

Supreme Court of India

Ch. Razik Ram vs Ch. Jaswant Singh Chouhan And Ors. on 11 February, 1975

Equivalent citations: AIR 1975 SC 667, (1975) 4 SCC 769

Author: R Sarkajha

Bench: A Alagiriswami, R Sarkaria

JUDGMENT R.S. Sarkajha J.

1. Ch. Rizak Ram, Ch. Jaswant Singh Chouhan and three others, contested the election to the Haryana Vidhan Sabha from 'Rai-37' Haryana Vidhan Sabha Constituency. The poll was held on March 11, 1972. The result was announced on March 13, 1972. Ch. Rizak Ram was declared elected having secured 19631 votes as against 18072 polled by Ch. Jaswant Singh, his nearest rival.

2. Ch. Jaswant Singh, respondent (to be called the petitioner hereafter) filed an election petition under the Representation of the People Act, 1951 (hereinafter called the Act) challenging the election of the appellant on various grounds, of which the following only survive for the purpose of this appeal:

(a) The returned candidate hired on payment of Rs. 200/- or procured otherwise than on payment. Truck No. HRR-5167 belonging to Lakhi Ram son of Hira, resident of Turakpur and on March 11, 1972, used that vehicle for the free conveyance of electors named in Schedule 'A' annexed to the election petition, from village Turakpur to the Polling Station at Mandaura (vide Paras. 7 (i) and (ii) and 13 of the petition); ·

(b) The returned candidate or his agent Sube Singh, Jat resident of Kheri Mana and/or Om Parkash of Basantpura alias Bhera Bakipur, hired on payment of Rs. 200/- or procured otherwise Tractor No. DLL-9 make Hindustan, and Trailer No. MPE-8748 belonging to Shiv Lai son of Tirkha Ram and driven by Richhpal Singh and used the same for free conveyance of voters on March 11, 1972, from village Aurangabad alias Brahmanwas to Jakhauli Polling Station (Paras. 7 (vi) and 13 of the Petition).

(c) The returned candidate on the polling day paid a sum of Rs. 7,000/- to Mange Ram son of Khusi Ram of Mandaura and his daughters and sons, by way of compensation in respect of the fatal injuries received by Mange Ram in an accident, caused by the driver of Truck No. HRR-5167 while carrying the voters of village Turakpur free of charge. The returned candidate has failed to show this amount of Rs. 7,000/- and the sum of Rs. 400/- being the total hiring charges of the aforesaid truck and tractor, in the return of election expenses submitted by him under Section 78 of the Act. On addition to these undisclosed items, the total of the election expenses incurred by him exceeds the permissible limit of Rs. 9,000/- (Paras. 7 (iii). 10. 13 and 14 of the Petition).

3. After considering the pleadings of the parties, their clarificatory statements and the abandonment of some allegations by the petitioner, the learned trial Judge condensed the controversy pertaining to the above grounds into these Issues:

Issue No. 1;

Whether Respondent No. 1 hired on payment truck No. HRR-5167 belonging to Shri Lakhi Ram son of Hira, of Turakpur, and used the same for the free conveyance of electors, named in Schedule 'A' to the petition, on March 11. 1972. from village Turakpur to the polling station, at Mandaura ?

Issue No. 2:

Whether Suba Singh of village Kherl Mana Jat was an agent of Respondent No. 1' within the meaning assigned to that expression in Explanation (1) to Section 123 of the Act Whether the respondent hired on payment tractor No. DLL-9, make Hindustan, and Trailer No. MPE-8748 belonging to Shri Shiv Lai son of Tirkha Ram, and driven by Richhpal Singh, and used the same for free conveyance of voters from village Aurangabad alias Brahmanwas to Jakhauli Polling Station?

Issue No. 5:

Whether respondent No. 1 paid Rupees 200/- as hire charges for Truck No. HRR-5167 and Rs. 200/- each to the owners or drivers of the tractors for their use for free conveyance of voters. If so, has the respondent shown the said expenditure in the return of election expenses ? If not. what is its effect ?

Issue No. 7:

Whether the respondent paid a sum of Rs. 7,000/-, by way of compensation in respect of injuries and death of Mange Ram as alleged in paragraph 10 of the petition. If so, has the respondent included the said amount in the return of his election expenses ? If not what is its effect ?

4. The High Court decided Issue No. 2 against the petitioner and Issues (1), (4), (5) and (7) in his favour and held that the appellant was guilty of committing the corrupt practices under Section 123(5) and Section 123(6) of the Act. In the result, the petition was allowed and the election of the appellant was set aside.

5. Against that decision, dated May 15, 1973, of the High Court, Ch. Rizak Ram has come in appeal before us under Section 116-A of the Act.

6. The first part of Issue (5) Is complementary to Issue (1), and the second part to Issue (4). These three issues relate to two distinct charges of corrupt practice under Section 123(5) of the Act. We should therefore, at the outset, have a clear idea of the ingredients of this corrupt practice, the onus of proving which lay on the petitioner.

7. Section 123(5) runs as under;

The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or of his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a

place fixed under Sub-section (1) of Section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint cost for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tram-car or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation: In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

8. Clause (5) of Section 123 has been amended more than once. Section 26 of Central Act 58 of 1958 inserted in it the words "with the consent of the candidate or his election agent". Section 53 of Act 47 of 1966 substituted in it for the words "or the conveyance", the phrase "or the use of such vehicle or vessel for the free conveyance". The object of making the 1966 amendment was stated thus: ...under Clause (5) of Section 123 the hiring or procuring of any vehicle or vessel by a candidate, etc., for the conveyance of any voter is a corrupt practice. But the Election Commission has expressed the view that it is not so and the hiring or procuring of the vehicles, etc., as the free conveyance of voters by candidate or his agent as an inducement to them to vote on his behalf that requires to be condemned as a corrupt practice. Clause (5) of section has been amended suitably for this purpose.

9. On analysis Clause (5) of Section 123 falls into two parts. The requirements of the first part are: (i) The hiring or procuring whether on payment or otherwise, of any vehicle or vessel for the free conveyance of voters (ii) Such hiring or procuring must be by a candidate or his election agent or by any other person with the consent of a candidate or of his election agent. The second part envisages the "use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family, or his election agent) to or from any polling station". The two parts are connected by the conjunction "or" which is capable of two constructions. In one sense, it is a particle coordinating the two parts of the Clause and creating an alternative between them. In the other sense - which is akin to the sense of "and" - it can be construed as conjoining and combining the first part of the clause with the second. The latter construction appears to comport better with the aim and object of the amendment of 1966. In this connection, it is noteworthy that even before the amendment, this Court in *Shri Balwan Singh v. Shri Lakshmi Narain*, held that if considering whether a corrupt practice described in Section 123(5) is committed, conveying of electors can not be dissociated from the hiring of a vehicle.

10. Even If the word "or" is understood as a coordinating conjunction introducing alternatives, then also a petitioner in order to succeed on the ground of a corrupt practice under the second part of the clause, must prove, in addition to the use of the vehicle or vessel for the free conveyance of any elector to or from any polling station, the hiring or procuring of that vehicle or vessel. This is so

because the word "such" in the phrase introduced by the 1966 amendment, expressly imports these elements of the first into the second part of the clause.

11. In the view we take we are fortified by the dictum of this Court in *Joshbhai Chunibhai Patel v. Anwar Beg Mirza*, wherein Hidayatullah, C.J., speaking for the Court, analysed the requirements of the clause, thus:

It will be noticed that this section also speaks of the use of such vehicle which connects the two parts, namely, hiring or procuring of vehicle and its use. The requirement of the law therefore is that in addition to proving the hiring or procuring and the carriage of electors to and from any polling station, it should also be proved that the electors used the vehicle free of cost to themselves.

12. In regard to Truck No. HRR-5167 and Tractor No. DLL-9. all conceivable facts, including some in the alternative, which would constitute corrupt practices under Section 123(5) were alleged in the petition. But at the time of settlement of issues, the plea of procuring in the case of Truck No. HRR-5167 and the allegation of hiring of the said tractor by the returned candidate through his agent, Suba Singh/or Om Parkash were given up by the Counsel for the petitioner.

13. In the light of the above analysis of Section 123(5), it will be seen that regarding Truck No. HRR-5167, under Issue (1) and the first part of Issue (5), the petitioner had to prove

(i) that the truck was hired by the returned candidate,

(ii) that it was used for the conveyance of the electors on March 11, 1972, from village Turakpur to the polling station at Mandaura, and

(iii) that such conveyance was free of cost to the electors.

14. Failure to substantiate any one of these facts would lead to the collapse of the whole charge.

15. Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious, penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the Respondent against whom the charge of corrupt practice is leveled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is a difference between the general rules of evidence in civil and criminal cases, and the definition of "proved" in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainly amounting to demonstration is rarely to

be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. 'Proof means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by a mere balance of probabilities and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt not being the doubt of a timid, fickle or vacillating mind as to the veracity of the charge, it must hold the same as not proved.

16. We have reiterated the above principles not as a ceremonial refrain of what has been said by this Court again and again but to emphasis their Importance as a guide in the matter. A court embarking upon an appreciation of evidence, without this rudder and compass, is apt to find itself at sea, mistaking every flotsam for shore, suspicion for proof and illusion for reality. Since these principles were not constantly kept in mind, the approach of the High Court in this case to the issues involved, and the treatment of evidence, appears to have gone awry. It is therefore, necessary to reappraise the evidence from the standpoint indicated above.

17. We will now deal with the evidence relating to Truck No. HRR-5167.

18. The first ingredient required to be proved in respect of this charge is the hiring of this truck by the returned candidate. The direct evidence produced by the petitioner to establish this fact consists of the oral statement of a solitary witness Tara Chand (P.W. 11) a resident of village Liwaspur. Tara Chand claims to be a relation of one Lakhi Ram of Turakpur who runs a shop at Sonapat and also has a brick-kiln in tiie area of Liwaspur. The story narrated by Tara Chand is that on the day preceding the poll, he went to Lakhi Ram at Ms brick-kiln just to smoke hukka. The appellant came there in a car, and, in the immediate presence of the witness and two or three other persons, including one Bhagwan Singh, hired the truck owned by Lakhi Ram and driven by his son, Kanwal Singh, for the purpose of carrying voters from Turakpur to the polling station at Mandaura, and paid there and then the hiring charges amounting to Rs. 200/-, which were reluctantly accepted by Lakhi Ram.

19. In rebuttal, the returned candidate appeared as R. W. 17 and also examined Lakhi Ram, R. W. 3, and the letter's son, Kanwal Singh, R. W. 2. All these three categorically refuted the version of Tara Chand.

20. We have carefully scrutinised the statements of P.W. 11, R. W. 2, R. W. 3 and R. W. 17 and the judgment of the High Court.

21. The question was whether the solitary statement of Tara Ghand was reliable and sufficient to establish the fact of hiring of the truck. Was his ipse dixit so impeccable that it would prudently be

preferred to the sworn, testimony of R. Ws. 2, 3 and 17 examined by the opposite party?

22. For reasons that follow the answer to these questions, in our opinion, must be in the negative.

23. Firstly, Tara Chand appears to have been engrafted for evidence, subsequently as an afterthought His name as a witness or an informant of any fact whatever relating to the truck or-any vehicle, or otherwise does not figure in the petition, its verification or in the affidavit accompanying it. Mention of his name was first made in the list (dated 16-8-1972) of his witnesses by the petitioner about four months after the institution of the election-petition.

24. Secondly, he answers the description of a convenient witness who could don any part and play any role assigned So him from time to time, by his 'director', the petitioner. In the list, dated 16-8-1972. Tara Chand was cited as a witness (At No. 25) for an entirely different purpose. viz: "To depose Tractor No. DLL 7946 used as conveyance for free carriage of voters". But one Bhagwan Singh son of Jug La! of village Liwaspur was cited at No.1 in that list, to "depose regarding corrupt practice of hiring truck No. 5167 (HRR) and using as free conveyance of voters". Later on when this Bhagwan Singh was given up. the role originally assigned to Tara Chand was changed and he was conveniently made to depose with regard to the hiring of Truck HRR-5167 a Part which according to the aforesaid list, had to be performed by Bhagwan Singh and some other witnesses.

25. Mr. lyenger, learned Counsel for the respondent-petitioner, contends that this variation between what Tara Chand, according to the list of witnesses was expected to depose and which he actually deposed at the trial, was never put to the petitioner in cross-examination, and consequently, the latter had no opportunity to explain the same. This discrepancy, it is suggested, may well be the result of an inadvertent error or clerical mistake.

