this case. We have no doubt that a mammoth election campaign cannot be carried on without engaging a number of workers of a hierarchical sort. Many of them may be man commanding influence through goodwill in the locality. Some of them may be village V.I.Ps. social or religious, our country being still feudal in many rural areas. The touchstone in all these cases of payment or gratification is to, find out whether the money is paid in reasonable measure for work to be done or services to be rendered. Secondly, whether the services so offered amount to a bargain for getting votes or merely to do propaganda or to persuade voters to vote for the candidate, it being left to the voters not to respond to the election. It is a plain case if a voter is paid for his vote. It is direct. It is equally plain if the payment is made to a close relation as inducement for the vote. The same is the case if it is paid to a local chief on the understanding that he will get polled the votes in his pocket borough, in consideration for the payment. The crucial point is the nexus between the gratification and the votes, one being the consideration for the other, direct or indirect. Such being the contours of the corrupt practice of bribery, let us consider the facts of the case bearing on this question.

The allegations are that the appellant and RW 33 called PW 12 the Mulla to the house of RW 33 at Dhing Bazar on February 18, 1972 and offered to pay Rs. 2,000/- for collecting votes. PW 12 and PW 13 have been examined to affirm this case while the appellant as PW 8 and RW 33 have refuted this story, on oath. The version is inherently improbable as it is unlikely that such a corrupt offer would be made to a comparative stranger by one conversant with election proprieties. It is particularly noteworthy that RW 33 has no special influence over this Mulla and his house need not have been the venue for the offer of bribe. Sahed Ali, P. W. 13 is also not shown to have any closeness to PW 12 and why he should get mixed up with this matter is not easily understandable. PW 12 has sworn that he had neither worked nor canvassed for any candidate at (1) [1963] 3 S.C. R.102,110. (2) [1968]3 S.C. R.111, 116.

any time and could not have been therefore pressured this time by the appellant who is likely to know the implications of this dangerous move himself being an Advocate. Before tile poll, P. W. 12 did not mention this matter to anyone but it was divulged only a fortnight after the election. The graphic description of the appellant not producing the cash along with the offer but suggestively opening his long cost without showing the money is more dramatic than true. P. W. 13 who corroborates in part the Mulla also is too virtue to prevail upon Jabbar Munshi to work for the appellant, as requested by the latter, as his evidence runs. This witness would say that the occurrence was around 10-30 a.m., but we have the evidence of Shri Moinul Haque Chowdhury who came in a helicopter to address a public meeting on behalf of the appellant that he and the appellant together landed in the place about mid-day. If really the appellant was keen on hiring the services of

the Mulla at a fancy price he would have put more pressure on PW 13 than is discernible in the dicerent answer of the witness :

> "Respondent No. 1 asked me this much that I should previal upon Jabbar Munshi to accept the money and work for him. He did not ask me anything more though be told me that he had offered, Rs. 2,000/- to Jabbar."

In this context it must be stated that in the original election petition the source of information regarding the allegation contained in section C of Part I that bribery of Rs. 2,000/- was not mentioned. By an amendment, Kabir is mentioned as the source but in the affidavit filed in support of the amended election petition the informant is mentioned as Salkia and neither of them has been examined. Nor are-we told how they came to know about the secret offer. The overall view of the evidence bearing on this aspect leaves us in grave doubt as to whether the Mulla had met the appellant at all. We have already held that the facts as spoken to by the former, even if true do not come within the relevant clause [s. 123(1)].

The evidence is purely parol, the accusation one of reprehensible corruption and so, however attractive an offer of payment to a Mulla for Muslim voters being influenced may appear to be, the court has to be circumspect to a degree. In our country where marshy areas of religious fanticism survive into late twentieth century politics and candidates, regardless of secular and even revolutionary faiths, succumb to methods of vote-catching inconsistent with democratic scruples, approaching Mullas, priests and pujaris may not be unfamiliar. But this vicious proclivity cannot be combated by courts except when (a) clinching proof is adduced and (b) the facts come within the clutches of the legal definition. After all, poll purity is preserved not by law alone but by a critical electoral climate.

The mere word of the Mulla, denied by the appellant, is altogether insufficient to bring home the guilt, corroborated though it is by P. W. 13.

Summing up our conclusions, we hold none of the grounds pressed have been proved to the point of judicial certitude. All that judges, fallible instruments, and cacooned by the record can hold in all conscience is that by human insight and judicialised procedures, with all the limitations they in practice imply, the truth is what our lights tell us it is, no more.

The appeal is allowed and the election petition dismissed with costs throughout.

V.P.S. Appeal allowed.