

Supreme Court of India

Ram Singh & Ors vs Col. Ram Singh on 7 August, 1985

Equivalent citations: 1986 AIR, 3 1985 SCR Supl. (2) 399

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

RAM SINGH & ORS.

Vs.

RESPONDENT:

COL. RAM SLNGH

DATE OF JUDGMENT 07/08/1985

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

MUKHARJI, SABYASACHI (J)

CITATION:

1986 AIR 3 1985 SCR Supl. (2) 399

1985 SCC Supl. 611 1985 SCALE (2)1142

ACT:

Representation of the People Act 1951: Corrupt Practice how should be Proved.

Evidence Act - Tape recorded statements - When could be used as evidence - Safeguards to be taken in using tape recorded evidence.

HEADNOTE:

In the general election to the State Assembly held in 1982 the appellants and the respondents were the candidates. The respondent was declared elected to the Assembly. In their election petition, the appellants alleged that the respondent was guilty of corrupt practice and booth capturing in that he went to two polling booths along with 50 to 60 persons, armed with guns, sticks and swords, threatened and pressurized the voters and as a result of the serious threats held out by the respondent and his men the voters ran away without exercising their franchise; that the respondent and his companions entered the polling booths and terrorized the Polling Officer and polling agents, assaulted the polling agents at gun point, snatched away the ballot papers and marking them in the respondent's favour, cast the votes in the ballot boxes and thumb marked the counter foil

of ballot papers. They sought a declaration that the respondents election was void under section 100 of the Representation of the People Act 1951. A large number of witnesses were examined by both sides. The Deputy Commissioner who was the Returning Officer of the constituency recorded on a tape recorder the statements of same persons including the polling agents, the Polling Officer and the respondent and of himself.

The High Court held that the evidence of the witnesses and the petitioners on these points was not corroborated, no effort was made by the petitioners to connect the respondent with the ownership of vehicles purported to have been used by him, that the witnesses were drawing more upon their imagination to make out stories about the detention of the persons and forcible polling at that polling station by the respondent and that the

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petitioners failed to prove the charge beyond reasonable doubt. A The court also held that the role assigned to the respondent by the petitioners has not been proved.

Dismissing the appeal

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HELD: [Per Fazal Ali J, Sabyasachi Mukharji J concurring and Varadarajan J dissenting] The appellants have failed to prove their case that the respondent was guilty of indulging in corrupt practices. [446 F]

Clear and specific allegations with facts and figures regarding the corrupt practices indulged in by the respondent have not been alleged in the first part of the election petition. The petitioners should have given definitive and specific allegations regarding the nature of fraud or the corrupt practices committed by the respondent as briefly as possible in the main part of the petition. [407 E-F]

The appellants have not established that the respondent was present at the time of the incidents at the two booths. Once this is not proved, the appellants have failed. It is settled law that corrupt practices must be committed by the candidate or his polling agent or by others with the implicit or explicit consent of the candidate or his polling agent. Where the supporters of the candidate indulged in corrupt practices on their own, without the authority from the candidate the election cannot be voided, and this factor is conspicuously absent in this case. It is also settled law that the charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. As the charge of corrupt practice is in the nature of a criminal charge, it is for the party who sets up the plea of undue influence to prove it, to the hilt and the manner of proof should be the same as in a criminal case. [445 F-H]

As regards the evidence recorded on a tape Recorder or other mechanical process the preponderance of authorities is

in favour of the admissibility of the statements subject to certain safeguards viz., (1) the voice of the speaker must be identified by the maker of the record or by others who recognise his voice. Where the voice is denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker. [414 E]

(2) The voice of the speaker should be audible and not distorted by other sounds or disturbances. [414 E]

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(3) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence. [414 F]

(4) Every possibility of tampering with or erasure of a part of the tape recorded statement must be ruled out; [414 G]

(5) The statement must be relevant according to the rules of evidence and [414 H]

(6) The recorded cassette must be carefully sealed and kept in safe custody. [415 A]

R. v. Maqsd Ali [1975] 2 All E.R. 464 and B. v. Robson [1972] 2 All E.R. 699, referred to.

In the instant case, the voices recorded at a number of places are not very clear and there is noise while the statements were being recorded by the Deputy Commissioner. A good part of the statement recorded on the cassette has been denied not only by the respondent but also the respondent's witnesses. No other witness has come forward to depose identification of the voice of the respondent or of witnesses. [444 E]

There are erasures here and there in the tape and besides the voices recorded being not very clear, it is hazardous to base a decision on such evidence. The Deputy Commissioner recorded the statements in violation of the instructions or the Government and erred in not placing the recorded cassette in proper custody. He kept it with himself without authority and therefore the possibility of tampering with the statements cannot be ruled out. The transcript was prepared in his office by his stenographer and when the transcript was being prepared the Deputy Commissioner himself was absent from his office. The possibility of its being tampered with by his stenographer or somebody else cannot be ruled out. Respondents witnesses have denied the identity of their voices. The recording was done in a haphazard and unsystematic manner. A conspectus of the evidence of the witnesses shows that the evidence adduced by the respondent in the court is much superior in quality than that adduced by the appellants. The High Court was right in holding that the petitioners had failed to prove the allegations of corrupt practice or booth capturing beyond reasonable doubt. [441 E, 442 H-443 E]

Sabyasachi Mukharji, J. concurring: While accepting the tape recorded statements the court should proceed cautiously. The

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evidence should be examined on the analogy of mutilated documents. If the tape recording is not coherent or distinct or clear it should not be relied upon. [502 B,D-E]

R. V. Maqsud Ali [1975] 2 All E.R. 464 and R. v. Robson [1972] 2 All E.R. 699, referred to.

In the instant case, the tape recording was misleading and could not be relied on because in most places it was unintelligible and of poor quality. Therefore, its potential prejudicial effect outweighs the evidentiary value of the recording. [504 C]

Shri N. Sri Rama Reddy etc. v. Shri V.V. Giri [1971] 1 S.C.R. 399 and R.M. Malkani v. State of Maharashtra [1973] 2 S.C.R. 417 M.Chenna Reddy v. V. Ramachandra Rao & Anr. [1972] E.L.R. Vol. 40, 390; Ram Sharan Yadav v. Thakur Muneshwar Nath Singh & Ors . [1984] 4 S.C.C. 649; C.A.No. 3419/81 decided on 29.11.84, referred to.

It is settled law that the charge of corrupt practice is in the nature of a criminal charge which if proved entails a heavy penalty in the form of disqualification and that a more cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate. In the instant case, it cannot be said that the appellants had proved their case to the extent required to succeed. [506 D]

Where the question is whether the oral testimony should be believed or not the views of the trial judge should not be lightly brushed aside, because the trial judge has the advantage of judging the manner and demeanour of the witness which advantage the Appellate Court does not enjoy. In view of the nature of the evidence on record there is no reason to disagree with the appraisal of the evidence by the trial judge. [506 G]

Moti Lal v. Chandra Pratap Tiwari & Ors. A.I.R. 1975 S.C. 1178 and Raghuvir Singh v. Raghuvir Singh Kushwaha A.I.R. 1970 S.C. 442, referred to.

Varadarajan J. dissenting : It is clear from decided cases that tape recorded evidence is admissible provided the originality and the authenticity of the tape are free from doubt. In the instant case, there is no valid reason to doubt them. It is not reasonable to reject the tape merely because some portions thereof

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could not be made out on account of noise and interference not only outside but also inside the Polling Station. On the contrary under the circumstances of this case great relevance has to be placed on the tape and its contents not only for corroborating the evidence of the District Commissioner and the Presiding Officer to the extent they go but also as resgestae evidence of the first part of the incident. The Trial Judge was not justified in rejecting the tape record and transcription. The appellants have proved satisfactorily and beyond reasonable doubt the first part of the incident in one of the Polling Stations, that the

respondent went armed with a rifle with 25 or 30 companions and entered the Polling Station with 4 or 5 armed companions and threatened the Presiding Officer and others who were present there with the use of force and got some ballot papers marked in favour of the respondent polled forcibly by his companions in the ballot box and that they left the Polling Station on seeing the villagers and the police coming towards the Polling Station. The discrepancy in evidence regarding the time of the incident is not material. [478 A-C, 483 E-484 A]

Secondly, the Deputy Commissioner recorded the conversation which he had with the presiding Officer but some portion thereof was erased by his own voice by inadvertence. After recording, his stenographer prepared the transcript in his office most of it under his supervision and though he was temporarily absent to attend to some other work he compared it with the original tape and found it to be correct. The tape, the tape recorder and the transcript remained with him throughout and were not deposited by him in the record room and there was not possibility of tampering. [496 F-497 A]

The respondent had managed to keep away from the court material evidence by way of the original report of the Presiding Officer. He had cited a person as his witness to depose about his case but did not examine him for that purpose and had called him only for the purpose of production of some record, without any oath being administered to him. He had denied to the appellants the opportunity to cross-examine that witness. The respondent had come forward with a new case of alleged booth capturing and forcible polling of bogus votes after the appellants had completed the examination of their witnesses to whom not such suggestion was made in the cross-examination. From the evidence on record two views are not possible. The appellants have proved beyond reasonable doubt that the respondent had committed the corrupt practices alleged against him. No lenient view can be taken in this case merely because the election petition is directed against the returned candidate. [499 G-500 B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6623 of 1983.