26. The contention is meritless and must be repelled.

27. As rightly pointed out by Dr. Singhvi, the learned Counsel for the appellant, the specification in the list of witnesses, the gist of the facts to be proved by each witness, was & requirement of Rule 22 of the procedural rules framed by the Punjab and Haryana High Court (see Punjab and Haryana High Court Rules and Orders. Vol. Ch 4G G.) R. 22 contains a salutary provision. It fulfils a twofold purpose: (i) It enables the Court to make a full, fair and effective use of its discretionary power under the proviso to Section 87 of the Act, to weed out unnecessary and immaterial witnesses cited by a parity only for the purpose of delay and vexation or on frivolous grounds (ii) It ensures due opportunity to the opposite party to collect material for impaneling and testing the veracity of the Witnesses in cross-examination. If in the list, dated 16-8-1972, Tara Chand was wrongly cited as a witness of different facts, then it was for the petitioner to explain, on his own, as to why it was so He \cannot be allowed to take advantage or escape the consequences of his own wrong in not complying faithfully and correctly with the requirements of R. 22. Moreover, in the circumstances of the case, there? is ho basis for the argument that the gist of Tara Chand's expected deposition as given in the list of witnesses, was the result of sheer inadvertence or en accidental slip. Tara Chand's case is not the lone instance of citing a witness for one purpose, and examining him for another. This technique seems to have been adopted by the petitioner in the case of a few other witnesses also. For instance,

in the verification, Bhagwan Singh was mentioned one of the omnibus informants (named therein) of the various facts alleged in Paragraphs 12, 13 and 15 of the petition. But in the affidavit, he was indicated as the sole informant of the allegations in Paragraph 15 only. The allegations in Paragraphs 12 and 15 have nothing to do with the issues under consideration. In the list, Bhagwan Singh was not cited as a witness of any of the facts alleged in Paragraph 15. but of the hiring and use of the truck and for that purpose also, he was not examined. We are therefore of the (c)pinion that the citation of Tara Chand in the list of witnesses for proving facts other than the hiring and use of truck HRR 5167. was not the result of a mere clerical error. The fact remains that originally he was not marked out to testify regarding the hiring of this truck.

28. Thirdly, the very story told by the witness is unnatural and in probable. His statement does not inspire confidence. He is a 'chance' witness of the worst type. According to his own showing, he had no business to go to the brick-kiln. He just halted there to smoke hukka as Lakhi Ram was his relation. His stay at the brick-kiln, as he claim was for 15-20 minutes only. He came there just before the arrival of the appellant. and disappeared soon after the latter's departure as if his sole purpose in coming there was to be a witness of the hiring of the truck. It would be extremely rash to swallow, without demur, so artificial a version.

29. In cross-examination, his claim of being related to Lakhi Ram or being his intimate associate was blown to smithereens. When the pursuit for truth began, he, in a seductive bid tried like Will-'O'-the Wisp to draw his pursuer deep into the bogs and marshes of the murky past and said that his great-grand father's sister was married to the grand father of Lakhi Ram. The cross-examiner was not taken in. He Dressed his probe further. The witness then tried to take refuge, in equivocation. Next he attempted to hide behind the smoke-screen of 'failing' memory and said that he could not recollect the name of the woman through whom he was related to Lakhi Ram's grandfather, nor did he know the name of Lakhi Ram's grandfather. The questioner relentlessly pursued his enquiry till the whole thing was exposed to be very nothing. Further cross-examination revealed that Tara Chand had only superficial knowledge of the affairs of Lakhi Ram and his family. He did not know how many children Lakhi Ram had. He did not know when and where Lakhi Ram's second son was married. He was not aware if Lakhi Ram was running shop in the Timber Market. Sonepat.

30. Lakhi Ram who appeared as R. W. 3, stated that Tara Chand was not related to him. His brick-kiln was not being worked since 1970. He used to visit the kiln only occasionally but his Munim was living there. He himself was running a shop in Kath Mandi, Soneot

31. It was thus clearly shown that Tara Chand's claim as to his being a relation and an intimate associate of Lakhi Ram was false.

32. On the other hand, there is evidence on the record to suggest that Tara Chand's relations with Lakhi Ram and his son were likely to be estranged. Tara Chand was asked whether he was cultivating the land of pyara of Rathdana. He blatantly denied it. On this point his version stands falsified by the entries in the Khasra Girdawri, Ex. R. W. 17/11. which show that Tara Chand son of Rattan had cultivated Kh. Nos. 14/21 and 20 in the revenue estate of Liwaspur in Kharif 1971 and

Rabi 1972 as a tenant under Pyara Lal and others. Khasra Girdawri is an official record prepared by a public servant in the discharge of his official duty. Prima facie there is no reason to doubt the correctness of the entries made therein. Tara Chand conceded that Pyara Lal of Rathdana was the father-in-law of one of the sons of Lakhi Ram. He further admitted that there was litigation between this Pyara Lal and his tenants. He however, denied the suggestion that he was the leader of the faction of the tenants who were pitched against Pyara Lal. He expressed ignorance as to whether the appellant was a counsel of Pyara Lal in that litigation against the tenants.

33. Viewed against the background of this litigation, it looks improbable that Tara Chand would go to Lakhi Ram just to while away time and to smoke hukkas in the latter's company. Still more improbable was his story that the appellant settled the deal as to the hiring of the truck in the immediate presence and hearing of the witness and his companion, Bhagwan Singh. Appellant is a practicing Advocate of standing and experience. He is a veteran of many election battles. It is therefore difficult to believe that he would be so imprudent as to make such a deal personally and openly in the presence of strangers.

34. In our opinion, to accept Tara Chand's testimony with all its faults, would be to adopt a course of blind faith and convenience, and not of prudence and discernment. His evidence suffers from grave defects and indelible blemishes which make it wholly unworthy of credit. We therefore hold that the petitioner had failed in his attempt "to substantiate by direct evidence the hiring of this Truck by the Respondent.

35. To prove the use of Truck No. HRR-5167 on the Polling day for the conveyance of electors from village Turakpur to Polling Station Mandaura and that appellant's connection with such conveyance, the petitioner examined P.W. 9 Amir Singh. P.W. 10 Lakhi Ram. P.W. 12 Dharam Singh P.W. 33: Randhir Singh all of village Mandaura-P.W. 1 Ram Singh and Inspector Moti Singh (P. W. 2). Their evidence relates to Issue (7) also.

36. We will first take up P. Ws. 9, 10 and 12. The resume of their evidence is as follows:

37. P.W. 9 Amir Singh stated that on the polling day at about 9 a. m. he was smoking Hukka on the chabutra of his nephew. He heard a loud noise and groaning from Turakpur-Narela Road which is at a distance of 60 paces from that chabutra. Thereupon he went to the road and saw a truck facing towards Mandaura. The truck belonged to Lakhi. It had struck against the branch of a neem tree. The broken branch was lying there. The voters of Turakpur had come in that truck. When the witness reached the site of the accident, the passengers had already alighted the truck and were going towards the polling station. The witness saw one or two of them whom he knew earlier. They were Ghansi and Sheora. Mange Ram was injured on one side of the truck. P.W. 10 Lakhi brought a charpol. Mange Ram was laid on the charpol and removed to the baithek of P.W. Randhir Singh. Mange Ram's two sons and two daughters came there soon after. A little later, Lakhi (R. W. 3) and Ch. Razik Ram arrived. Ch. Razik Ram asked the witness and others present there to bring about a settlement with Mange Ram as it was election time, adding that otherwise, the whole thing might get spoiled. Randhir Singh got the settlement made, according to which, the appellant was asked to pay Rs. 10,000/- to the children of Mange Ram. Ch. Razik Ram agreed. He took out Rs.



7,000/-from a thaila (bag) which he was carrying and paid that amount there and then to one of the daughters of Mange Ram and promised to pay the balance later. Ch. Rizak Ram then went away. Thereafter the Chowkidar called the Police Sub-Inspector (P.W. 1). Ram Singh from the polling station. The Sub-Inspector came and recorded the statement of Mange Ram, injured. The latter told the Sub-Inspector that the matter had been amicably settled. After the departure of the Sub-Inspector, Mange Ram was removed from the baithek and taken away in a white-coloured car. Witness further stated that he had seen this truck coming earlier on that day at about 8 a.m. There were passengers in the truck and a flag bearing the symbol of a woman at the spinning wheel had been hoisted on the truck.

38. In cross-examination, contradicting his version in examination-in-chief, the witness stated that he had not seen Lakhi Ram the owner of the truck, with the appellant, nor had he noticed Lakhi Ram at the time of the settlement and payment of Rs. 7,000/- by the appellant.

39. P.W. 10 Lakhu Bairagi stated that he was present at his house in village Mandaura at about 7.45 a. m. He saw Mange Ram and voters including Ram Mehar and Jugta. from village Turakpur arriving there in a truck belonging to one Daleep of village Turakpur (later on he substituted 'Lakhi Ram' for "Daleep"). Witness saw another truck load of voters arriving in that very truck at about 10-30 a.m. On that occasion the truck struck against the branch of a neem tree. On hearing the commotion, the witness ran to the scene which was about 50 paces away from his house. On reaching there he saw Mange Ram lying on one side of the truck and the broken branch of the neem tree on the other. Kanwal Singh, the driver of the truck, after inquiring from the injured as to the seriousness of his injuries, fled away. Witness had seen Khasi, Sudan, Jogi and Prem Rai of village Turakpur. among that who had alighted from the truck. He added that these persons had come to cast their votes. The truck was carrying a flag bearing the figure of a woman with a spinning wheel. After the accident, P.W. Amir Singh and many children arrived at the scene. His further statement with regard to the removal of Mange Ram to the house of Randhir Singh, the arrival of Lakhi Ram and Ch. Rizak Ram, the payment of Rs. 7,000/- by the latter to Smt. Parmeshwari, daughter of Mange Ram and the recording of Mange Ram's statement by Ram Singh (P.W. 1) is more or less the same as that of P.W. 9. Amir-Singh. He however, contradicted P.W. 9 with regard to the arrival and departure of Lakhi Ram, the alleged owner of the truck, and said that after making the payment appellant went away, while this Lakhi Ram remained there near the injured Mange Ram, and sent the Chowkidar to call the Police Sub-Inspector from the polling station.

40. P.W. 12 Dharam Singh was admittedly a supporter of the petitioner and worked as the latter's polling agent. There were two polling booths located at Mandaura, one for the electors of Mandaura and the other of those of Turakpur and a part of Mandaura. These booths were at a considerable distance from each other, Dharam Singh acted as a polling agent of the petitioner at the polling booth meant for the electors of village Mandaura,

41. Dharam Singh's version is that at about 8 a. m. on the polling day, 30 to 40 voters including Sis Ram, Balbir. Ram ' Singh. Ram Chand and Bharta of village Turakpur had come in a truck owned by Lakhi Ram and driven by his son, Kanwal Singh, outside the boundary of the polling booth. Witness was not aware whether this truck had come a second time.

42. Dr. Singhvi contends that original in the petition P. Ws. Amir Singh and Lakhu Bairagi were not mentioned as witnesses of the carriage of voters, but only of the settlement and the payment of Rs. 7.000/- by the appellant to the daughter of Mange Ram. The expanded role which they performed in the witness-box, it is urged, was a subsequent development.

43. As against this. Mr. Iyengar submits that the settlement and payment in the context of which the names of P. Ws. 9, 10, 11 and 33 were mentioned in the petition itself, could not be dissociated from the carriage of voters. Thus viewed, .says the Counsel, there has been no variation between pleading and proof.

44. In Para. 7 (iii) of the petition after stating inter alia that the truck was engaged in the free conveyance of voters, it is pleaded:

The Respondent No. 1 and Lakhu Bam sop of Hira ... compounded with the injured Mange Ram and his sons and daughters and agreed to Pay his survivors Rs. 10,000/- in the presence and through the mediation of Sarvshri Babu Randhir Singh, Amir Singh alias Mir Lamberdar ... and Lakhu Bairagi of village Mandaura and paid Rs. 7.000/- at the spot.

In the verification, it is stated:

"Para. 7. sub-paras, (i) to (vi) are true to my information derived from Dharam Singh, Ex-Sarpanch. Mandaura. Bule Ram. Member Panchavat of Khu-rampur' and Chander Bhan, Sanpnch of Garni Bala and Para. No. 10 through Babu Randhir Singh and Mir Singh Lamberdars.

The name of Lakhu P.W. does not figure in the verification. In the affidavit also, P.W. Randhir Singh. Amir Singh and Lakhu are mentioned as witnesses of the settlement and the payment of Rs. 7.000/-to the heirs of Mange Rain and Dharam Singh as informants of all the facts alleged in Paras. 7. and 10 of the petition. The aforesaid Bule Ram and Chander Bhan have not been examined.