From the Judgment and Order dated 3.6.1983 of the Punjab & Haryana High Court in E.P. 13/82.

Kapil Sibal, Gopi Chand, K.C. Sharma, R. Karanjawala, Mrs. M. Karanjawala, Miss Neethu & Mrs. Madhu Tewatia for the Appellants.

K.G. Bhagat, Additional Solicitor General, R.Venkataramani, Ranbir Singh Yadav, P.S. Pradhan, Chandra Shekhar Panda and A. Mariaroutham for the Respondent.

The following Judgments were delivered:

FAZAL ALI, J. The election process in our country has become an extremely complex and complicated system and indeed a very difficult and delicate affair. Sometimes, the election petitioner, who has lost the election from a particular constituency, makes out on the surface such a probable feature and presents falsehood dextrously dressed in such a fashion as the truth being buried somewhere deep into the roots of the case so as to be invisible, looks like falsehood which is depicted in the grab of an attractive imposing and charming dress as a result of which some courts are prone to fall into the trap and hold as true what is downright false. If, however, the lid is carefully opened, and the veil is lifted, the face of Falsehood disappears and truth comes out victorious.

In such cases the judicial process and the judicial approach has to be both pragmatic and progressive so that the deepest possible probe is made to get at the real truth out of a heap of dust and cloud. This is indeed a herculean task and unless the court is extremely careful and vigilant, the truth may be so completely camouflaged that falsehood may look like real truth.

Of course, the advocacy of the counsel for the parties does play a very important role in unveiling the truth and in borderline cases the courts have to undertake the onerous task of "disengaging the truth from falsehood, to separate the chaff from the grain". In our opinion, all said and done, if two views are reasonably possible one in favour of the elected candidate and the other against him Courts should not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate should uphold his election giving him benefit of the doubt. This is more so where allegations of fraud or undue influence are made.

These observations have been made by us in order to decide election cases with the greatest amount of care and caution, consideration and circumspection because if one false step is taken, it may cause havoc to the person who loses.

It is not necessary for us to dwell on or narrate the facts of the case of the parties which have detailed by the High Court in very clear and unambiguous terms. To repeat the same all over again might frustrate the very object of deciding election petitions with utmost expedition. Even so, it may be necessary for us to give a bird's eye view and a grotesque picture of the important and dominant elements of the controversy between the parties in order to understand which of the two cases presented before us is true.

The evidence in the present case consists of - a. Oral evidence of the witnesses of the parties b. the documentary evidence c. the evidence consisting of the tape recorded statements of the conversation between the Deputy Commissioner and the respondent, Col. Ram Singh, corroborated by the respondent himself who was examined as a court witness by us in this Court and both sides were given full opportunity to cross-examine him.

d. important points of law arising out of the arguments presented before us, and e. authorities of this Court or other courts cited before us.

For the purpose of understanding the truth and the spirit of the matter a scientific dichotomy of the case has to be made which may include the following factor:

a. Time and manner of voting, b. allegation of both capturing, c. role played by the electoral authorities who may have acted honestly yet the possibility of their falling an easy prey to the machinations of one side or the other cannot be safely eliminated which may lead to an error of Judgment on their part. This should be fully guarded against as also the possibility of their being attracted by any False temptation, d. Where the proof of a corrupt practice is the very cornerstone and the bedrock of the case set against the successful candidate, the court should be doubly sure that it is not lured to fall in the labyrinth of chaos and confusion by easily holding that the corrupt practice alleged has been proved.

With this short prelude, we would now proceed to give an exhaustive glimpse of the contentions raised before us by the parties. Before, however, we do that we must record our appreciation and gratefulness to the counsel for both the parties who in a big case like this had been fair enough to confine their arguments only to two polling stations, viz., Kalaka and Burthal Jat, which has rendered our task much easier besides saving a lot of time, labour and expense. We also feel indebted to the learned counsel for the parties for having argued the case with dexterity and brevity which, as it is said, is the 'soul of wit'.

The present appeal arises out of an election held on May 19, 1982 to the Haryana Vidhan Sabha from Rewari constituency No.86. In view of the concession made by the counsel for the parties, we are concerned in this appeal only with two polling booths, viz., Kalaka and Burthal Jat. It appears that there were as many as five candidates and Col. Ram Singh [respondent] seems to have been pitted against the aforesaid candidates.

The bedrock of the allegations made by the appellants against the respondent was that he has been painted to be a most undependable and unreliable person from the moral point of view as having changed sides with one party or the other to suit his needs and divided his loyalties by playing a dirty game of politics in that he changed sides without any fixed ideology and the only principle which, according to the appellants, the respondent had, was lust for power. It may be pertinent to note here that the respondent had also alleged that Rao Birendra Singh, who, according to him, was the evil genius of the whole show, had set up his sister, Sumitra Bai, to contest the election in order to get the respondent out of the way. However, we are not at all concerned with any of these matters or allegations which appear to be foreign to the scope of the present appeals nor are these matters of which any serious notice can be taken because as Shakespeare has said "everything is fair in war and love" and the respondent could not be presumed to be as virtuous as Caesar's wife so as to be completely above board. So, we cannot blame the respondent if he changed sides to suit the temper of the times. At any rate, this allegation has no relevance to the setting aside of the election of the successful candidate. The law does not recognise either political morality or personal loyalties so

long as the candidate allows a fair game to be played without destroying the sanctity of the electoral process by indulging in undue influence or corrupt practices which must be proved satisfactorily beyond reasonable doubt.

So far so good. A conspicuous fact may however be noticed here, viz., that clear and specific allegations with facts and figures regarding the corrupt practices indulged in by the respondent have not been alleged in the first part of the election petition itself. The allegation however, have been detailed in the statement of particular submitted by the appellants, who were certainly entitled to do so but we should have expected some definitive and specific allegations regarding the nature of the fraud or the corrupt practices committed by the respondent as briefly as possible in the main part of the petition itself. Therefore, this is doubtless a relevant factor in Judging the truth of the particulars mentioned in the statement more particularly when the onus of proving the corrupt practice lies entirely on the election petitioner who must demonstrably prove the same.

And now a pointed peep into the salient features of the facts of the case. To begin with, the arguments of the appellants are confined only to the Kalaka and Burthal Jat polling booths. Therefore we proceed further we might at this stage briefly indicate, shorn of details, the nature, character and the extent of the allegations regarding the corrupt practices and booth capturing alleged to have been indulged in by the respondent on the basis of which the appellants seek to set aside the election of the respondent.

As regards Kalaka, (1) it was alleged that the respondent appeared at the scene at about 10.30 a.m. with 50-60 persons and was himself armed with a gun while his companions had guns, sticks and swords. By sheer show of force, the voters were threatened and pressurised as a result of which they ran away without exercising their votes. In other words, the allegation is that as a result of the serious threat held out by the respondent, the voters were deprived of their valuable right of franchise.

(2) The respondent alongwith his companions enter the booth and terrorised the polling officer as also the polling agents (Basti Ram & Ishwar) of the Congress I candidate who were assaulted by The respondent by the but end of the barrel of his gun.

(3) The respondent and others at gun point snatched away about 50 ballot papers from the polling staff and after marking them in his (respondent) favour put them into the ballot box.

(4) The respondent and his companions at his (respondent) instance thumb-marked the counterfoils of the ballot papers also.

As regards Burthal booth, (1) the appellants alleged that almost the same modus operandi was adopted by the respondent and he directed his supporters to prevent the voters from entering the booth, thereby depriving them of the opportunity of exercising their right to vote.

(2) Not content with this, the respondent left behind his relations Anil Kumar and Satbir Singh to carry on the aforesaid activities and gave further instructions that the maximum number of votes

should be polled in his favour.

Thus, so far as Kalaka and Burthal polling booths are concerned, two important corrupt practices have been alleged by the appellants:-

(1) forcible polling of votes and (2) preventing the genuine voters from exercising their right to vote.

It manifestly follows that once it is proved that the respondent was not present at the time of the incidents at Kalaka and Burthal, the case of the appellants falls like a pack of cards because it is well settled by several authorities of this Court that the corrupt practice must be committed by the candidate or his polling agent or by others with the implicit or explicit consent of the candidate or his polling agent. Where, however, the supporters or a candidate indulge in a corrupt practice on their own without having been authorised by the candidate or his polling agent, the election of the returned candidate cannot be voided. We might mention here that the last factor indicated by us is conspicuously absent in this case taking *ex facie* the entire facts narrated by the appellants in their pleadings or in the evidence.