45. In the list of witnesses, P. Ws. Dharam Singh, Babu Rafldhir Singh. Amir Singh Lamberdar and Lakhu Bairagi are mentioned at Sl. Nos. 4. 5. 6 and 7 respectively. Against their names, it is written : "Will depose regarding corrupt practice of hiring Truck No. 5r67. and using as free conveyance of voters". None of these witnesses has deposed to the fact of hiring of the truck. P.W. Babu Randhir Singh does not give. any direct evidence in regard to the carriage of voters in the truck. P.W. 12 Dharam Singh does not depose with regard to the visit of the truck at about 10-30 a. m. or the accident in which the truck was involved. He claims to have seen the truck, only at 8 a. m. coming with a load of voters from Turakpur. Thus: there has been some readjustment of the roles of these P. Ws. It is not as Pronounced and dramatic as in the case of Tara Ghand and Bhagwan Singh. By itself, this circumstance may not be a ground for rejecting their testimony. Nevertheless, it casts a duty on. the Court to scrutinise their evidence with more than ordinary care.

46. P.W. 12 Dharam Singh is an Ex-Sarpanch and. as such, appears to be an influential person of Mandaura. He is admittedly a worker, supporter and polling agent of the petitioner. According to the petitioner's affidavit, he was his chief informant with regard to the facts constituting this charge.

The witness is a political partisan of the deepest dye. As will be presently seen, it was he who seems to have 'guided' Inspector Moti Singh in manufacturing evidence for the purpose of this election petition. Not only Dharam Singh's evidence, but also that of P. Ws. 9, 10 and 33 has to be appreciated in this perspective.

47. The evidence of Dharam Singh, besides being strongly partisan in character, appears to be otherwise unreliable. He wants to have it believed that while he was at the Polling Booth to submit the Polling Agent's Form, at 8 a.m., he saw the voters from Turakpur arriving there in this truck. Bringing electors in a motor truck on the polling day right upto the polling Station is an offence punishable under the Act. The Police Sub-Inspector Ram Singh and some constables were present on duty at the Polling Station. If Dharam Singh had actually seen this truck coming there loaded with voters, he would not have failed to report about it to the Police. The very fact that he did not do so makes his story suspect.

48. Further point to be noted is that material witnesses from village Turakpur, who could be entirely independent and free from the influence of Dharm Singh, have been withheld by the petitioner.

49. P. Ws. 9, 10 and 12 have named thirteen persons who, according to them, were voters and had been brought in this truck from Turakmir. Thus P.W. 9 named Ghasi and Sheo Ram; P.W. 10 named Khasi, Sudan, Jogi, Prem Rai, Ram Her and Jugte; P.W. 12 named Sis Ram, Balbir, Ram Singh, Ram Chand and Bharta. None of these was examined by the petitioner. One of them, Prem Rai, examined as R. S. 4 by the appellant, categorically denied having traveled in the truck on the polling day. He swore that he had gone on a cycle and not in a truck, to cast his vote at the Polling Station Mandaura.

50. Another curious feature which casts a speck on their evidence, is, that although they were supposed to be witnesses of the same fact at least with regard to the first trip of the truck not a single person out of the aforesaid thirteen has been named in common by these P. Ws.

51. Although it has not been affirmatively established that P. Ws. 9 and 10 are partisans of the petitioner, yet some significant indications are available in their evidence and demeanour, as manifest therefore, that they are not altogether independent and disinterested witnesses. An attempt was made in cross-examination to show that P Ws. 9, 10, 12 and 33 constitute one group or faction which has in all the elections since 1952 been opposing the appellant, and in the 1972 elections- they had supported Congress (R) and its candidates, Ch. Jaswant Singh (petitioner), Hukam Singh and Rajinder Singh who were close associates of each other.

52. To most questions P.W. Amir Singh did not give prompt and straightforward answers. In an effort to evade, parry and hide something he indulged in equivocation. For instance, he was asked whether the appellant had in 1952 fought the election against Ch. Tikka Bam, a co-villager of the witness. As the note of the learned Judge shows, he took a few seconds to think over the matter. Rave a smile, and then said: "I do not have any". He was then asked whether the appellant had been elected as M. L. A. in the post-Independence election. At first flush, he came out with an evasive reply, even to such an innocuous question and said; "I do not have any idea about it", On further

questioning, the witness had to admit that in the elections of 1962 and 1967, the appellant was pitched examination of P.W. 9 to establish his interestedness in the petitioner. P.W. 10 was therefore, better prepared to meet the efforts of the appellant directed towards that end. P.W. 10 refused to divulge any such fact even at the risk of taking a stand verging on absurdity. He first hit back by saying that in the Parliamentary Elections of 1971 he had supported the appellant and not his opponent who, as is apparent from the other evidence on record, was a Congress (R) candidate. At first, he stated that he knew the election symbols of the petitioner and the appellant. He then said that he had voted against one of the several election symbols. He then reversed his earlier answer and stated that he cannot recollect the election symbol of the petitioner or any other candidate. He admitted this much that Ch. Tikka Ram of his village was defeated by the appellant in the elections of 1952 and that in two Assembly Elections the appellant was fighting against Ch. Hukam Singh.

53. Lakhu Ram. P.W. 10. was examined on the day following the cross- against Hukam Singh and that the witness had supported Hukam Singh in both those elections. The witness was thereafter questioned about his acquaintance with the petitioner. In keeping with his evasive attitude, he first had the temerity to say "I do not know the petitioner". He then hastened to couple this reply with the protest: "I did not support anyone in the election in question". On further hammering, however, the witness qualified his earlier version and had to yield: "I have been knowing the petitioner by face, for the last five or six years". The witness admitted that his nephew, Handhir Singh. P.W. 23. was related, through his maternal uncle, to Ch. Lehri Singh whose nephew. Ch. Raiinder Singh, was fighting the election from the adjoining constituency in March 1972. The witness was asked, whether Ch. Rajinder Singh was contesting the election as a candidate of the Ruling Congress. At first he unwittingly replied in the affirmative. On second thought he tried to wriggle out of the answer by saving: "I know that he was a Congress candidate but I do not know as to which Congress had set him up". He tried to feign ignorance, even of the fact that the petitioner was contesting the election on Congress (R) ticket and wanted to have it believed: "I do not know the name of the party which had set up the petitioner as a candidate". Under the force of further cross-examination, however, he conceded that so far as he was aware the appellant and the petitioner only were rival candidates in the election in question, and that, on the ballot-paper he had seen only two spins, only of cow and calf and the other of a spinning wheel. He admitted that Professor Sher Singh and Ch. Rizak Ram had, as rival candidates, contested the election to Parliament in 1971 and that he was a helper and supporter of Prof. Sher Singh. To show that the witness was under the influence of the petitioner. it was suggested to the former that when he came to appear as a witness in this case, he had stayed at Chandigarh for four days in the bungalow of the petitioner. He emphatically denied it. and asserted that he was staying at Chandigarh for the preceding three days with "some boys of his village in hostel . Asked about the particulars and residence of those "boys". the witness said: The name of that boy is Rain but I do not know the name of the class he is studying in or the Sector in which he is living . This miserable failure of the witness to particularize the place of his stay and his host or hosts at Chandigarh, renders probable the alternative suggestion put to him by the appellant.

54. Another peculiar feature of the evidence given by P. Ws. 9 and 10. is that both are assertive and specifically claim to be present at their respective viewing places, only at those points of time which are crucial to the charge leveled by the petitioner. Their version with regard to this matter is strikingly similar, if not absolutely identical. Thus Amir Singh, P.W. 9 stated:

I took my seat on the Chabutra for smoking Hukka at about 8 a. m. on that day ...I went away to my house at a distance of about eight paces to take food at about 8.15 a.m. I returned from my house to the chabutra at about 10.30 a.m. Similarly P.W. 10 said:

I had come out of my house at about 7.45 a. m. for rope making. I was sitting opposite my house on the kutchra portion abutting the road. However, I was not intently watching the road as I was busy with my occupation. I cannot now recollect the time for which I continuously kept sitting outside my house from 7.45 a. m. onwards. I had gone to give water to my bullocks but I cannot fix the time precisely and similar is my answer in regard to my taking the food. After taking my food I had come out and started smoking the Hukka. I cannot say at what time I started smoking the same. I recollect two points of time, the one being 7.45 and the other at 10-30 a.m.

55. Amar Singh is an educated person and Lakhu an illiterate rustic. Ordinarily, it would be difficult for any two witnesses of the same occurrence, with diverse backgrounds of education and experience, to attain such unison in their notes without their having been carefully attuned and instructed by the same maestro.

56. Furthermore, these witnesses in their anxiety to go whole hog to support the charge, are prone to exaggerate matters. In regard to the bringing of voters in this truck at about 10-30 a.m., they have, more or less, drawn upon their imagination. Both went to the scene after what may be shortly after the accident on hearing noise and commotion. Amir Singh says, when he reached the spot, the driver had already disappeared and the passengers had also got down from the truck and were on their way to the Polling Station. The version of Lakhu (who claims to have reached there simultaneously with P.W. 9) is that when he went to the scene. Mange Ram injured was lying on one side of the truck, and the broken branch on the other: several persons had alighted the truck. The driver ran away after making an enquiry from the injured. In cross-examination, ' the witness, improving upon his version in examination-in-chief, stated:

When I reached the spot I saw some of the voters had already alighted, whilst others...were in the course of alighting.

Thus, P. Ws. 9 and 10 were, if at all. post-accident witnesses. Still, an anxiety on their part to pose as full-fledged eye-witnesses of the accident by stretching their imagination, is discernible.

57. How deeply Amir Singh. P.W. 9. was committed to support the petitioner is demonstrated by what he said regarding the apparent ownership of Truck No. HRR 5167, in cross-examination. Kanwal Singh. R. W. 2. swore that this truck was his exclusive property and that his father had no interest or share in it. The witness purchased it for Rupees 13,000/- in 1968 from one Asa Nand of Sonapat. Consequently, since October 14, 1968, the truck stood registered in the records of Transport Department, in favour of the witness alone. Kanwal Singh brought with him the registration certificate in respect of this vehicle to make it available for inspection by the Court and the parties. He further testified that his name stood painted on the truck. He claimed to be separate from his father in mess and residence.

58. Lakhi Ram. R. W. 3. fully corroborated his son. Kanwal Singh, in regard to the ownership of this vehicle. In cross-examination of R. W. 2. although an attempt was made to show that Lakhi Ram and his sons as members of joint family had a beneficial interest in this vehicle, yet Kanwal Singh's claim to the apparent ownership of the truck and the display of his name, as owner, on the body of the truck, was not questioned. These twin facts had thus been undisputably established. Amir Singh was cross-examined with regard to the basis on which the Detitioner's side alleged that basis truck belonged to Lakhi Ram son of Hira of Turkpur. Amir Singh replied:

I did not notice its registration number but I noticed the name of Lakhi Ram written as its owner.

This was a blatant lie. The witness has thus betrayed his true colour. He is of a type who in blind loyalty and support to the ease of the party calling him. would not hesitate to tell lies even in regard to patent facts.

59. The Charpoy for the removal of the injured from the accident site was brought from a nearby house. Admittedly, the houses of Sardar Singh and Ram Kishen are near the spot. None from those houses has been examined.

60. On one vital point, the witnesses sharply contradict each other. Amir Singh, being educated, is the cleverer of the two. He stated in examination-in-chief, that sometime after the removal of Mange Ram injured to the house of Randhir Singh, the appellant and Lakhi arrived there. In direct contradiction to this, in cross-examination, Amir Singh said:

Respondent No. 1 stayed for about 15 to 20 minutes in the Baithek of Randhir Singh where the compromise was arrived at. I had not seen Lakhi Ram With him. I had not noticed Lakhi Ram there.

This attempt to keep out Lakhi Ram out of the picture, and to depict the appellant as one of the compounding parties, as will be presently discussed, appears to have been deliberately made to mould and adapt the evidence in a manner suited to the charge as laid in the petition. Suffice it to say here that this version is diametrically opposed to that of Lakhu P.W. 9 and Randhir. P.W. 33. P W. 9 says that Lakhi Ram, owner of the truck, was with the appellant when the compromise was made and Rs. 7,000/- were paid in pursuance thereof by the appellant. Lakhu added: "Lakhi Ram remained there whilst respondent No. 1 went away therefrom".

61. From the above discussion, two things emerge quite clear. Firstly. that there is nothing in the statements of P. Ws. 9. 10 and 12 to show that the voters, if any. conveyed in the truck, HRR 5167, to Mandaura. were carried free of cost to themselves. Secondly, even in regard to the alleged carriage of voters from Turkpur to Mandaura in .this truck and the payment of compensation by the appellant to the daughter of Mange Ram, the evidence rendered by these witnesses was not so unimpeachable, unblemished and disinterested that it could be safely accepted without corroboration from independent sources. We, have therefore, to see, whether such corroboration is coming forth from the statements of Randhir Singh P.W. 33. Ram Singh P.W. 1, Smt. Parmeshwari P.W. 25 and P.W. 2. Moti Singh or any other evidence on record.

62. P.W. 33 Randhir Singh was. at the material time, employed at Delhi in the Central Water & Power Commission, but on the polling day he was in Mandaura. He is the nephew of Amir Singh. P.W. 9. According to him. the School building in which the polling station was located, is at a distance of 300 to 400 yards, from his residential house in the village. He has deposed that Mange Ram was brought to his house in an injured condition at about 10-30 a. m. by Amir Singh, p. W. 9, and Lakhu Bairagi. P.W. 10. The witness immediately called Smt. Sunder, the nurse from the Government Dispensary. The nurse save a couple of injections to Mange Ram and dressed up his head injuries. A large number of persons collected at his Baithek. The crowd included two sons and two daughters of Mange Ram. The witness further stated that Ch. Rizak Ram (appellant) and Ch. Lakhi Ram came there after about half an hour. The appellant asked the witness to get the matter amicably settled "as it was a Question of polling". A compromise was thereupon effected between the sons and daughters of Mange Ram on one side and the appellant and Ch. Lakhi Ram on the other. Pursuant to that settlement. Rs. 7.000/-were paid in cash by the appellant to Parmeshwari, the eldest daughter of Mange Ram. and the balance was to be paid, subsequently. The people collected there were saying that since the owner of the truck was a supporter of Rizak Ram. that was why the money was being paid by the latter. The people were also saying that the truck was bringing voters from Turakpur when the accident took place. In answer to a Court Question, the witness expressed his inability to name the persons who were saying that the truck was bringing voters from Turakpur. After the payment of the sum of Rs. 7.000/-, Amir Singh Lambardar sent the Chowkidar to inform the police. After the appellant and Lakhi Ram had gone away, the Police Sub-Inspector came there and recorded the statement of Mange Ram injured. Mange Ram told the Sub-Inspector that the matter had been amicably settled. The witness asked the Sub-Inspector to arrange for the removal of Mange Ram from his baithek. Mange Ram was accordingly taken away at about 3 or 4 o. m. in a cream coloured car arranged by the party of Ch. Rizak Ram.

63. In cross-examination, Randhir Singh said that apart from the witness, a large number of persons including Risal Singh. Jai Lai, Lakhu. Kidarev, Bhogana, Narain Singh, helped in bringing about the settlement, and that the money was also paid by the appellant to the daughter of Mange Ram, in the presence of that crowd. Eight or ten persons from that crowd were present inside the baithek when the Police Sub-Inspector arrived, there. The witness admitted his relation ship-though far-fetched-with Ch. Raiinder Singh, Ex-Minister. He. how ever, expressed ignorance as to whether Ch. Raiinder Singh. Ch. Hukam Singh and the petitioner were members of the same political party in Sonapat District. He however, conceded:

I know all those three persons. I was present in the High Court yesterday and Ch. Hukam Singh was also present. I did not. however, meet Chaudhry Ravinder Singh in the High Court, yesterday.

He denied that he and his family members have been traditionally opposed to the appellant in the elections and helping Ch.. Hukam Singh. He also emphatically denied that he was giving false evidence on account of his interest in the petitioner.

64. A careful scrutiny of the statement of Randhir Singh shows that his denials and protests notwithstanding, like his uncle Amir Singh P.W. 9. he (P.W. 33), too, is not an entirely disinterested witness. He was not an eye-witness of the accident or of the carriage of any passenger in this truck.

Still, he was anxious to bring in that hearsay information by attributing the same to some unidentified persons in the crowd. The same technique of induction by hearsay, was used by the witness to explain why the appellant who was not driver or owner of the truck and as such, was not even remotely responsible for the accident. openly before a large number of persons, paid compensation to the injured or his daughter. The witness was conscious that in the absence of any such explanation, the story of the payment by the appellant, a veteran parliamentarian and experienced lawyer, would look inherently implausible and improbable.

65. The witness has disclosed the names of six persons who also, according to him, were present at the time of the composition and payment in pursuance thereof by the appellant. None of them has been examined.

66. Thus, the evidence of Randhir Singh does not stand on a better footing than that of P. Ws. 9 and 10. Not being itself flawless, it cannot, lend the requisite corroboration and assurance to the testimony of P. Ws. 9 and 10.

67. Now we turn to the evidence given by Ram Singh P.W. 1. He is a Sub-Inspector of Police. On the polling day he had gone to Polling Station Man- daura to check the police personnel posted there. At about 12 Noon, he was informed by the village Chowkidar that Mange Ram had sustained injuries in a truck accident. Witness thereupon went to the Baithek of Randhir Singh and recorded the statement of Mange Ram injured. Ex. P.W. 1/1, is a copy of that statement. It reads as follows:

Today I was coming from village Turakpur to my village in the tool box of a truck in which many persons had boarded who were to cast their votes, t came from Kaloi, the village of my sister, At about 10-30 a. m. when the truck reached Mandora. near the crossing of the Mata (place of worship) a ovclewala was coming from the front side. The truck driver tried to save him. At that time the truck was moving at normal speed. While saving him the truck was taken out through two neem trees and a branch of the neem tree from above got broken, struck the tool box and got separated from the neem from arid struck my head and nose. Mv feet and chest got scratch marks. The front right side of the truck struck the neem tree. Lakhi Baithek Mir Lambardar and Chowdhri Randhir, Singh have brought me to the Baithek of Randhir Singh. There is no negligence on the Dart of the driver. I have heard my statement and the same is correct.

Sd/- Mange Ram aforesaid with his thumb mark.

68. The material part of the note of his proceedings made under the statement Ex. P.W. 1/1. by the witness reads:

Under these circumstances no prima facie offence cognisable by police is made out. The accident has taken place perchance. There is no carelessness or negligence on the part of the driver of the truck. Hence the MoharrirJ should enffer the report in the Roznamcha.

Sd/- Ram Singh Sub-Inspector 11-3-1972 P.W. 1 Ram Singh further Stated:



I saw that truck ... parked a little ahead of the two neem trees and noticed that its tool-box had been broken. The number of truck was HKR-5167K belonged to Lakhi Ram Of Turakpur. The peeling booth It Mangeram was about two hundred yard's about Of the site of the accident. Two daughters of Mange Ram" including Parmeshwari two sons of Mange Ram, Mir Singh Lambardar, the Chatikidar, Lakhu Bairagi and the owner of the truck had all collected at Randhir Singh's baithak before I reached there and before I recorded the statement of Mange Ram. The injured and his relatives on the one hand and the owner and the driver of truck on the other had already arrived at an amicable settlement before I had reached the baithak of Randhir Singh. Mange Ram made the statement before me regarding that settlement. I did not ascertain the exact amount but I came to know that the settlement was in the form of some payment which had been made by Lakhi Ram owner of the truck and others to Mange Ram and his dependents.

69. Ram Singh's statement in so far as it relates to the compromise and payment of compensation, is a subsequent improvement. These were facts relevant to the proceedings he was conducting, yet, he did not mention anything of this kind in the record (Ex. P.W. 1/1 and P.W. 1/2) prepared by him. Nor did he examine and record the statement of Smt. Parmeshwari, daughter of Mange Ram, Lakhi Ram, the alleged owner of the truck or the other persons found in the Baithak, who were supposed to be parties or witnesses to the said settlement and payment. Moreover, with regard to these facts which he claimed to be deposing from memory unaided by any record about 7 months after the occurrence, his version is hopelessly self-contradictory. In examination-in-chief (quoted above) he said that Mange himself had stated about this "amicable settlement". In cross-examination, he discounted it, and said: "Nor did I record the statement of any of his daughters about the compromise though she did tell me that a compromise had been made". Without enquiry and caution, he tried to endorse the version of the interested witnesses (P. Ws. 12, 9 and 10) that this truck belonged to Lakhi Ram of Turakpur. In cross-examination, he admitted that he did not inspect the Registration Book, the Log Book or other documents relating to the truck. He however, put up the excuse that he could not inspect these documents "because there was nobody in the truck and the driver had "run away". The excuse is hardly convincing. He forgot that earlier in examination-in-chief he had said that Lakhi Ram, the alleged owner of the truck was there. Why did he not ask for those documents from Lakhi Ram ? Further, it is difficult to believe that a Police Officer of his rank and experience would not in such a case, care to contract or make enquiries from the driver of the truck involved in the accident, much less would he reach a finding that no cognizable offence had' been committed without examining the driver. Kanwal Singh. R. W. 2, the driver has categorically stated that he was allowed to go by the Sub-Inspector, only after the latter was convinced -after making the enquiry from Mange Ram. that he (R. W. 2) was not at fault. We will discuss Kanwal Singh's statement in detail, later. At this place it will be sufficient to say that Kanwal Singh's presence before the Sub-Inspector in the baithak of Randhir Singh, at the relevant time, cannot be doubted. The existence of this fact accords not only with probabilities, but also with what P.W. 1 had himself stated earlier in the portion quoted above. It may be recalled that in examination-in-chief Ram Singh had stated that the owner and the driver had compounded the matter before his reaching there. He stated so in the context of the preceding sentence in which he had said, that among others, the owner of the truck, was still there in the Baithak when the witness went there (at about 12 Noon). He did not then expressly say that the driver was not there. If the driver was admittedly there shortly before the arrival of Ram Singh, to compound the offence, he

could not evaporate into thin air in such a short time, nor was there any point in his running away when everything had been settled. Indeed, from the general tenor of Ram Singh's statement, it appears that he did not, at first, intend to deny the driver's presence before him. It was only to get out of the difficult situation in which he found himself in cross-examination, that he put up the absence of the driver as an excuse for not doing something which was the most material and natural thing to do for a person investigating an accident case of this nature.

70. We therefore, think that Ram Singh's statement with regard to the alleged composition and payment of compensation and other facts which do not find mention in the record prepared by him, is not reliable, much less is it of any use to lend assurance to the testimony of P. Ws. 12, 9 and 10. Rather, the non-mention of these material facts viz., the settlement and payment in pursuance thereof in the record of the proceedings by Ram Singh, undermines by implication, the version of the other P. Ws. in regard thereto.

71. Even so, Ram Singh's statement regarding these facts which, as he says, were derived from Mange Ram and/ or his daughter. Smt. Parmeshwari is on the crucial points inconsistent with the story told by P. Ws. 9, 10, and 13. Ram Singh does not say that anyone present there had told him about the appellant being in any way concerned in the settlement and payment of compensation for the injuries of Mange Ram. Ram Singh twice said in clear terms that this settlement, according to the information given to him at the Baithak was only between Lakhi Ram<sup>1</sup> the owner and the driver of the truck,, on one side, and Mange Ram and his dependents on the other. After deposing to that effect, in examination-in-chief, Ram Singh added:

I did not ascertain the exact amount but I came to know that the settlement was in the form of some payment which had been made by Lakhi Ram, owner of the truck, and others to Mange Ram and his dependents.

Two points in respect of this statement are noteworthy. Firstly, Ram Singh spoke about this payment in the context of the parties to the settlement. In that context, the words "and others" used by him in conjunction with "Lakhi Ram. owner of the truck", do not take in "Ch. Rizak Ram". At the most, they would mean "and the driver etc." Secondly, the clause "but I came to know that the settlement was in the form of some payment", in the context of the preceding sentence, stands in contradistinction to the information he received from Mange Ram. Thus construed this clause indicates that this information was given to him presumably by persons other than Mange Ram and his children, who were present there. P. Ws. Randhir Singh, Amir Singh and Lakhu Rairagi were, according to P.W. 1, then present in the Baithak. Failure of these P.' Ws. to tell the police Sub-Inspector there and then that the appellant had shortly before, visited the place, settled the matter and made the payment, necessarily raises the inference that nothing of this kind was done by the appellant in their presence, and the story in which such a role has been assigned to the appellant was developed by these witnesses subsequently. Furthermore, Ram Singh does not say that he saw any flag bearing any election symbol, on the truck when he inspected it. Thus on this point he does not furnish any corroboration of P. Ws. 9, 10 and 12.

72. The net result of the above discussion is that the evidence of Ram Singh P.W. 1, does not confirm if it does not directly contradict the account given by P. Ws. 9. 10 and 33 regarding the visit of the appellant and his participation in the settlement and payment of compensation to the daughter of Mange Ram.

73. The statement Ex. P.W. 1/1 of Mange Ram, recorded by Ram Singh, is however, admissible under Section 32, Evidence Act as to the circumstances of the transaction which resulted in his death. This Dying Declaration bears the thumb-impression of Mange Ram. This statement in its entirety, was incorporated in the General Diary of the Police Station. The authenticity of Ex. PW 1/1 cannot be doubted.