Before, however, analysing and marshalling the evidence we would like to refer to the authorities of this Court and other courts regarding the necessary precautions to be Taken in approaching evidence in election cases and the principles laid down by us. We would also deal with the extent of the admissibility of the evidence of the tape recorded statements alleged to have been made by some of the witnesses in the tape-recorder recorded by P.W. 7, the Deputy Commissioner.

As regards the principles enunciated by this Court regarding the nature and the standard of proof of corrupt practice alleged by an election petitioner against the successful candidate, though it is not necessary for us to burden our judgment with multiplicity of authorities yet the ratio of some of the important decisions which are directly in point may be briefly stated.

To begin with, as far back as 1959 in *Ram Dial v. Sant Lal Ors.*, [1959] 2 supp. S.C.R. 748, the Court observed thus:

"What is material under the Indian law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. Decisions of the English Courts, based on the words of the English Statute, which are not strictly in *pari materia* with the words of the Indian statute, cannot, therefore, be used as precedents in this country."

In *Samant N. Balakrishna, etc. v. George Fernandez & Ors. etc.*, [1969] 3 S.C.R. 603, this Court while dwelling on the principles to be followed in election cases pithily point out thus:

"The principle of law is settled that consent may be inferred from circumstantial evidence but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although the trial of an election petition is made in accordance with the Code of Civil Procedure it has been laid down that a corrupt

practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent."

In *Ch. Razik Ram v. Ch. Jaswant Singh Chouhan & Ors.*

[1975] 4 S.C.C. 769, this Court laid down the following principles:

"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.

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 affect the quantum of its proof but does not relieve the petitioner of his primary burden."

In *Balwan Singh v. Prakash Chand & Ors.* [1976] 3 S.C.R. 335, Shinghal, J. made the following observations:

"Another argument of Mr. Bindra was that the corrupt practice in question should not have been found to have been committed as the election petitioners did not examine themselves during the course of the trial in the High Court. There was however no such obligation on them, and the evidence which the election petitioners were able to produce at the trial could not have been rejected for any such fanciful reason when there was nothing to show that the election petitioners were able to give useful evidence to their personal knowledge but stayed away purposely."

In the case of *Sultan Salahuddin Owasi v. Mohd. Osman Shaheed & Ors.* [1980] 3 S.C.C. 281 to which one of us (Fazal Ali, J.) was a party, this Court observed thus:-

"It is now well settled by a large catena of the authorities of this Court that a charge of corrupt practice must be proved to the hilt, the standard of proof of such allegation s the same as a charge of fraud in a criminal case.

In *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh & Ora.* [1984] 4 S.C.C. 649, to which two of us were parties, this Court observed thus:

"The sum and substance of these decisions is that a charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. As the charge of a corrupt practice is in the nature of a criminal charge, it is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a court that a candidate has been guilty of 'undue influence' then he is likely to be disqualified for a period of six years or such other period as the authority concerned under Section 8-A of the Act may think fit.

By and large, the Court in such cases while appreciating or analysing the evidence must be guided by the following considerations: (1) the nature, character, respectability and credibility of the evidence, (2) the surrounding circumstances and the improbability appearing in the case, (3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behaviour, character and demeanour of the witnesses appearing before it, and (4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged."

This, therefore, concludes the question regarding the standard of proof.

As heavy reliance was placed by the appellants on Ex.P- 1 (the tape-recorded statements of RWs 1 to 3) as also the statements recorded in the same tape-recorder by PW 7 which included the statement of the respondent, in order to allay all doubts and satisfy ourselves regarding the genuineness of the statements made in the tape-recorder we have examined the respondent as a court witness in this Court and allowed him to be cross-examined by both sides. We would deal with the nature and the relevancy of the statements made at a later part of our judgment. But before that we would like to settle the controversy between counsel for the parties as to the extent of admissibility of evidence recorded on tape-recorder or other mechanical process.

It seems to us that the matter here is not free from difficulty but the preponderance of authorities - Indian and foreign - are in favour of admissibility of the statement provided certain conditions and safeguard are proved to the satisfaction of the court. We now proceed to discuss the various ramifications and the repercussions of this part of the case.

This Court had the occasion to go into this question in a few cases and it will be useful to cite some of the decisions. In *Yusufalli Esmail Nagree v. State of Maharashtra* [1967] 3 S.C.R. 720, this Court, speaking through Bachawat, J. Observed thus:

"If a statement 'is relevant, an accurate tape record of the statement is also relevant and admissible. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified. One of the features of magnetic tape RECORDING is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received

with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with.

The tape was not sealed and was kept in the custody of Mahajan The absence of sealing naturally gives rise to the argument that the recording medium might have been tampered with before it was replayed."

(Emphasis ours) In the case of N. Sri Rama Reddy, etc. v. V.V.Giri [1971] 1 S.C.R. 399, the following observations were made:

"Having due regard to the decisions referred to above, it is clear that a previous statement, made by a person and recorded on tape, can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court, as well as to test the veracity of the witness and also to impeach his impartiality.

In R.M. Malkani v. State of Maharashtra [1973] 2 S.C.R.

417, this Court laid down the essential conditions which, if fulfilled or satisfied, would make a tape-recorded statement admissible otherwise not; and observed thus:

"Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.

(Emphasis supplied) In Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra & Ors., [1975] 1 Supp. S.C.R. 281, Beg,J. (as he then was, made the following observations:

"We think that the High Court was quite right in holding that the tape records of speeches were "documents" , as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who knew it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, DIRECT or circumstances, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject matter recorded had to be shown to be relevant according to rules of relevancy found in the evidence Act." (Emphasis ours) Thus, so far as this Court is

concerned the conditions for admissibility of a tape recorded statement may be stated as follows:

(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strick proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence - direct or circumstantial. (3) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of con text and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

The view taken by this Court on the question of admissibility of tape recorded evidence finds full support from both English and American authorities. In *R. v. Maqsd Ali*, [1965] All. E.R. 464., Marshall, J., observed thus:- C "We can see no difference in principle between a tape recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. There can be no question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged.

We find ourselves in complete agreement with the view taken by Marshall, J., who was one of the celebrate Judges of the Court of Criminal Appeal. To the same effect is another decision of the same court in *R. v. Robson* [1972] 2 All E.R. 699, where Shaw, J., delivering a judgment of the Central Criminal Court observed thus:

"The determination of the question is rendered more difficult because tape recordings may be altered by the transposition, excision and insertion of words or phrases and such alterations may escape detection and even elude it on examination by technical experts.

During the course of the evidence and argument on the issue of admissibility the recordings were played back many times. In the end I came to the view that in continuity, clarity and coherence their quality was, at the least, adequate to enable the jury to form a fair and reliable assessment of the conversation which were recorded and that with an appropriate warning the jury would not be led into and interpretation unjustifiably adverse to the accused. Accordingly, so far as the matter was one of discretion, I was satisfied that / injustice could arise from admitting the tapes in evidence and that they ought not to be excluded on this basis."

In American Jurisprudence 2nd (Vo1.29) the learned author on a conspectus of the authorities referred to in the footnote in regard to the admissibility of tape recorded statements at page 494 observes thus:

"The cases are in general agreement as to what constitutes a proper foundation for the admission of a sound recording, and indicate a reasonably strict adherence to the rules prescribed for testing the admissibility of recordings, which have been outlined as follows:

- (1) a showing that the recording device was capable of taking testimony;
- (2) a showing that the operator of the device was competent;
- (3) establishment of the authenticity and correctness of the recording;
- (4) a showing that changes, additions, or deletions have not been made;
- (5) a showing of the manner of the preservation of the recording;
- (6) identification of the speakers; and (7) a showing that the testimony elicited was voluntarily made without any kind of inducement.

..However, the recording may be rejected if it is so inaudible and indistinct that the jury must -

(Emphasis ours) We would, therefore, have to test the admissibility of the tape recorded statements of the respondent, given in the High Court as also in this Court, in the light of the various tests and safeguards laid down by this Court and other Courts, referred to above. We shall give a detailed survey of the nature and the character of the statement of the respondent in a separate paragraph which we intend to devote to this part of the case, which is really an important feature and, if accepted, may clinch the issue and the controversy between the parties on the point of corrupt practice.

This now brings us to a summary of the nature of the evidence produced by the parties. As already stated counsel for the parties confined their arguments only to the validity of the election relating to Kalaka and Burthal Jat polling booths.