74. According to P.W. 10. in the morning of the polling day, at. about 8 A. M. also, Mange Ram had come to Mandaura in this very truck with a load of voters, and that earlier he had come along with one Lajya Ram, to canvass for the appellant.- As against this, in Ex. P.W. 1/1. Mange Ram stated that on the polling day he was returning home from village Kaloi after seeing his sister. On the way, he boarded the ill-fated truck at Turakpur which met with the accident at about 10.30 A. M. Kanwal Singh, R. W. 2, supports this version of Mange Ram. Mange Ram's daughter Parmeshwari also confirmed it. She testified that her father had gone to village Kaloi which is 14 miles from Mandaura, three days before the poll. He was absent from Mandaura for these days and was returning home when he received these injuries in the accident. Contradicting P.W. 10, directly, she said that her father had not earlier canvassed during the election in the company of Lajya Ram,

75. Thus Ex. P. 1/1, implicitly discounts and improbabilises the assertion of P.W. 10, that Mange Ram was working in the election for the appellant or was escorting and conducting the voters to Mandaura when he received the fatal injuries in the truck accident. However, it cannot be gainsaid that in one material particular Mange Ram in his statement. Ex. P.W. 1/1 corroborates P. Ws. 9 and 10, inasmuch as he has stated that "many persons" who were to cast their votes, had boarded the truck in which he was coming to Mandaura. It will be seen that this fact alone is not sufficient to establish the charge under consideration.

76. We will now examine the statement of Moti Singh P.W. 2. At the material time, he was an Inspector of Police Incharge, C. I. A. Rohtak. This is how he came into the picture.

77. One Rasal Singh of village Mandaura is said to have submitted an application, dated 20-4-1972, to the Superintendent of Police, Rohtak. expressing dissatisfaction against the investigation conducted by the Police in the truck accident-case. Without specifically naming Sub-Inspector Ram Singh, it was "complained" that he had got effected a compromise "in connivance with some persons of the village"; that Mange Ram injured, being' unconscious, did not make any statement, but the police itself was getting his thumb-impression affixed on the Police proceedings by holding his hand, and other people of the village were making their statements, from the side of Mange Ram deceased.

It is also said therein:

At the time of the above proceedings, Sarvashri Ram Narain Contractor, Ram Parshad son of Rattan, Rasal Singh. Member Panchayat son of Rati Rain, Randhir Singh son of Mange Ram, Amir Singh Lamberdar. Dharam Singh. Harnarain Lambardar (Member Panchayat till now) etc., were present at the spot. The death of Mange Ram deceased took place in Safdarjang Hospital, Delhi ... on 12-3-1972.

78. It is further said:

All the children of Mange Ram deceased are deprived of the Police action and they cannot initiate any kind of proceedings.

In the end it is prayed that enquiry may be held at the spot In this case personally so that his children may get justice and some means of their livelihood.

79. This "complaint" was marked by the Superintendent of Police to Inspector Moti Singh on 5-5-1972. Five weeks later the witness went to village Mandaura on June 11, 1972, for as he says "enquiry into the complaint" . He examined Rasal Singh, the ostensible complainant, who disowned the complaint and said that he had never made it. Moti Singh, however, examined one Misri Lai Brahmin, and Smt. Parmeshwari. daughter of Mange Ram. Moti Singh has testified that Ex. P.W. 2/2 is that statement of Smt. Parmeshwari, which he had recorded. He added that this statement, after recording was read over to Smt. Parmeshwari who had, after, admitting it to be correct, thumb-marked it.

80. The statement Ex. P, W. 2/2 runs thus:

On the 11th March. 1972, votes were to be cast in our village. My father was supporter of Chowdhri Rizak Ram. Truck No. HRR-5167 owned by Lakhi Ram son of Hira Ram resident of Turakpur had been deployed for the transportation of voters on behalf of Chowdhri Rizak Ram. The truck was coming on the pucca road outside the village. There were two three neem trees by the side of the road. The head of my father struck against them. He received grave injuries. Chowdhri Rizak Ram sent my father Mange Ram to Safdarjang Hospital in his car where he died the next day. After that Chowdhri Rikaz Ram paid me Rs. 8,000/- and promised to pay the expenses of the marriage of my younger sister. He also promised to get my brother employed. Chowdhri Rizak Ram got my brother Suraj Mai employed as a water-carrier at the Veterinary Hospital Mandaura. My uncle (father's elder brother) Dharma son of Magha has gone to Hus'sainpur in connection with the engagement of my younger sister. Now there is no doubt about the death of my father.

Attested Thumb impression of Sd/- Moti Singh, Parmeshwari. Inspector (in. English) 11-6-1972.

81. After this, the Inspector reported to the Superintendent of Police that Risal Singh had disowned the complaint and had said that he had never made it and that the commission of no cognisable offence had been proved and the death of Mange Ram appeared to have been caused as a result of a pure accident.

According to Moti Singh's own admission no further action" was taken by him on the purported complaint of Risal Singh.

82. In cross-examination, Moti Singh disclosed that he first went to the house of Pandit Misri Lai at Mandaura and sent for Risal Singh there. It was suggested to him that it was Dharam Singh (P.W. 12) who had taken him to Parmeshwari's house. Witness protested by registering a denial. Questioned further, he had to admit that Dharam Singh Ex-Sarpanch of village Mandaura met him in the Mohalla in which Parmeshwari was residing. It was put to the witness that Parmeshwari had never made any statement before him and that he had recorded her purported statement. Ex. P.W. 2/2, at the instance of Dharam Singh. He denied that suggestion, also. These protests and denials were too fragile, thin and transparent. One could easily see through them the truth that his pilot and 'guide" in these proceedings was none other than Dharam Singh (P.W. 12), the chief confident and star partisan of the petitioner.

83. To quote Moti Singh's own words:

The subject-matter of my enquiry was whether the local police had or had not properly investigated into the case relating to the fatal injuries sustained by Mange Ram. I did not go to Rai Police Station in connection with my enquiry. I knew before going for the enquiry that Mange Ram had already died, as this had been stated in the application Ext. P.W. 2/1. I did not go to the hospital when\* Mange Ram might have died as I had not considered it necessary to do so. Nor did I consider it necessary to examine the truck owner or the driver of the truck. Nor did I make enquiry from any resident of Mandaura except the three persons already named by me.

84. It was therefore his duty to find out whether or not the death of Mange Ram was caused by any rash or negligent driving on the part of Kanwal Singh, and .it so, whether any cognizable offence had been committed. In case the commission of any cognizable offence was disclosed, he should have taken to task Sub-Inspector Ram Singh or at least call ed for his explanation as to why he had allowed the matter to be hushed up, even without registration of a case at the Police Station. For inquiring into these vital issues, it was absolutely necessary for him to examine Kanwal Singh, the driver, and the persons who were witnesses of the accident, particularly those who were named in the complaint. But according to his own showing, the Inspector did not do any of these things which he should have normally done. He made the above-quoted admission in a somewhat unabashed manner.

85. From what has been extracted above, it will not be wrong to say that the preparation of this document. Ext. P.W. 2/2, was the "be-all" and "end-all" of this pretence of an enquiry. Whether it was the result of 'misguidance' by Dharam Singh (P.W. 12) 'or otherwise, the fact remains that the sole purpose this enquiry purported to serve was to create evidence for the purpose of this petition. The ostensible author disowned it. The whole thing appears to have been conceived in a shady setting highly redolent of suspicion and mystery. Risal Singh, the apparent complainant was contacted first, and Smt. Parmeshwari later on. From the suggestion put to Inspector Moti Singh, in cross-examination, it seems that the Inspector was, after Risal Singh had denied having made the complaint, about to return disappointed, but Dharam Singh P.W. 12 then threw away the mask and

revealed himself in the role of the complainant. The Inspector, also, either willingly or unwittingly, allowed himself to become his tool and to be guided or misdirected by him (Dharam Singh). A perusal of the statement Ex. P.W. 2/2 shows that particular attention was paid to bring put these facts, prominently, in this alleged statement of Smt. Parmeshwari, which had a material bearing on the ingredients of the charge under consideration, while the basic facts pertaining directly to the truck accident, and the oblique allegations against Sub-Inspector Ram Singh were left either completely unrequited. or in relative obscurity.

86. Smt. Parmeshwari was examined as P.W. 25 by the petitioner. She completely disowned the statement, Ext. P.W. 2/2. The petitioner cross-examined her with the permission of the court. She stated that about three months after the death of her father Mange Ram, a Police Officer came to record her statement. He was accompanied by Dharma. But in her presence that officer did not record any statement. He made no inquiry about the manner of her father's death. The officer obtained her thumb-impression on a blank paper with the representation that she would get some money from the petitioner. The officer did not mention the amount that would be paid to her. She, however, did not receive any money later on. In answer to a question put by the petitioner's Counsel, she replied that she had not complained to any authority that her thumb-impression had been taken on a blank paper. Parmeshwari, however, categorically stated that she never saw the appellant on the day of the accident and that the latter or his agent did not pay her any compensation for the injuries received by her father. As already noticed, she had corroborated the statement (Exh. P.W. 1/1) of Mange Ram to the effect, that on the polling day, he was returning home from village Kaloi and had taken a lift in the truck unto Mandaura.

87. The learned trial Judge has held:

The manner in which Parmeshwari prevaricated in the witness-box (as is evident from her vacillating statement.) leaves no doubt in my mind that she was not only under the influence of the respondent, but had been coached during the lunch interval by someone in the interest of the respondent with the result that she wanted to completely go back on that part of her earlier statement which supported the case of the petitioner. The note made by Sandhawalia, J., on October 12, 1972, regarding the request made by the Counsel for the petitioner (wherein it was stated that Parmeshwari was sitting outside the Court in the car of respondent No. 1) is also very significant in this respect. I have no hesitation in believing that Inspector Moti Singh recorded her statement P.W. 2/2 correctly and the same was read over to her and was thumb-marked by her.

88. With regard to her confirmation of Mange Ram's statement about his getting into the truck on his way from Kaloi to Mandaura. the learned trial Judge said that this statement was got recorded by Mange Ram at the instance of the appellant in order to "exculpate the respondent (appellant) from any possible liability that might have arisen on account of the accident if Mange Ram or his heirs were later to claim that he died while working for the respondent.

89. In reaching the above finding, in our view, the learned Judge clearly erred. There were no circumstances on record to show that she had been coached during the lunch interval by someone in the interest of the appellant. It was in examination-in-chief, much before the lunch-break, that she

had stated that her thumb-impression was taken on a blank paper by Moti Singh and that she had never made that statement. Her statement to the effect, that Mange Ram had gone to village. Kaloi three days before the poll and was returning in the truck When the accident occurred was also made before the lunch-break. Indeed, her entire statement appears to have been recorded before the lunch-break. She had practically said everything she had to say before she was cross-examined by Mr. Bindra Counsel for the appellant It was however, put to her by the petitioner's Counsel in cross-examination, that after her arrival in Chandigarh she met Ch. Rizak Ram and that on the preceding day at about 3 p. m.. she was sitting in the white car of Ch. Rizak Ram outside in the Court premises. She denied the suggestion. The note of SandhawaMa, J., which has been referred to by the learned trial Judge, was recorded on 12-10-1972 when P.W. 14 Richhpal Singh was being examined. Parmeshwari was not examined on that day but on the following day. This note is to the effect:

At this stage Mr. Bakhtawar Singh, learned Counsel states that Smt. Parmeshwari one of the witnesses summoned by him is present outside in the car of respondent No. 1. Counsel has requested that an official of the Court should go out to ascertain this fact. I am afraid no such roving enquiry is possible.

90. It will be seen that this was only an allegation made on behalf of the petitioner. A suggestion to that effect, as already noticed, was unequivocally denied by Parmeshwari. , There is nothing else on the record to show that this allegation was a fact.

91. Surrounding circumstances apart, the document Ex. P.W. 2/2 has its own tell-tale features which point towards its spuriousness. The document runs into two pages. On the first page, there is no signature or thumb-impression of the alleged deponent. The thumb-impression of Parmeshwari appears on the second page towards the bottom. The main body-writing is in Devnagri script studded with several English words written in English. These words are "supporter", "veterinary hospital", "water-carrier" etc. Moti Singh wants to have it believed that every word in Ex. P.W. 2/2 was written by him to the dictation of Parmeshwari. and that 'after scribing it, he read it over to her, in full, and she, after hearing and admitting it to be correct, thumb-marked it. In other words Moti Singh's bold claim is that even these English words were uttered by the deponent. It is difficult to swallow this tall and sweeping assertion. Parmeshwari is an illiterate, rustic woman. Very truthfully, in cross-examination, she said that she did not know what is meant by the words "supporter", "veterinary hospital", and "water-carrier". Evidently, these words were inserted by Moti. Singh either on his own, or at the instance of Dharam Singh, the spot mover of the gear.

92. We have carefully examined the original, Ex. P.W. 2/2. The ink of the thumb-impression appears to be darker and different from that used in executing the body writing.

93. The obtaining of the thumb- impression of Parmeshwari the alleged deponent on the statement in question, was itself a very unusual act on the part of the investigating Police Officer. Under Chapter V of the Code, a Police Officer is empowered to investigate into these classes of cases.

(a) Where first information under Section 154 is received relating to the commission of a cognisable offence;

(b) Where information is received, under Section 155 relating to the commission of a non-cognisable offence and an order for investigation in respect thereof has been obtained from the competent Magistrate:

(c) Where information is received of a suicide or as to the killing of a person by another or by an animal or by machinery or by accident or having died under circumstances raising a suspicion that an offence has been committed. Such an investigation is primarily directed to ascertain the cause of death, falls under Section 154, and is called inquest.

94. Inspector Moti Singh did not come in motion by any of these first two modes. It was not a case under (a) because no F. I. R. under Section 154 had been registered. It did not fall under (b) because no order of the Magistrate to investigate the non-cognizable case with regard to which Ram Singh got the information entered in the Diary of the Police Station under Section 155. was obtained. Class (c) could possibly cover the case, but Moti Singh did not follow the procedure laid down even in Section 154.

95. While it is true that the receipt and registration of an F. I. R. is not the sine qua non to the setting in motion of the machinery of criminal investigation, the investigating officer must follow the procedure laid down in Ch. V. Section 162 in that Chapter, provides inter alia that no statement of any person, if recorded, by a police-Officer in the course of investigation, shall be signed by the person making it. Even a statement of a witness recorded by the investigator during the inquest under Section 154 would be within the inhibition of Section 162. Behind this provision is a wholesome rule of public policy that witnesses at the trial should be free to tell the truth, unhampered by anything they might have been made to say to the police (see *Tehsildar Singh v. The State of U.P.*,. In contravention of this salutary provision, the Inspector got the record Ex. P.W. 2/2 .thumb-marked by Parmeshwari. Obviously, the object was twofold: Firstly, to tie her down to the statement as incorporated in Ex. P.W. 2/2; and secondly, to make U appear to the Court that it was her genuine statement as it had been 'authenticated' by her thumb-mark.

96. Assuming Ex. P.W. 2/2 was not hit, by Section 162. Criminal Procedure Code then also, it could not be used as a substantive piece of evidence as it appears to have been done by the High Court to support the finding that the appellant had compounded the case and paid Rs. 7,000/- as compensation for the injuries received by Mange Ram in the truck-accident. At the most, it could be Used only as a previous statement to corroborate or contradict her at the trial. It could not be validly used for the purpose of corroborating P. Ws. 9, 1Q, 12 and 33.

97. It is interesting to note that even this 'statement' Ex. P.W. 2/2 conflicts with the story as propounded by P. Ws. 9, 10 and 13 at the trial, in material particulars. According to Ex. P.W. 2/2, the death of Mange Ram took place in Safdarjang Hospital, New Delhi, and the case compensation was paid by Ch. Razik Ram "after that" death. Contrary to this, P. Ws. Randhir Singh, Amir Singh and Lakhu have stated that the payment was made after consultation, among others, with Mange Ram when he was very much alive and fit to negotiate the settlement himself in the Baithak of P.W. Randhir Singh, within an hour or so of the accident Further, according to P.W. 2/2, the amount paid was Rs. 8,000/- and there was a promise by the appellant that he would pay more in the shape of



meeting the expenses of the marriage of Parmeshwari's sister. The statement Ex. P.W. 2/2 does not fix this promised amount at any particular figure. Nor does it indicate that the total compensation agreed to be paid was Rs. 10,000/-. As against this, P. Ws. 9, 10 and 33 say that the cash paid was Rs. 7,000/- and the balance promised to be paid was Rs. 3,000/- cash. Again, Ex. P.W. 2/2 gives the impression that Parmeshwari did not accompany her father in the car to Delhi. Therein, she is shown as stating: "Now there is no doubt about my father's death". On this point, also, Ex. P.W. 2/2 runs counter to the statement of P.W. 9 who maintains that Parmeshwari and her brother had accompanied the injured Mange Ram in the car.

98. Looked at from the above angle, also Ex. P.W. 2/2 far from supporting, scuttles the story of P. Ws 9, 10, 12 and 33 by pulling the linchpin out of it

99. Not less Important is the time when and how this document came into existence. The election-petition was filed on 27-4-1972. The so-called complaint by 'Risal Singh' "made to the Police Superintendent is dated 20-4-1972. But the mere putting of this date does not assure that it was prepared on that date because it was not presented to the Superintendent before 5-5-1972 when he marked it to Inspector Moti Singh for necessary action. The latter did not do any thing to comply with the Superintendent's order for another five weeks. It was only on 11-6-72 that he went to Mandaura and made this so-called enquiry and recorded Ex. P.W. 2/2. The "complaint" Ex. P.W. 2/1 although D/- 20-4-1972, was not mentioned in the list of reliance filed by the petitioner. The complaint Ex. P.W. 2/1, the statement Ex P.W. 2/2 and even its copy Ex. P.W. 2/1 were produced in the trial Court for the first time on 10-10-1972 by Moti Singh when he was in the witness-box. An objection was taken to the late production of these documents. But it was overruled. Nevertheless, the fact remains that the document Ex. P.W. 2/2 was conceived and brought into existence pendent lite and produced in Court about 6 or 7 months after the filing of the election-petition.

100. The circumstances noticed above, in their totality, irresistibly lead us to the conclusion that the document, Ex. P.W. 2/2 was created primarily for use as evidence in this case. This finding must necessarily affect the mind of the Court in appraising the other evidence rendered by witnesses of Dharam Singh's ilk.

101. The stage is now set for examining the evidence of witnesses produced by the appellant in rebuttal, on these issues. They are Kanwal Singh, R. W. 2, Lakhi Ram, R. W. 4 and Dube Singh. R. W. S.

102 We have alluded to Kanwal Singh's statement already in connection with the ownership of this truck (No. HRR 5187). In regard to the use of the truck on the polling day, Kanwal Singh said:

My truck was not used for transporting any voters on behalf of respondent No. 1 from Turakpur to Mandaura ... on March 11, 1972, I loaded sand in my truck from Fazalpur and left that place at about 9 or 10 A. M. for Turakpur, The sand had to be unloaded in the school building at Turakpur where construction work was going on, I know Mange Ram of village Mandaura. He met me outside the school building after I had unloaded the sand there. He stopped me and wanted a lift upto to Mandaura. He got into the truck from the rear. When I reached Maadauca I suddenly swerved my

vehicle on one side in order to save a cyclist. In so doing I passed from under a Neena Tree. A branch of that tree struck Mange Ram and he fell in the truck. He got down from the truck as he appeared to have received minor injuries. I took him to the baithak of one Randhir which was close by. His wounds were dressed at that place. After about fifteen minutes the Thanedar (Sub-Inspector of Police) reached there. Neither respondent No. 1, nor my father Lakhi Ram arrived at that place. My truck was not displaying the flag of any candidate. The Sub-Inspector of Police asked Mange Ram orally as to what had happened, but did not record his statement. Mange Ram told the Sub-Inspector that I was not at fault and that while trying to save a cyclist I passed from under the Neem Tree which hit him accidentally. The Sub-Inspector thereupon told me to go away as I was not at fault. I then went to the school building in Mandaura and cast my vote. After that I went away to Sonapat. I also took another trip of sand from Fazalpur to Turakpur on that day. Six labourers were in my truck on the occasion of both the trips.

103. In cross-examination Kanwal Singh said that he had purchased the truck for Rs. 13,000/- from one Asa Nand, and that the money was supplied to him by his grandfather. He also admitted that he had not given up his share in his father's property. He further said that the sand was being supplied to one Silk Contractor who was doing the construction work of the school and that he excavated this sand after paying Royalty to Surat Singh who was the lessee of the quarry. He added that he did not obtain any receipt from Surat Singh regarding the payment of Royalty. When the names of thirty-five persons mentioned in Schedule 'A' to the election-petition were read out to the witness, he stated that they were voters. He however, expressly denied that anyone of them travelled in is truck on the polling day. He asserted that he did not give lift in is truck to any person, excepting Mange Ram, on that day. He denied that he had already brought one trip of voters from Turakpur to Mandaura and that this accident occurred during the second trip with Mange Ram sitting on the tool-box. He denied that his father used to accompany the appellant for canvassing during the election.

104. The learned trial Judge has disbelieved Kanwal Singh's version that on the polling day he was engaged in carrying sand from Fazalpur to Turakpur and not in conveying voters escorted by Mange Ram. He reached this conclusion mainly on the reasoning that no receipt, voucher or other independent evidence regarding the payment of Royalty to Surat Singh or the supply of sand to Silk Contractor has been produced. In this connection it was also observed that if the truck had not been full of voters. Mange Ram would not have been sitting on the roof of the cabin of the truck. Kanwal Singh's version that Mange Bam was inside the truck was found to be untrue. With regard to the ownership of the truck it was held that Kanwal Singh was only ostensible owner of the truck, while the real owner was his father. Lakhi Ram. This finding was principally based on the admitted fact that Kanwal Singh had not given up his share in his father's property and the source of the money with which the truck was purchased was supplied by his grandfather, the . Karta of the joint family. Kanwal Singh's claim that he had made the second trip after the accident, and not prior to it at 8 or 8-30 A. M. was also found to be incorrect. Instead, it was spelled out from his evidence that he must have made the first trip earlier in the morning, and that on both the occasions the truck had brought voters from Turakpur. His version that his father and the appellant never came to the Baithak of Randhir before the arrival of the Police Sub-Inspector was also not accepted.

105. It is true that Kanwal Singh has not been straight in giving evidence. He has not deposed to some facts truthfully. But that is no ground to reject the whole body of his testimony. The grain in his evidence can be sifted from the chaff in the light of the other evidence and the surrounding circumstances and probabilities of the case. So far as his claim to the ownership of the truck is concerned it is fully supported by the official records of the Transport Department. In those records, he has been entered as the sole owner of this truck since 1968. His name, as owner, has been written large on the truck; P. W. 9 as already noticed, had not spoken the truth when he went to the length of saying that he had seen Lakhi Ram's name, as owner, written on the body of this vehicle. Even if Lakhi Ram was the beneficial owner or joint owner of this truck that would not make any difference so far as the probative value of the evidence produced by the petitioner to prove the hiring and use of this truck is concerned. That evidence must stand' or fall on its own intrinsic worth.

106. As regards the trip of the truck to Mandaura at 10 or 10-30 a. m. in which it met with the accident Kanwal Singh may not have spoken the truth inasmuch as he says that no voter from Turakpur had, boarded it. His statement, that Mange Ram at the time of receiving the injuries was not on the tool-box at the top but inside at the rear of the truck, is also not convincing. Circumstances suggest that Mange Ram was then perched on the tool-box which as a result of the collision had sustained damage. On these two points, Mange Ram himself has in his 'dying declaration' contradicted Kanwal Singh's version, and supported that of P. W. 10.

107. We are however, not inclined to agree with the learned trial Judge in so far as he has held that Kanwal Singh's claim in regard to the carriage of sand from Fazalpur to Turakpur must necessarily be false. Mandaura lies on the road from Turakpur to Fazalpur. While going to Fazalpur from Turakpur for bringing sand the truck would not be carrying any load of sand. It was therefore, not difficult to combine one-way carriage of sand with the carriage of voters on the return trip to Fazalpur. As regards the carriage of voters also, we are not prepared to go to the length of holding that Kanwal Singh's statement that the accident occurred during the first trip, and not in the second must necessarily be untrue. Sub-Inspector Ram Singh found damage only to the tool-box of the truck. Even after the accident, the truck was fit enough to make another trip. Kanwal Singh named six persons who, according to him, were labourers and were in this truck to help in the excavation, loading and unloading of sand. The presence of labourers in the truck lends support to the above conclusion.

108. We are further of the opinion, that from Kanwal Singh's statement no admission of his having made"-one trip earlier at 7-30 or 8 a. m. to Mandaura can be clearly spelled out. much less that In, any other trip also. Mange Ram was with him. In Ex. P.W. 1/1, Mange Ram has not spoken about his being in the truck during any other trip or occasion excepting the one when he received the injuries. Nor do we find any good reason to doubt Kanwal Singh's sworn word that Mange Ram got a lift in the truck from Turakpur on its fateful journey. On this point his version is in conformity with the dying declaration of Mange Ram.