By virtue of a notification dated 17.4.82 the Governor of Haryana called upon the voters to elect Members to the Vidhan Sabha. The last date for filing the nomination papers was 24.4.82, the date for scrutiny was 26.4.82 and 28.4.82 was the last date for withdrawal of candidature. The polling was held on 19.5.82 and the counting of votes took place on 20.5.82. It is the last date with which we are mainly concerned. To begin with, it appears that 24 persons had filed their nomination papers out of which three were rejected by the Returning Officer and 16 persons withdrew their candidature, leaving five persons in the field. Smt. Sumitra Devi was a nominee of the Congress (I) party and the respondent filed his nomination papers initially as an Independent candidate but later on joined Congress (J) party. The respondent was first in the army but he resigned soon after the Indo Pakistan war in 1971 and started doing business as a diesel dealer in partnership with others. On being elected to the Vidhan Sabha he became its Speaker as he enjoyed the confidence of the then Chief Minister, Ch. Devi Lal. As it happened, in the 1980 Parliamentary elections the Congress (I) party swept the polls and Shri Bhajan Lal, having left the Janata Party, joined the Congress (I) party along with many of his supporters, including the respondent. But, we are concerned only with the 1982 Assembly elections to the Haryana Vidhan Sabha in which the main candidates were Smt. Sumitra Devi and the respondent.

**KALKA POLLING BOOTH** We would first take up the allegations levelled by the appellants against the respondent regarding the corrupt practices relating to the Kalaka polling booth. According to the evidence of R.W.1, the polling started at 7.30 a.m. and went off peacefully without any untoward incident till 10.30 a.m. Near About this time, according to the allegations of the appellants, the respondent arrived with a posse of 60-70 persons, including Des Raj, Ram Kishan and others, to create disturbance in the polling and to prevent the votes from being polled in favour of other parties. It is also alleged that a mob of 40-50 persons was variously armed with guns, lathis and swords, and the respondent himself was armed with a gun. As a result of the activities of the respondent, some of the voters like Shiv Charan, Gurdial and others were forced to run away without exercising their right to vote. It was further alleged that not to speak of the voters even the polling staff was not allowed to do its duty which resulted in the voting coming to a stand still. At this, one Mangal Singh raised serious protest and on the orders of the respondent he was assaulted. Ishwar (Lambardar) was also hit by the buttend of the gun and despite the objections of Basti Ram he was also assaulted. The policemen were heavily outnumbered and had to stand as silent spectator to the whole show. Further details of the acts of omission and commission committed by the respondent have been given in the judgment of the High Court as also on pages 10-12 of Vol. III of the Paperbooks. It is also alleged that the respondent with the aid of his companions snatched as many as 50 ballot papers from the polling staff and after marking them in his favour put them into the ballot box. Ultimately, on the arrival of the high officers the Presiding Officer lodged a detailed report giving his own version of the incident on the basis of which FIR was registered on 19.5.82 itself. P.W. 7, Mr. N. Balabhaskar, the Deputy Commissioner of Mohindergarh District, who was the Returning Officer of the entire constituency also reached the spot and made enquiries in the matter. As a result of the trouble created at the instance of the respondent, the polling had to be postponed

as it was disrupted for more than an hour.

These in short, are the allegations of the appellants against the respondent in respect of Kalaka polling booth. We shall now refer to the evidence led by both the parties on these particular points to show how far the allegations have been proved. To begin with, P.Ws. 7, 8, 12 to 18 deposed in favour of the appellants in respect of this polling booth. In order to rebut the evidence led on behalf of the appellants, the respondent produced Roop Chand (R.W.1), Deen Dayal (R.W.2), constable Mohinder Singh (R.W.3), Dhani Ram (R.W.4), Ram Kishan (R.W.5) and Suresh (R.W.6) besides respondent himself (R.W. 22).

Having gone through the evidence led on behalf of both the appellants and the respondent, we are clearly of the opinion that despite the quantity of the appellants' witnesses, the quality of the respondent's witnesses appears to be much superior to that of the P.Ws. In regard to the respective facts stated by them.

We would like to discuss the evidence of the Respondent witnesses by way of a comparative assessment in relation to the evidence led by the appellants so that a true picture of the cases of the parties may come out conspicuously which would throw a flood of light on the credibility of the witnesses concerned.

We shall now show that the statement of R.W. 1 seems to find intrinsic support from the star witness of the appellants, viz., P.W. 7, the Deputy Commissioner. P.W. 7 is a high officer and, therefore, a respectable witness though, with due respect, we might say that his performance in this case has not been very satisfactory and his conduct leaves much to be desired. Without going into further details we might mention that his action in recording the statement of the witnesses on a tape recorder without taking the necessary precautions and safeguards cannot be fully justified. We are not able to understand as to why should he have taken the risk of recording the statements on a tape recorder knowing full well that the evidentiary value of such a tape recorded statement depends on various factors. Since P.W. was accompanied by his stenographer, there could have been no difficulty in recording the statement of the persons concerned by dictating their statements to him and after being typed, signed the same and taken the signatures of the deponent a certificate "Read over and accepted correct." If this was done nobody could doubt the authenticity of such statements. P.W. 7 admits his statement that he was not authorised or asked by any higher officer than him to record the statement at the spot in a tape recorder which obviously he did at his own risk. Furthermore, even if he had recorded the statements on a tape-recorder he ought not to have kept the cassette in his own custody but should have deposited it in the Record Room according to rules. By keeping the recorded cassette in his own custody, the possibility of tampering with or erasure of the recorded speech cannot be ruled out. Another serious defect in recording the statement on a tape recorder was that he had to take further care and precaution to see that the voice of the person whose statement was recorded should be fully identified. Here again, he seems to have fallen into an error resulting in a very anomalous position as some of the witnesses particularly those appearing for the respondent, have clearly denied their voices in the cassette and refused to identify the same. Others have partly admitted and partly denied their voices alleged to be those of the witnesses for the respondent. Finally, he himself admits that there were a number of voices which led to some

disturbance and difficulties in putting Two and two together. All these manifest defects could have been avoided if in the usual course he would have administered oath to the witnesses, recorded their statements and got the same signed by them as also by himself. In a sanctimonious matter like this, it is extremely perilous to take a risk of this kind. Perhaps it any be said that by recording the statements on a tape recorder he save time as he had to go to the other polling booths also. That, however, does not solve the problem because even if the statements were recorded on a tape recorder they had to be transcribed and by the time the statements were ready the witnesses would not be available to append their signatures. Moreover, the direct method of recording the statement by dictating the same to the stenographer would have been as expeditious as recording on a tape recorder and transcribing the same thereafter. We might mention here that the recorded cassette was replayed in this Court and then transcribed and only the relevant statements of the respondent took quite a few hours. Thus, by his negligence he allowed the recorded statements to suffer from a manifest defect.

That there were some erasures and lot of other voices has been admitted by P.W. 7 himself in his statement where he stated Thus:-

"Some gaps in Ex. P. 1 have been left out, where the voice was not clear and audible.

Many people were standing at the polling booth whose voices have been recorded in the tape. I cannot now identify the person whose voices I had recorded in the tape. I also cannot distinguish the name of person whose voice I had recorded after hearing the tape ..... My Stenographer had prepared the transcript Ex.P1. It was prepared in my office. Most of it was done under my supervision. I might have been temporarily absent to attend to certain other work."

Thus, even accepting the statement of P.W. 7 at its face value it appears that the various safeguards and precautions which the law requires to be taken while recording the statement On a tape recorder were not observed by him. That by itself is sufficient to discard the statement of the respondent recorded on the tape recorder without going into the merits of the said statement. Even so, we shall deal with this matter in detail when we take up the recorded statements in the cassette in the light of the evidence of the respondent who had been examined by us as a court witness to throw light on the subject.

Another serious infirmity from which the evidence of this witness suffers is that while he himself admits that he was not in a position to identify the voices of the persons whose statements he had recorded, R.W. 1, who was an alternative Presiding Officer at the Kalaka polling booth, has completely denied to have made any statement as recorded in the cassette and asserts that he had absolutely no talk with P.W. 7. Similarly, R.W. 3 (constable) stated that P.W. 7 had talked only to the Presiding Officer and to no other member of the polling staff. No evidence has been produced by the appellants to rebut this part of the evidence of R.W.

3. R.W. 3 says in unconditional terms as follows:

"I did not make any such statement which is recorded in the tape. The voice recorded in the tape is not my voice.

The statement of the witness which is transcribed in Exhibit P-1 was also put to the witness. After hearing the same, the witness stated:

I did not make any such statement to the Deputy Commissioner, nor he interrogated me.' It Would thus appear that the two witnesses for the respondent, who were government servants and therefore official witnesses, clearly and categorically d denied having made any such statement in The cassette. P.W.. 7 HIMSELF has very fairly and frankly stated that he was not in a Position to identify the voices either of the respondent or of the witnesses for the respondent (R.Ws. 1 and 3) at the time of giving his evidence. This, therefore, throws a considerable doubt on the truth of the statement made by these witnesses in the cassette recorder. The law which has been analysed and examined by us is very clear that identification of the voices is very essential. In this view of the matter, the tape recorded statements lose their authenticity apart from other infirmities which we shall give later while appreciating the evidence of the respondent in this court.