109. The learned trial Judge did not accept Mange Ram's statement to the effect, that he was returning from Kaloi and on the way got a lift in this truck. His reasoning is that Mange Ram must have been coached by the appellant to say so. To us this reasoning does not appear to be

well-founded. Firstly, it was nobody's case that the appellant was present when Mange Ram's statement was recorded by the Police Sub-Inspector, or that the former had been coached by the appellant or anybody else on his behalf to depose in a particular manner. Secondly, Mange Ram's dying declaration had to be taken as a whole. Had he been tutored or coached to make a statement favourable to the appellant or to suppress facts adverse to the appellant, he would not have said that some voters had boarded the truck at Turakpur. Excepting the bald oral statement of Lakhu P.W. 10, there was no independent and reliable evidence to show that Mange Ram was a political worker or partisan of the appellant. There is no allegation that Mange Ram in the election process acted as an agent of the appellant at the time of counting or polling etc., or was seen canvassing in his company. Nor has it been shown that he was a man of influence or status. He seems to be an ordinary villager of humble means having no special position or station in life. Further, Kanwal Singh's testimony to the effect, that he was present before the Sub-Inspector when the latter questioned Mange Ram in regard to the circumstances in which he received the injuries, appears to be plausible. It accords with the probabilities of the situation. Kanwal Singh's further assertion that the appellant never came there or saw Mange Ram injured also appears to be true. The counterversion of P. Ws. 9, 10 and 33 that soon after the removal of Mange Ram injured to the baithak of Randhir Singh, the appellant came there, compounded the matter, took out Rupees 7,000/- in currency notes from a thaila he was carrying, got the money counted and paid it there and then to Parmeshwari, and then disappeared well in time before the arrival of the police, sounds little better than the story of Alladin's Lamp. It was indeed a fantastic tale not a snapshot from real life. It was not corroborated by anything in the record prepared by Ram Singh, P.W. 1. The appellant's connection with Mange Ram or any composition, settlement or ^payment of compensation for the injuries received by the latter in the accident does not receive confirmation, even from Ram Singh's oral statement which he conjured up "from memory". Even Lakhi Ram's arrival and participation in the settlement and payment of compensation has not been firmly established. Regarding this fact the infirm interested evidence of P. Ws. 9, 10 and 33 remains uncorroborated from any independent source. Ram Singh's statement in regard to these facts does not find mention anywhere in the record of his proceedings. It was obviously a subsequent 'improvement' and not merely an embellishment. Ram Singh's oral statement on these facts therefore, could not lend the requisite assurance to the story narrated by the said P. Ws.

110. Lakhi Ram (R. W. 3) stated that his neighboring shopkeeper and friend, Dharam Pal was also fighting the election. The witness was working for and supporting Dharam Pal in the election. Lakhi Ram was appointed as a counting agent of Dharam Pal. He had to cast his vote at the Polling Station in village Livaspur which is 10 or 12 miles from Mandaura. Consequently, he did not go to village Mandaura on the date of polling. Lakhi Ram emphatically denied that he visited Mandaura on the polling day. or paid any compensation to Mange Ram or his daughter on that day. It may be noted that Lakhi Ram's, assertion that he was working in the election for Dharam Pal, was not challenged in cross-examination. Nor was any question put to him that he was a political partisan or worker of the appellant in the election.

111. Thus the probability of Lakhi Ram, at the material time being at Lavaspur or his coming to Mandaura to help his son out of the difficulty, was equally divided. In the ultimate analysis, it must beheld that even Lakhi Ram's participation in compounding the accident case and payment of

compensation had not been affirmatively established.

112. We do not think it necessary to over-burden this judgment by a detailed discussion of the evidence of Ch. Sube Singh. Advocate, R. W. 5. He belongs to village Mandaura. He swore that Mange Ram, his co-villager, was not a supporter of the appellant. Witness claims to have visited Mange Ram soon after the accident. He however deposed to the arrival of the police 15 or 20 minutes after Mange Ram's removal to the baithak of Randhir Singh. He has further corroborated Kanwal Singh and Ram Singh P.W. 1 inasmuch as they had deposed that Mange Ram injured in his dying declaration had stated that the accident was unavoidable and not due to any fault of the driver. Sube Singh's claim however, that Sub-Inspector Ram Singh did not record that statement of Mange Ram is not acceptable. Sube Singh further testified that neither Lakhi Ram of Turakpur, nor the appellant ever came to Mandaura on the polling day. Sube Singh's statement no doubt is not impeachable. The learned trial Judge of the High Court however has rejected his evidence in to . We think 'this was not justified. In any case Sube Singh's statement is not of a determinative character. His presence at the time of the settlement and payment of compensation has not been admitted by P. Ws. 1, 9, 10 and 33. Even so it lends strength to the sworn word of the appellant and Lakhi Ram, that they never visited Mandaura on the polling day much less they participated in any settlement and payment of compensation attributed to them.

113. Before the High Court it was contended that there was no evidence whatever to show that the voters, if any, conveyed in this truck were carried free of charge. The High Court got over this difficulty by calling in aid the observations of this Court among others in *Dr. M. Chenna Reddy v. V. Ramachandra Rao* (1968) 40 ELR 390 (SC), wherein after pointing out the difference between the trial of an election' petition and a criminal trial, it was observed:

It becomes the duty of the court to weigh the two versions and come to a conclusion as to whether notwithstanding the denial and the evidence, in rebuttal a reasonable person can form the opinion that on the evidence the charge is satisfactorily established. ... Inferences can therefore be drawn against a party who does not call evidence which should be available in support of his version.

114. The High Court seems to think that once it was established that on the polling day voters were carried in this truck to Mandaura. the onus had shifted on to the returned candidate to prove that they were not carried free of charge. This view proceeds on the reasoning that this was a circumstance which could be within the special knowledge of the candidate only.

115. The facts in *Dr. Chenna Reddy's case* (1968) 40 ELR 390 (SC) (supra) were materially different from the one before us. Therefore, the observations therein are of no assistance in appreciating the evidence in the instant case.

116. In the first place, it may be . remembered that the principle underlying Section 106, Evidence Act which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within the knowledge of the-defendant-respondent. It cannot apply when the fact is such as to be capable of being known also by persons other than the respondent. In the present case, the carriage of voters free of charge, was obviously known to several

persons other than the appellant. No less than thirteen voters were named by P. Ws. 9, 10 and 12 who were alleged to have travelled in this truck. Besides others, this fact would be fully known to them. The petitioner could, if he so desired, examine at least some of them to prove this fact. But none was produced by him. One of them, Prem Raj who was examined by the appellant denied having travelled in this truck. The High Court has rejected his evidence merely on the ground that he had supported Kanwal Singh's version which in the opinion of the High Court was false in regard to the carriage of sand in the truck, although there was a discrepancy in their statements about the time of such carriage. In our opinion this was hardly a good ground to brush aside Prem Raj's otherwise reliable testimony. We have already pointed out that one way carriage of sand in this truck from Fazalpur to Turakpur was not necessarily false.

117. Secondly, even if the nature of the trial of an election petition is not the same in all respects as that of a criminal trial, the burden of proving each and every ingredient of the charge in an election petition remains on the petitioner. If a fact constituting or relevant to such an ingredient is pre-eminently within the knowledge of the Respondent, it may effect the quantum of its proof but does not relieve the petitioner of his primary burden. The petitioner must adduce prima facie proof even of such a fact. That is to say he must establish such other relevant facts and circumstances which if unrebutted or left unexplained by the opposite party, would raise a presumption as to the existence of such fact in issue. But in the instant case, no evidential foundation was laid, nor any factual premises were established by the petitioner, from which any inference as to the free carriage of voters could be raised. Apart from the petitioner's formal derivative statement of his case which on this fact could be no better than hearsay not a scintilla of evidence on this material fact had been brought on record by the petitioner. Nor was any specific question as to this fact was put to the appellant in cross-examination. Yet, the appellant, as R. W. 17, swore in clear and unequivocal terms:

I had no talk either with Lakhi Ram or with Kanwal Singh for hiring any truck for carrying voters or for any other work. I never had any talk with Lakhi Ram in the presence of Tara Chand, P.W. or anyone else regarding the hiring of any truck. I did not go to village Mandaura on the date of Polling. The story about my having paid Rs. 7,000/- to Mange Ram or to his daughter is absolutely false. No voters were brought in any truck or in any other conveyance on my behalf or with my consent or otherwise from Turakpur to Mandaura for casting their ballots. Nor were any voters taken back after voting, in any conveyance on my behalf or with my knowledge or with my consent.

118. The refutation and denials, if true, had left no scope for raising an inference as to the existence of any essential ingredient of the charge of this corrupt practice.

119. Thirdly, the evidence on both sides as pointed out by this Court in Dr. Chenna Reddy's case (1968) 40 ELR 390 (SC) (supra) also had to be weighed. In the case in hand many of the infirmities, noticed above, in the evidence produced by the petitioner, were either overlooked or were not given due weight by the High Court. The High Court while accepting the evidence of the P. Ws. without much discussion, allowed itself to be concerned mainly with the task of sorting out and highlighting the weak spots, deficiencies and Untruths in the evidence produced by the respondent. In this approach, it (had) strayed from the course indicated by the fundamental principle as to the burden of

proof applicable in such cases.

120. After a careful consideration of the evidence adduced by both sides and the contentions canvassed before us, we are of the opinion that the petitioner had failed to prove, at least, three essential ingredients of this charge of corrupt practice, namely:

(i) that the truck (HRR 5167) was hired or even procured by the appellant;

(ii) that the use of this truck for carriage of voters to Mandatra, Was with the consent, knowledge or at the instance of the appellant:

(iii) that the conveyance of the voters in this truck was free of charge.

121. We would, accordingly, reverse the findings of the High Court on Issues 1 and 5 on this charge.

122. In view of our finding that payment of any compensation to Mange Ram or his dependents by the appellant had not been proved. Issue No.7 becomes redundant and academic. Consequently, we do not think it necessary to go into it. For want of factual premises the High Court's finding on this Issue fails and would stand reversed.

123. Now we turn to the charge relating to the hiring and use of tractor No. DLL-9 for the free conveyance of voters. This charge is the subject of Issue No. 4. The allegations relating to this charge are to be found in Paragraphs 7 (vi) and 13 of the petition. In Para. 7 (vi) it is pleaded that the appellant procured or hired this Tractor through his agents, Sube Singh and Om Parkash, In the verification. Dharam Singh. Bute Ram and Chander Bhan are named as informants of the facts alleged in paragraph 7 (vi), and Jatinder Singh, Ran Singh and Ch. Rasal Singh regarding the facts alleged in paragraph 13. In the affidavit, the petitioner averred that Suba Singh gave him the information in regard to the hiring and use of this Tractor. This Suba Singh has not been examined. Rather, in the witness-box, the petitioner stated that he did not remember if he had named Suba Singh as informant of the fact relating, to this charge. P.W. 12 Dharam Singh does not say a word as to the hiring and use of this tractor. Bute Ram. Chander Bhan, Jatinder Singh and Ran Singh were not cited in the list of witnesses submitted by the petitioner. Subsequently, an application was submitted seeking permission to examine Bule Ram, Chander Bhan, Jatinder Singh and Ran Singh. However, on 5-12-1972, the petitioner abandoned his intention to examine them and gave them up. Rasal Singh son of Harnarain Singh of village Khewara was cited in the list at Sl. No. 62 with the representation "Witness shall state about obtaining service of Hawaldar Partap Singh and' his canvassing for Rieak Ram by him". This Risal Singh was not cited for proving an allegation in respect of the hiring and use of this Tractor DLL-9 along with a trailer. Even so. Risal Singh was not examined for any purpose, whatever.

124. Om Parkash was examined as P.W. 29. He is a resident of village Bhaira Bakipur. He was admittedly a supporter and polling agent of the appellant in the election. He stated that, four or five days before the polling, he got a tractor of Richhpal Singh of Kurampur hired out to the appellant for the polling day for transporting voters from Aurangabad to Jakholi and back. The hiring charges

were settled at Rs. 200/- between Richhpal and the appellant in the presence of the witness. The appellant asked the witness to tell Richhpal that the latter should reach Aurangabad at 8 a. m. on the 11th March, 1972 and that Raje would meet him there and give instructions as to the persons to be carried in his tractor-trailer. On the polling day, the witness sent the tractor but did not himself accompany it. In cross-examination, Om Parkash admitted that he is a Chauhan Raiput by caste and that Shiv Charan and Piare Lal also belong to his caste, while the appellant is a Jat. He admitted that he is the grandson of one Mam Chand. It was then suggested to the witness that Jai Devi, sister of his grandfather. Mam Chand, was married to Yad Ram, grandfather of the petitioner. The witness replied: "I do not know, as my grandfather's sister must have died before my birth". In answer to a court question he said that he was not related to the petitioner in any manner. He was further questioned as to whether Richhpal, the alleged driver of the tractor was related to the petitionee. He denied the suggestion. He further claimed that he had never informed the petitioner or anybody else about the hiring of this tractor. Of course he used to talk about it in the family. There is a note of the learned Judge who recorded his statement, that the witness prevaricated a good deal before giving this answer. He expressed ignorance about the original village of his grandmother, Smt. Dhapo. He further feigned ignorance if his wife, also named Dhapo was the sister of Khazan Singh of village Khewra Tehsil Sonapat. He went to the length of saying that he did not know any Khazan Singh of that village.

125. This Khazan Singh was examined as P.W. 38. In cross-examination, P.W. 38. frankly admitted that Smt. Dhapo was his sister and she was married to P.W. 29, Om Parkash son of Bhim Singh of Bhaira. P.W. 29 had thus no sanctity for oath. No reliance could be placed on the word of such a person who had the audacity to deny even such a Blaring fact Om Parkash would have us believe that he was staunch supporter of the appellant in the election, but now without disclosing any reason, he wants to see him unseated. He was thus a self-professed betrayer.; . Despite deliberate attempt at concealment of his deep Interest in the petitioner, the same could be seen through the chinks and crevices caused by cross-examination. Moreover, his statement has been contradicted by P.W. 14. Richhpal Singh in some material aspects.

126. It may be recalled that in the petition, it was alleged that Sube Singh agent of the appellant, and P.W. Om Parkash, both, were jointly and severally responsible in getting the tractor on hire for the appellant, and. thereafter, an issue was raised on the point as to whether Sube Singh was an agent of the appellant. Sube Singh was later on given up. Nor was this Issue pressed, and the same was consequently decided against the petitioner. Om Parkash obviously was mentioned as a 'stand-by' in the event of Sube Singh failing to give evidence in favour of the petitioner. It is not understood how Om Parkash was mentioned as a joint or alternative witness of the fact of hiring when he did not pass on any information about the fact to the petitioner.

127. Richhpal's version in examination-in-chief was:

I received a sum of Rs. 200/- for carrying the voters above said from one Om Parkash of village Bakipur Bera. This Om Parkash was one of the supporters of respondent No. 1. Two days before the poll on 9th of March, an agreement for carrying the voters was arrived at in my house. On the polling day at . about 10-20 a. m. my tractor was checked by the Sub-Inspector and his



accompanying staff. I was challenged and a chit was given to me in this connection. This is Ex. P.W. 14/1. On 26th of April, 1972, I had attended the Court of Magistrate 1st Class in connection with the challan above said. I was fined Rs. 70/- in that case. I cannot now recollect the names of any of the voters to whom I had carried from village Aurangabad to village Jakholi.

128. Om Parkash contradicted the above version inasmuch as he stated that this transaction of hiring was settled about four or five days (and not two days) before the poll.

129. Another point to be noted is that in examination-in-chief, Richhpal did not say a word about the presence of Ch. Rizak Ram either at the time of hiring or the payment pf hiring changes, although in cross-examination. (sic) to make good this omission.

130. The deposition of P.W. Om Parkash is studded with adverse notes recorded by the learned trial Judge about his demeanour which was not of a straightforward and truthful witness. Despite this. in the judgment, the High Courts has observed:

The whole of the statement of Om Parkash cannot be rejected merely because of slight exaggeration in his deposition on a side issue like the question of Riving information to the petitioner. The principle of falsus in no falsus in omnibus has not been applied to the evidence of witnesses in such cases and it is my painful duty to separate the grain from the chaff and to accept the former and merely reject the latter. I do not, therefore, attach any importance to that part' of the deposition of Om Prakash wherein he denied having given the information about the transaction to the petitioner.

131. In our opinion his demeanour coupled with the other infirmities was sufficient to condemn his evidence as wholly unreliable. Furthermore. Om Prakash was questioned as to where he had stayed at Chandigarh when he reached there for appearing as a witness in court. He admitted that he had first attended the court on October 10, 1972, in compliance with the summons of the Court. There after he went away from Chandigarh on the 12th or the 13th of October and re turned on the 18th. Again, on the night of the 18th he went away. To conceal his stay at Chandigarh with the petitioner, he stated that he had stayed with a boy of his village who was not known to him. but to Piarey. The name of that boy was Dhakan. The matter was probed further, whereupon the witness conceded that he did not know the number of the house in which this Dhakan was residing. The learned trial Judge has accepted the flimsy explanation about his stay at Chandigarh without comment. Om Prakash being a highly interested witness, his evidence required a severe and close scrutiny. Due weight had to be given to his demeanour, prevarications, contradictions and suppression of facts. The witness admitted that he had applied for being registered as a Valid under the Ayurvedic system of medicine to the authorities. He was asked: "Was your application signed by the petitioner in any capacity?" His answer was in the negative. When the question was repeated he could not hold any more and broke:

I got it attested from Ch. Rajendra Singh. There was another boy with me. He got my application as well as his own signed by the petitioner.

132. In view of what has been said above, we think it hazardous to rely on the testimony of Om Parkash which is admittedly of an accomplice character.

133. The evidence of Richhpal Singh does not, in our judgment, stand on a better footing than that of Om Parkash. According to Richhpal Singh on the polling day at about 12-30 p. m., his tractor was checked and challaned by the Traffic Police Inspector and his accompanying staff. On April 26, 1972, Richhpal Singh attended the court of the Magistrate 1st Class who convicted and fined him Rupees 70/-. Cross-examined Richhpal stated that the Sub-Inspector had a bound Challan-book with him and Ex. P.W. 14/1 was detached from that book and delivered to the witness. The witness disclosed that his father had not attended the court in connection with the challan because he had died about one and half year before his (Richhpal Singh's) deposition (which was recorded on 12-10-1972). This means that, Richhpal's father, Shiv Lai, had died somewhere in April 1971, that is, about 11 months before the police challan in question. As will be presently seen, even the dead man was challaned along with his son, and was got 'actually' convicted.

134. Ritu Bhawaj, Inspector of Police, who is said to have checked and challaned this Tractor DLL-9 on the polling day, has been examined as P.W. 3. He inter alia stated that he had intercepted this Tractor-cum-Trailer at about 12-30 a.m. on March 11, 1972. on the road between Seoli and Jakholi. The trailer was displaying a flag bearing the election symbol of Ch. Rizak Ram. There were about 50 passengers in the trailer pulled by it. Witness stopped the vehicle and questioned its driver, Richhpal of village Khurampur. Richhpal told the witness that he had brought the passengers from Aurangabad and was taking them to Jakholi. Voters from Aurangabad had to cast their votes at the Polling Station Jakholi. One of the passengers, Raje Ram, Lambardar of village Aurangabad, requested the witness to let off the driver as they were getting late for casting their votes at Jakholi. Richhpal further informed the witness that the tractor was being used for hire and reward and had been engaged by Ch. Rizak Ram. Witness then prepared an intimation form in duplicate on a plain paper and gave the carbon copy thereof to the driver retaining the original with himself. Witness long there after handed over the challan prepared on the basis of that chit (Ex. P.W. 3/2) to the Moharrir Head Constable of Police Station, Rai. The witness added that Rich hpal Singh and "the owner of the vehicle" were challaned and were convicted and fined Rs. 35/- each.

135. It is mentioned in Ex. P.W. 3/2 that this Tractor-cum-Trailor was carrying 50 persons on hire. Another ground of the offence mentioned is "with out R. C. and I. C." We are told that 'R. C stands for Registration Certificate and I. C for Insurance Certificate. The owner is mentioned as Shiv Lai son of Tirkha Ram of Khurampur.

136. We have carefully examined the evidence rendered by Inspector Ritu Bhawaj. 'To us, the substratum of his story appears to be wholly untrustworthy, for these reasons: According to his own admission he was not carrying any challan book or police papers in the prescribed form. He had only loose sheets of paper on which he wrote out the intimation; he did not prepare the challan in the prescribed form. Further, he did not prepare and send any daily diary to the Deputy Inspector General of Police as required by the Rules.

137. Rule 21.36, Ch. XXI Vol. III, of the Punjab Police Rules, as applicable in the State of Haryana, prescribes the duties of the Range Mobile Traffic Patrols. Such duties, among others, include the checking of licenses of vehicles plying for hire, with a view to ensure that the conditions of their licenses are duly observed etc. The rule enjoins upon the members of the Mobile Traffic Patrol to maintain a confidential register by districts containing notes of matters prescribed in the rule. This rule further requires that offences under the Motors Vehicles Rules and under the Penal Code detected on checking of vehicles shall be reported in Form 21.36 (b). Rule 21.37 gives a mandate to the Inspector-in-charge of Mobile Traffic Patrol to submit a daily diary of the work done by them to the Deputy Inspector General of Police in Form 21.37 (2)(A). Ritu Bhawaj honoured the salutary provisions in breach.

138. Admissions wrung out from the witness in cross-examination show that he bore hostility towards the appellant. Ritu Dhawaj remained posted as Station House Officer of Police Station Rai from May 1962 to the end of 1963. A complaint of one Sardara of village Machhraula was then under investigation in that Police Station. It was suggested to the witness that he and one Raghbir Singh, Personal Assistant to Ch. Ranbir Singh, then a Minister, had extorted bribes in the sums of Rs. 2,200/- and Rs. 2,800/-, respectively, from this Sardara. Witness denied the suggestion. He however admitted that Sardara had made some such allegations in a complaint against him and that complaint was inquired into by the District Inspector of Police. Questioned further, he first denied that Ch. Rizak Ram had appeared as a witness against him in that enquiry. In the next breath, however, he said I do not know if Ch. Rizak Ram did or did not appear as a witness before the District Inspector of Police in connection with that complaint of Sardara". There was still another shift in his position. On further questioning, he admitted that Ch. Rizak Ram did appear as a witness in support of that complaint against him. in his presence, in the departmental enquiry at its second stage. He denied a further suggestion that on the intervention of Rizak Ram, he was made to refund a sum of Rs. 1,600/- out of Rs. 2,200/- that he had extorted from Sardara.

139. The admission wrenched out of the unwilling lips of Ritu Dhawaj, in cross-examination, to the effect that the appellant had appeared as a witness in the departmental enquiry relating to a charge of corruption against him, unerringly indicates that the witness had a motive to gratify private spite against the appellant,

140. Screened, against this backdrop, the silhouette of suspicion stalking his evidence become more pronounced. Strangest of these which stamps the account given by Ritu Dhawaj with the character of a ghost story is the, apparition of the dead man. Shiv Lal, looming large on the scene. Ritu Dhawaj has not explained with what 'incantations' and with what motive and for what purpose he had invoked the spirit of the dead man. Nor has he explained the circumstances in which he got the dead man convicted. In all likelihood, at the time when this story was conceived Ritu Dhawaj did not know that Shiv Lai was dead. Might be at that time the only handy source from which he could draw his raw material for. the story was the record of the Transport Department wherein Shiv Lai was entered as the owner of the tractor. If actually he had intercepted the Tractor in the due discharge of his duty, the fact about the death of its owner could not go undetected. Still another circumstance which enhances the suspicion surrounding his proceedings is that the challan was not handed over by him to the Mohurrer Head-Constable of the Police Station till April 20, 1972. This inordinate

delay also remains unexplained.

141. As already noticed the Inspector did not prepare any daily diary of his proceedings. He did not take any notes of the investigation which he claims to have made although as an Officer of rank and standing specially on duty in connection with elections, he ought to have known that the commission of a corrupt practice under Section 123(5) is also an offence under Section 133 of the Act. He did not record the statement of any person not even of the driver Richhpal. nor of Raje Ram, a self-styled election-worker of the appellant. He made no note of the fact that the tractor was displaying a flag or symbol of any candidate. All his acts of omission and commission show that he was keeping options open and .scope for development, improvement and adaptations with impunity.

142. P.W. 15. Raje Ram son of Arjan of Aurangabad stated that he was instrumental in procuring the voters and sending them in the tractor-trailer of Richhpal to the polling booths of Jakholi on behalf of the appellant. According to Raje Ram, no fare was being charged from the voters for this conveyance. In examination-in-chief Raje did not say a word about, the interception of the tractor-trailer by the police Inspector. Nor did he claim that he used to accompany the voters to Jakholi. Cross-examined, the witness in an unguarded moment, admitted that the shorter path from Aurangabad to Jakholi may be hardly two or three furlongs. On second thought, when he realised the absurdity of free conveyance over so short a distance he tried to retract and change his earlier version.

143. In our opinion, it would be ridiculous for any candidate to arrange for carriage of village voters over so short e distance as two or three furlongs. Villagers are used to traverse long distances on foot. They could have easily walked this distance in a matter of minutes.

144. Further, like Richhpal, this witness would have us believe that he was an ardent supporter and worker of the appellant in the election. He, too, does not give any reason as to why he has chosen to betray his erstwhile friend. In any case, his evidence is according to his own showing, of an accomplice character.

145. In his statement as R.S. 17, the appellant refuted and denied all the allegations relating to this charge also.

146. After considering very carefully the evidence of this troika Ritu Dhawai Richhpal Singh and Raje Ram one of whom was the admitted enemy of the appellant and the other two self-styled friends and self- confessed accomplices, we are left with the impression that the story propounded by them is not genuine and worthy of credence. Thus this charge also fails. Accordingly we reverse the finding of the High Court on Issue No. 4, also, in favour of the appellant.

147. For all the foregoing reasons, we allow this appeal, set aside the judgment of the High Court and dismiss the election petition with costs.