Another circumstance that goes a long way off to demolish the edifice and the structure of the appellants case regarding the Kalaka polling booth is the statement of P.W. 7 himself. According to the consistent evidence of K.Ws. 1-6, no incident had happened nor was any trouble created by the respondent but instead the musclemen of the appellants led by Ajit Singh tried to create all sorts of trouble, information of which was sent to the Deputy Commissioner. Here, we might notice the admission of P.W. 7 where he states as follows:

"At about 10.30 a.m., when I was between Mandola and Zainabad villages in Jatsuana constituency, I received a message on the wireless, the apparatus of which I was having in my motor car, that Col. Ram Singh had complained against the workers of Congress (I). The COMPLAINT was that about 40 to 50 Congress (I) workers had attacked the Congress (J) workers at village Kalaka.

If the wireless message was sent to the d.C. at about 10.30 a.m. there could be no question of the respondent or his people to have visited Kalaka polling booth in order to create disturbance. This, therefore, INTRINSICALLY supports the case of the respondent and demolishes the case of the appellants about the arrival of Col.. Ram Sing and his relations, Satbir Sing and Anil Kumar.

It was also in evidence that after the first incident of the morning (wireless message received by P W. 7) two motor cycles are said to nave been left behind. It is manifest that if the persons who had committed the disturbances alongwith their companions did not belong to the party of the respondent, as the wireless message shows, then the only other irresistible conclusion, by the process of elimination, would be that the motor cycles must have belonged to Ajit Singh and his companions who were supporters of the Congress (I) candidate.

Thus, this being the posit on and the real state of affairs at the spot, in a case like the present one involving high stakes and serious handicaps, we should have expected the conduct of the senior

officers to have been completely above board.

Another reason which throws a considerable doubt on the testimony of the witnesses of the appellants is that P.W. 7 himself deposed that he did not receive any written complaint from the polling officer or the Presiding Officer or from any other person at the time when he visited the Kalaka polling booth. The appellants tried to bring on file certain complaints made to P.W. 7 by Suraj Bhan and others but as the original complaint had not been filed the complaint produced by the appellants apart from being clearly inadmissible cannot be relied on particularly in face of the clear admission of the Deputy Commissioner (P.W.

7) that he did not receive any written complaint from the officers concerned.

Another intrinsic circumstance which demolishes the case of the appellants about the presence of a mob headed by Satbir Singh and Anil Kumar (said to be relatives of respondent) is that P.W. 10 (A.S.I.) who was accompanying the D.C. said that he received the information that one of the candidates, viz., Col. Ram Singh, alongwith some persons had reached Kalaka polling booth and started intimidating the polling staff and the public. Here this witness is sadly contradicted by the statement of the Deputy Commissioner that the wireless message received by him was not in respect of Col. Ram Singh and his men but the message which the D.C. actually received was that the disturbance was created by one Ajit Singh at the instance of the Congress (I) candidate. It is, therefore, impossible to accept the case of the appellants that the respondent and his companions on the one hand and Ajit Singh with a posse of his own men on the other had reached the Kalaka polling booth at almost the same time. Indeed, if this had been so there should have been a huge riot and a pitched battle between the two parties but no witness says so. The evidence merely shows that Col. Ram Singh had reached the place just after Anil Kumar and Satbir Singh alongwith their men left and after the Presiding Officer had set the matters right. me A.S.I. (P.W.10) also says that 3-4 persons had made a complaint in writing to him but he had not seen those reports on the date when they were made to him but it must be on the file. The witness was shown the file of complaints and he admits thus:-

"I have seen the file of complaints which has been shown to me now. That complaint is not in this complaint file."

What happened to the complaint received by the witness (P.W. 10) is not known or can be anybody's guess-perhaps the same vanished into thin air or may be was non-existent.

The matter does not rest here but there is one more inherent circumstance which completely falsifies the case of the appellants. The Presiding Officer was shown Ex. P-5 and he stated that he had not mentioned anything in the said document about intimidation of the voters and other persons. He (P.W. 8) categorically states thus :-

I have seen Ex. P-5. Column No. 20 (a) is to furnish information about "Intimidation of voters and other persons . I have not mentioned anything- in this column but have crossed it."

Indeed, if there was any such intimidation, being the Presiding Officer he would not have crossed the column regarding the same. He admits that he had served in the Ahir High school which appears to have been patronized by Rao Birendra Singh and the possibility that this witness concealed the truth (as appears from his evidence) and made a statement regarding intimidation to oblige Rao Birendra Singh cannot be ruled out. This is because he merely denies knowledge that the Ahir School belonged to Rao Birendra Singh but he does not say affirmatively that Rao Birendra Singh had absolutely no connection with the said School. . Coming now to the rest of the evidence of R.W. 1, he says that after the departure of Ajit Singh, Col. Ram Singh came to the Kalaka polling booth and he was alone at that time. The respondent in the presence of R.W. 1 told the Presiding Officer that he should not be partial to any party and complained to him about the beating up of his polling agent. Hari Singh (P.W. 8), the Presiding Officer assured the respondent that he would not permit anything further to happen. Thereafter, a number of people came there and stoned the polling booth and despite the protests of the witness and the Presiding Officer they tried to snatch the ballot box which was, however, protected by the Presiding Officer. In the meantime, the police party arrived and the people who had gathered there sped away. Much was made by the counsel for the appellants regarding omission of the witness to make any report to the police. But not much turns upon this because the witness clearly admits that as the Presiding Officer was in charge of the whole show, he had reported the matter to him who had assured him that he would set things right. A number of questions were put to him which are of not much significance because the answer of the witness was that whatever he had to say he had told his immediate superior, the Presiding Officer. It is obvious that K.W. 1 was neither a police officer nor a person holding any important job but was only a teacher in a school. Perhaps he thought that it was enough if he informed his superior (Presiding Officer) who would do the needful. The witness also admits that he had told the Presiding Officer about the visit of Ajit Singh and his companions and the trouble created by them but he was told by the Presiding Officer that he had recorded the same in the Diary; though in the presence of the witness he did not write any report nor did he handover any report to the police in his presence. The witness then goes on to state that after a few days of the elections, the police had obtained an affidavit from his but no attempt was made by the appellants to get that affidavit summoned, produced and exhibited in the case and in the absence of that the court is entitled to presume that whatever the witness may have said to the Presiding Officer was contained in affidavit also.

R.W. 2, Deen Dayal, who was a member of the polling staff, fully corroborates the evidence of R.W. 1 regarding the arrival of Ajit Singh armed with pistol and accompanied by a number of persons. He further corroborates that some of the companions of Ajit Singh removed the polling agent of Col. Ram Singh and then asked the witness and others to handover the ballot papers but as the witness resisted he was beaten up by Ajit Singh and others but on the intervention of the Presiding Officer the matter rested there. Thereafter, Col. Ram Singh came who was also assured by the Presiding Officer that needful would be done. A capital was made by the appellants before the court below as also here regarding the veracity of this witness because he did not make any report to the D.C. Or the S.D.O. about his being beaten up. As already mentioned, the witness was merely a teacher and he appears to have been satisfied by the assurance given to him by the Presiding Officer that necessary action would be taken. He further states that the D.C. Only talked to the Presiding Officer and not to any other member of the polling staff. This shows that the evidence of this witness is true.

The next witness on the point is RW 3 (Mohinder Singh) who was a police constable deputed to the spot to maintain law and order. The sequence of events that happened at the polling booth and which have been deposed to by the witness may be summarised thus:

- (1) while the polling was going on, between 7.30 and 8.00 a.m., Ajit Singh arrived with his companions and tried to create all sorts of trouble.
- (2) After the departure of Ajit Singh, Col. Ram Singh came alone and was assured by the Presiding Officer that he would not allow any further trouble to take place.
- (3) After Col. Ram Singh had left the place a number of people from the village came and wanted to poll forcibly, and 2-3 persons came out of the polling booth with a ballot box.
- (4) He (RW 3) snatched the ballot box from the people and returned the same to Dhani Ram (RW 4).

The witness states that after some time the S.D.O. came there and after having a talk with the Polling Officer he went away. After about half-an-hour or 45 minutes of the departure of the S.D.O., the D.C. arrived and on his intervention the polling again started at about 12 mid-day. The witness vehemently denied that his statement was recorded by the D.C. in a tape-recorder and said that the voice recorded in the tape-recorder (which was played to him in court) was not his. He even goes to the extent of saying that he did not see any tape-recorder with the D.C. nor did he have any talk with him.

The following important points may be noted from his testimony -

- 1) The sequences of events narrated by him gives sufficient strength to the case of the respondent.
- 2) his positive evidence that the voice in the cassette was not his.

The witness was after all a police constable (a government official) and would not have the courage to make a false statement before the D.C. Moreover, even the D.C. in his statement has frankly admitted that he was not in a position to identify the voice of this witness or for that matter of others at the time of his deposition. Thus, in the eye of law, there is no legal evidence at all to prove that the voice recorded in the tape-recorder was the voice of this particular witness.

The next witness is RW 4 (Dhani Ram) who was also one of the members of the polling staff and a teacher in a Government Primary School. He fully corroborates the story given by RWs 1 and 3 and also gives the sequence of events referred to above while dealing with the evidence of RW 3. His evidence does not appear to be of much consequence. At any rate the learned High Court has fully discussed his evidence and we agree with the conclusions arrived at by the High Court in this respect.

RW 5 appears to be a voter of the Kalaka polling booth. He has been examined to prove the fact that when Ajit Singh and his party came to the booth, one Tula Ram who was a polling agent of Col. Ram Singh and real brother of RW 5, was beaten up by Ajit Singh and his party and when he tried to rescue him he was also beaten up and their clothes were torn and it was with great difficulty that Mohinder Singh (RW 3) who was on duty rescued him and his brother from the clutches of Ajit Singh and his party. He further states that he, alongwith his brother Tula Ram, went to Rewari to meet Col. Ram Singh and narrated the whole incident to him. In cross-examination, the witness says that he and his brother had received fists and slaps as a result of which they bled because of injuries on their bodies. He further says that as there was no visible mark of injury they did not get themselves medically examined. He is an unsophisticated villager and once having reported the matter to Col. Ram Singh he did not think it necessary to file any complaint with the police.

RW 6 (Suresh) was also a voter waiting in a queue to cast his vote when at about 8.30 a.m. AJit Singh aimed with a revolver, appeared on the scene and entered the booth. He heard hue and cry from inside the booth. He corroborates the evidence of RW 5 about the beating up of Tula Ram and Ram Kishan (RW 5). He goes on to state that after about half-an- hour of the departure of Ajit Singh and his party, Col. Ram Singh came and after spend about 5-6 minutes inside the booth he drove away. The witness further says in cross- examination that the polling did not start after the departure of AJit Singh in view of the commotion that took place there. After the departure of Col. Ram Singh the S.D.O. and the D.C. also came and ultimately the polling was continued. The witness finally says that he did not inform Col. Ram Singh about the incident nor did anybody enquire from him anything about the same. In these circumstances, we do not think that the evidence of this witness is creditworthy.

The other witnesses examined by the respondent not in respect of the Kalaka polling booth.

The picture would not be complete unless we give the other version of the story put forward by the appellants who have also examined many witnesses.

PW 8 is the only witness who has identified his voice recorded in the tape recorder by the D.C. when other witnesses, including the D.C., could not do so. That itself shows that he has leanings towards the appellants.

Another important aspect which emerges from the evidence of PW 8 is that, according to him, the total votes polled in the Kalaka polling booth were 573, the break-up of which is as follows:-

|                           |     |
|---------------------------|-----|
| between 7.30 to 8.45 a.m. | 58  |
| " 12 Noon- 2.00 p.m.      | 205 |
| " 2.00 p.m. - 4.30 p.m.   | 109 |

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This means that if there was any disturbance it would have taken a very short time in view of the calculation given by this witness. If, however, it is a fact that both parties - one led by Ajit Singh and

the other led by respondent - had a sort of a direct confrontation, it would have been extremely difficult for the polling to start only after an interval of an hour and a half. Moreover, no explanation has been given by this witness of the votes polled in between 8.45 to 10.30 a.m. The tally of votes is not consistent with his evidence and is an intrinsic proof of the fact that his evidence is not true. The general impression which we gather after perusing his evidence is that he does not appear to be a witness of truth and, therefore, we find it difficult to rely on the evidence of this witness. Moreover, we shall have to say something more regarding the credibility of this witness when we deal with the documentary evidence.

PW 10 (Sri Krishan) was the S.D.O. and Returning Officer for the Rewari constituency. According to him, he remained in his office upto 10.00 a.m. and after that he started touring the various polling booths. He goes on to say that on 19.5.82 he reached Kalaka at about 11.00-11.30 a.m. on receipt of a complaint to the effect that Col. Ram Singh, along with his companions, had tried to intimidate the polling staff and the voters. When he arrived at the spot he found the polling at a standstill. This actually supports the case of the respondent that the polling went on smoothly from 8.00 a.m. to 11.00 a.m. and the trouble must have been started either by Ajit Singh or by his men. The poll could not have restarted before 1.00 to 1.30 p.m. because, according to the evidence of the D.C., the polling staff had been interrogated and their statements were tape-recorded which would have taken quite a lot of time. This fact intrinsically knocks the bottom out of the case made out by PW 8 regarding timing of the voting.

PW 14 (Puran) is the next witness who does not appear to be of any importance because it is only a case of oath against oath. Moreover, a perusal of his evidence shows that this witness ran away after Col. Ram Singh is alleged to have threatened him. He then returned and cast his vote at about 3.00 P.M. Not much turns upon this evidence. Rather his evidence shows that he reached the spot near about 3.00 p.m. when peace had been restored and the polling had restarted smoothly.

More or less, to the same effect is the evidence of PW 16 (Ishwar Singh) with the difference that this witness says that he was assaulted but then except informing the S.I. about the injury he took no further steps. If he was actually injured he would have made it a point to report the fact of his assault to the D.C. Or the S.D.O. Or other officers who had assembled after the miscreants had gone away. This obviously he did not do. Lastly he admits that his family was supporting the Congress (I) candidate (Sumitra Bai) and, therefore, he could not be said to be an independent witness.

PW 17 (Amar Singh) was admittedly a polling agent of Sumitra Bai. The witness says that when the D.C. and S.D.O. came he made a complaint to them in writing which was also signed by Suraj Bhan, Mangal Singh, Basti Ram and others. He further says that he had verbally complained to Deep Chand, the ASI but he took no action. He states that the D.C. had however made an enquiry from him but the D.C. does not say anything about this witness and being a most interested witness it is difficult for us to rely on this witness when the High Court which had the opportunity of watching the demeanour and behavior of this witness placed no reliance on him.

The evidence of PW 18 is almost in the same terms. Like others, he also seems to have made a written report to the police station which has not been produced and no action seems to have been taken

thereon. It is rather strange that a number of witnesses say that they had made an oral or written complaint yet no action was taken thereon which shows that the statement of the witness is a purely cooked up story.

This closes the evidence so far as the prosecution witnesses are concerned. The learned Judge of the High Court has taken great pains in very carefully marshalling and analysing the evidence and so far as Kalaka polling booth is concerned, the findings of the High Court may be extracted thus:

"The evidence of the PWs on this point is not corroborated. The ownership of the motor cycles abandoned by the party of the respondent was not traced. The ownership could be established from their Registration Books. No effort was made to connect those with the respondent or his supporters. This shows that the PWs were drawing upon their imagination to make out stories about the detention of the persons and the forcible polling at that polling station by the respondent .

When the evidence on the file of the case is given a close look it leads to an inference that the petitioners have failed to prove this part of the charge beyond reasonable doubt.

Shri Sri Krishan SDO (Civil) stated that 3/4 persons gave him a complaint at Kalaka about the incident. It was a signed complaint. That complaint is not traceable. It was not found in the complaint file. Nor was it entered in the complaint register. That complaint could throw light on the incident if at all it had been produced. The oral evidence has failed to convincingly make out this allegation that the voters were threatened at Kalaka.

From the overall assessment of the petitioners' evidence and the detailed discussion in the previous paragraphs concerning this polling station it has left an impression in my mind that the role assigned to the respondent has not been proved beyond reasonable doubt. Lot of suspicions which are indicated in the previous paragraphs attach to his evidence and it is difficult to say that the inference in favour of the petitioners' case is irresistible. The evidence of the A petitioners is not of the type, which could persuade me to take a decision in their favour."

After going through the evidence very carefully, we find ourselves in complete agreement with the conclusions arrived at by the learned Judge of the High Court so far as Kalaka polling booth is concerned.

**BURTHAL JAT POLLING BOOTH** This now brings us to the second and the last limb of the arguments advanced by counsel for the appellants - the evidence regarding the corrupt practice in respect of Burthal Jat polling booth (for short, referred to as 'Burthal booth'). To prove the allegations, the appellants produced PWs 6,7,10, 26 to 33 and in order to rebut the case the respondent examined RWs 11, 12, 13, 14, 20 and 22. D We would first take up the evidence led by the appellants. PW 6, Krishan Bihari, is merely a formal witness who has been examined with the

complaint register of No.86 - Rewari constituency in which both Kalaka and Burthal polling booths fell. His evidence, therefore, does not appear to be of any significance.

The next important witness is PW 7, the Deputy Commissioner of Mohindergarh District ( N. Balabhaskar), a major part of whose evidence has already been discussed by us while dealing with his evidence relating to Kalaka polling booth. So far as Burthal polling booth is concerned, he states that he had received a complaint that a worker of Congress (J) candidate was attacked by villagers of Burthal Jat and his main purpose to visit the villages was to verify the truth or falsity of the complaint. But, when he went to the Burthal booth, the polling officer expressly told him that nothing had happened inside the booth. Some of the polling officials who were there, however, told him that there was some incident outside the polling booth but the identity of the persons responsible for the same had not been established. PW 7 further goes on to say that some villagers at that place told him that the workers of Congress (J) had come there in a jeep and tried to create trouble and they were able to detain two person and the third one had run away. The D.C. interrogated those two persons who told him that they had no connection with the jeep. He further admits that he did not interrogate them as to which political party they belonged - whether Congress (I) or Congress (J). he further testifies to the fact that a jeep was found at the spot with some sticks lying inside it but he did not see any motor-cycle near the polling booth. The persons who were attacked at Burthal by the villagers and whom he did not interrogate, for reasons best known to him, were Satbir Singh and Anil Kumar. This part of the evidence, therefore, corroborates the case of the respondent that assuming Satbir Singh and Anil Kumar were companions of Col. Ram Singh but they had undoubtedly been attack at the village and the D.C. also admits that the Sarpanch to the village Burthal had complaint to him regarding this matter when he reached Burthal Booth. PW 7 then says that at Burthal he recorded the conversation of the Presiding Officer in detail though he admits that some portion of the recorded conversation was erased inadvertently due to his own voice being recorded there.

This is all that witness says in respect of Burthal booth. Accepting the entire testimonial as it is without any further comment, it is not proved or established as to who was the person ) or persons at whose instance the corrupt practice was committed. There WAS, however, a clear admission by the D.C. that it was the respondent's party which had been aggrieved. It is rather surprising and intriguing that although the D.C. had gone to hold a regular inquiry into the irregularity committed at Burthal booth he did not care to interrogate Satbir Singh and Anil Kumar who were present there particularly when, as he himself says, the Sarpanch of the village had complained to him regarding some trouble. It seems that PW 7 contended himself merely by recording the statement of the Presiding officer in the tape recorder which was really a dictaphone, as told by the witness himself. t' A very important admission has been made by the witness which completely nullifies the statements recorded in the tape recorder. In this connection, he states thus:

"I cannot now identify the person whose voices I had recorded in the tape. I also cannot distinguish the name of person whose voice I had recorded after hearing the tape.

The witness was cross-examined regarding the cassette recorder and he has made the following admissions:

- a) that there was no instructions from the Government for recording such conversations as he had done,
- b) that even if he was supplied a dictaphone, it had to be mainly used by him for recording his own observations in his own voice.
- c) that the cassette and the dictaphone remained all the time with him and were not deposited by him in the record room.
- d) even a copy of the transcript of the recorded statements prepared by his stenographer was not deposited in the official record room, and
- e) that there were some gaps in the recorded tape (Ex.P-1) which had been left out and at some places the voice was not clear and audible.

PW 7 in his statement says that the statements of the witnesses recorded by him were transcribed by his stenographer under his supervision in his office but he may have temporarily gone out to attend to some other work. This is rather important because if the statements were typed out in his absence it would have been very difficult for his stenographer to find out whose statement he was transcribing which throws a considerable doubt on the credibility of the recorded statement. To a direct question by the court - "Can you rule out the possibility of tampering with the transcript" - his answer was - "I do not think if it was possible". The answer is self-evident and frightfully vague so as not to exclude the possibility of tampering. Ordinarily, the admissions made by PW 7 would have been sufficient to discard the statements recorded in the tape-recorder. We shall, however, develop this aspect of the [matter when we deal with the statements recorded on the tape-recorder.

The next witness is Shri Krishan, S.D.O., PW 1(). We have already discussed a major part of his evidence while dealing with the Kalaka polling booth and pointed out the serious infirmities from which his evidence suffers. Same comments would naturally apply to his evidence relating to Burthal booth to show that his evidence is not creditworthy. However, we shall briefly summarise what he had said about Burthal booth. In the first place, he states that when he reached Burthal, alongwith D.C., he saw Satbir and Anil Kumar surrounded by the people of that village.

He also saw a jeep containing some sticked parked there, which was, on the instructions of the D.C., taken into custody by the police. Satbir and Anil Kumar were also taken into custody under the orders of the D.C. In support of his evidence he relies on Ex.P-9, the complaint which was handed over to him by one Mam Chand. The manner in which the complaint was handed over to PW 10 and as to the author of the complaint are rather dubious particularly in view of the evidence of Mam Chand (PW 35). PW 35 was shown Ex.P-9 and after seeing the same he stated that the same did not bear his signatures. He also deposed that there are two other persons by the name Mam Chand, e.g., there is one Mam Chand who is the son of Kehar Singh and the name of the father of the other Mam

Chand was not known to him. It is, therefore, manifest from the admission of PW 35 that the complaint EX.P-9 was merely handed over to PW 10 by Mam Chand but neither the contents were proved nor the maker thereof had been examined. Therefore, the complaint is clearly inadmissible, as the persons who hands over a complaint cannot be said to be the author of the same. We would, therefore, have to exclude Ex.P-9 from the array of the documentary evidence. There is nothing further which this witness proves.

PW 26, Shri Mahabir Singh, is another witness who has been examined to prove the active participation of Anil Kumar and Satbir Singh. Far from supporting the case of the appellants he supports the case of the respondent. He states that he was a voter and had cast his vote. The learned counsel for the appellants, however, did not choose to rely on this witness and made a prayer for cross-examining him. In cross-examination all that PW 26 said was that he was on duty as an election agent of the respondent inside the booth and that he knew Satbir Singh previously but did not know to which place he belonged. Thus, the evidence of this witness is of no assistance to the appellants.

PW 27 (Dharam Vir) was a voter and, according to his evidence, he had gone to cast his vote at about 8.00 a.m. when near about that time Col. Ram Singh accompanied by 50- 60 persons came there and summoned Mahabir and Udai Bhan who were his election agents and told them that he was leaving some persons behind and that they should see to it that no- one should be permitted to vote for the Congress (I) candidate. The witness further states that Satbir Singh was amongst the 15-20 persons left behind by Col. Ram Singh. In cross-examination he admits that he cannot identify Satbir Singh. It is, therefore, difficult to believe as to how he named Satbir Singh as one of the persons left behind by Col. Ram Singh. His evidence on this point appears to be clearly false. The sequence of events mentioned by other witnesses shows that Col. Ram Singh had reached there near about 9.30 a.m. and he had come alone which fact has been supported by an overwhelming majority of witnesses for the respondent. Therefore, we find it difficult to place any reliance on this witness and his evidence does not inspire any confidence and must be rejected.

The next witness is Thaver Singh, PW 28 who also speaks in the same terms as PW 27. We are unable to place any reliance on this witness because he was the most interested witness being a polling agent of the Congress (I) candidate. During cross-examination he stated that he verbally complained to the Presiding Officer about the conduct of Col. Ram Singh but he did not make any compliance to any officer in writing. His evidence, therefore, carried no weight unless corroborated by some unimpeachable documentary evidence.

PW 29, Amir Chand, also repeats the same story as PW 28 but there is no evidence to corroborate him. Reading in between the lines of his evidence it appears that he was a strong supporter of Rao Birendera Singh though he does not commit himself in so many words.

PW 30 (Surjit Singh) and PW 31 (Raghubir Singh) have repeated the same parrot like story as the preceding witnesses. In the absence of any documentary evidence to corroborate their testimony, we find it unsafe to rely on their evidence.

PW 32, Shamsher Singh, is rather an important witness and according to his evidence he went to the Burthal Booth at about 7.30 a.m. and returned to his house at about 8.30 a.m. He then again went to the polling booth at about 2.30 p.m. He admits that he was a polling agent of Smt. Sumitra Bai, the Congress (I) candidates, and states that while he was on his way to the booth in the afternoon he met Satbir Singh and Anil Kumar who asked him to support Col. Ram Singh and when he told them that it was one's own choice to support any candidate an altercation took place which was, however, stopped with the arrival of Mam Chand, Ram Singh, Kishori and some other people. Thereafter, an ASI of police came there in a jeep who intervened in the matter and in his presence also Satbir Singh started uttering abuses. He further says that he found a jeep parked there and people told him that it belonged to Col. Ram Singh, a statement which is clearly inadmissible. He finally says that when the D.C. and the S.D.O. came there he informed them of the incident. In cross examination he admits that he made no report in writing to the police that he was beaten up nor did he get himself medically examined. He also did not file any complaint in any court against Satbir and Anil Kumar. In these circumstances, we find it difficult to rely on his evidence.

Kishori Lal, PW 33 says that he was a Chowkidar of the village Burthal Jat. He says that when he had gone to the polling booth at about 2.30/3.00 p.m. to cast his vote he found Satbir Singh and Anil Kumar having an altercation with Shamsher Singh, PW 32. He rescued Shamsher Singh with the help of some other persons. The witness, being a chowkidar of the village, should have immediately reported the matter to the D.C. Or the S.D.O. Or the ASI, all of whom had come to the spot but he did not do so and kept quiet which speaks volumes against the credibility of his evidence.

More or less to the same effect is the evidence of PW 34 (Ram Narain) who is also a Lambardar of village Kakoria. He says that on the day of the polling at about 2.30/3.00 p.m. he had gone to the Village Burthal Jat where he saw an altercation going on between Satbir Singh. Anil Kumar on the one hand and Shamsher Singh on the other. An ASI had also arrived there followed by the D.C. and the S.D.O. He admits that he had never met Anil Kumar and Satbir Singh nor did he know them before. Although he was an eye-witness to the incident of altercation yet he does not say that he had told anything to the various officers who were present at the spot. His evidence, therefore, does not inspire much confidence.

The learned Judge of the High Court who had fully considered the evidence of these witnesses observed thus:

"The time of their arrest as noticed makes the evidence of the petitioners' witnesses in regard to the incident at Burthal Jat very doubtful. The analysis of the evidence led by the petitioners reveals that they have failed to prove this part of the charge of corrupt practice against the respondent."

A bare perusal of the evidence of the witnesses for the appellant clearly reveals that they are not telling the truth and hence no implicit faith can be reposed on their testimony.

This now brings us to the evidence led on behalf of the respondent. To begin with, RW 11, Ravi Datt Sharma, who was a Lecturer in Govt. Higher Secondary School Rewari, was a polling Officer at Burthal Booth. According to him, the polling went on smoothly from 7.30 a.m. to 4.30 p.m. Without any untoward incident. He categorically states that he knew Col. Ram Singh and he (respondent) did not visit the polling booth on the polling day. He further goes on to state that at about 1.00 p.m., the D.C. and S.D.M. visited the polling booth. On their enquiry, the witness told them that everything was going on smoothly. He clearly denies that the D.C. had recorded any conversation which he had with him in the taperecorder. His evidence, however, is confined only to the incident that had happened inside the booth and not outside. We do not see any infirmity in his statement as he appears to be an independent and truthful witness.

RW 12, Parbhathi, was a voter of Burthal booth and he testifies to the fact that he had cast his vote at 8.00 a.m. though he had reached the booth at 7.30 a.m. After casting his vote he came out and stayed with his co-villagers and remained there till 1.30 or 2.00 p.m. He further states that during this period Col. Ram Singh or anybody on his behalf did not come to the booth nor did any quarrel or dispute take place inside or nearabout the polling booth. He further states that Shamsher Singh (PW 32), Sarpanch of the village was standing at a small distance with some people and he (PW

12) heard some altercation between them. During the course of the said altercation the police arrived at the spot and removed two persons (meaning perhaps Anil Kumar and Satbir Singh) whom he did not know. Thereafter, Shamsher Singh and other villagers returned to the polling booth. In cross examination the only fact which he admits is that Mahabir and Udai Bhan were the polling agents of Col. Ram Singh and Shamsher Singh and Thaver Singh were the polling agents of Smt. Sumitra Bai. He categorically states that he did not know Satbir Singh or Anil Kumar and therefore he was not in a position to say whether they were there or not. He also states that at a distance of about 2 killas from the booth a jeep was standing and he did not see any sticks in that jeep, and that villagers were saying that B.D.O. and S.D.O. have come there. Since he did not know the D.C. was also there. He stoutly denied the allegation that Col. Ram Singh had come to the polling booth in the morning soon after the start of the polling and that he (respondent) had left 15-20 persons who had to be removed by the police. It may be noticed at this stage that the suggestion in cross-examination itself presupposes and does not dispute the fact that Col. Ram Singh had come to the booth only in the morning, that is to say, long before the arrival of the deceased. This is an important and intrinsic circumstance to show that so far as Burthal booth is concerned, the statement recorded on the tape-recorder by PW 7 could not have included the respondent and that was perhaps the initial case of the appellants themselves.

RW 13, Ami Lal, was also a voter of Burthal booth and he says that so long as he was there he did not see Col. Ram Singh nor did any dispute take place either within the polling station or outside. He admits that he saw Shamsher Singh, who as the polling agent of Congress (I) candidate, altercation with two unknown persons at a distance of about 100-120 karms. He categorically states in cross-examination that he did not see any candidate at the booth on that day. He also testifies that he knew Col. Ram Singh since the last election. He further denies the suggestion that Anil and Satbir were threatening the voters. Nothing further of any importance seems to have been elicited from this witness.

RW 14, Sheo Chand, who as also a voter, fully supports the evidence of RW 13 and says that he knew Col. Ram Singh whom he did not see passing through the approach-road to Burthal Jat. A number of suggestions were made to him which were denied by him and which are hardly of any importance.

RW 20, T.C. Singla, is more or less a formal witness who produced certain letters (dated 25.4.82 and 30.4.82) written by Col. Ram Singh to the Chief Election Commissioner of India containing certain complaints made by Col. Ram Singh about the irregularities in the election which are not relevant for our purpose.

RW 22, Col. Ram Singh, is the respondent himself. We shall deal with his evidence relating to both Kalaka and Burthal booths. To begin with, he clearly states that the D.C. (PW 7) was not impartial and was working against his interests. Perhaps we may not go to the extent of accepting the apprehensions of the respondent but there is no doubt that the conduct of the D.C., as revealed in this case, leaves much to be desired. According to the evidence of RW 22, at about 8.45 or 9.00 A.M. two of his persons from Kalaka polling booth came to him in a dishevelled condition: their clothes were torn and they appeared to have been badly beaten up. They informed him (RW 22) that Ajit Singh S/o Rao Birender Singh, accompanied by 50-60 persons had entered the polling booth and beaten them up and that they were indulging in forcible polling. The two persons who came to him in an injured condition were Ram Kishan and Tula Ram (both brothers) and Tula Ram was his polling agent. On receiving this information, the witness rushed to Kalaka and reached there at about 9.15/9.30 a.m. and after leaving his car at some distance from the polling booth he walked to the booth. He went inside the booth and protested to the Presiding Officer (PW 8) and drew his attention to the complaint which he had received from Tula Ram and Ram Kishan. The Presiding Officer verbally assured him that nothing untoward would be allowed to happen. The witness stayed there only for 7-8 minutes and returned to his house and telephoned the police and also sent a written report to the police about the incident. He received a message from the police station at about 10.30 a.m. that his complaint had been flashed to the D.C. to take appropriate action in the matter. This important part of his evidence is fully corroborated by the statement of DC (PW 7) that he had received a wireless message from the police authorities to the effect that Ajit Singh and his party were creating trouble at Kalaka booth. The witness categorically states that he did not go to the village Burthal Jat / r did he send any of his workers there. This fact is fully corroborated by the intrinsic evidence of the witness recorded by the D.C. at Burthal where the respondent does not appear to figure or, at any rate, his statement was not recorded at Burthal which is clear from the tape-recorded statement.

The rest of his evidence is regarding a number of other factors which are not relevant for the purpose of this case. Reliance was, however, placed by the appellants that Satbir Singh, who was a leading figure at Burthal, was an adopted son of Jagmal Singh, who was father-in-law of Col. Ram Singh. The witness further clarifies that he had divorced his wife as far back as 1962. Thus, when the witness says that he had no relations with Satbir Singh, we dare say he is right. A number of questions regarding his domestic matters were put in cross-examination but they are not very relevant.

As, however, this witness, who appeared before us, was examined by us at our instance and was subjected to cross-examination by both the parties, we shall discuss that part of his evidence a little later when we come to the statement of this witness recorded by PW 7 in his tape-recorder at Kalaka polling. Thus, leaving the tape-recorded statement for the time being, we adhere to our view expressed in the earlier part of this judgment that the evidence adduced by the respondent seems to be much superior in quality than that adduced by the appellants. The learned Judge of the High Court was also of the same view and had rightly held that the allegations of corrupt practice or of capturing of booth had not been established by the appellants beyond reasonable doubt or, to be very accurate, by the Standard of proof required to set aside the election of a successful candidate.

We might now rush through the relevant documentary evidence produced in this case which has been fully dealt with by the learned Trial Judge and we agree with his conclusions. To begin with, Ex. P-5 is the diary of the Presiding Officer of the Kalaka booth. We have already discussed the effect of this document and found that while in column No. 21 relating to interruption or obstruction of poll, he (PW 8) mentioned Col. Ram Singh putting pressure on polling party and getting bogus votes polled in his favour yet in column No. 20(e), relating to intimidation, etc., he made no mention of any such incident and crossed the same, meaning thereby that there was no intimidation of voters. The document, Ex. P-5, is therefore, self-contradictory and does not inspire any confidence. The explanation given by PW 8 in his evidence is that while he was filling up column 20 (e) he did not mention anything as he was greatly perturbed at that time. This is a most implausible and fantastic explanation which apart from being inherently improbable appears to be absolutely absurd. The witness wants us to believe that at the time of filling up column 20 (e) he was perturbed but in a split second while filling up the very next column, i.e., column 21(4) he suddenly gathered strength to compose himself and made the observations contained in the said column. As the two entries were supposed to be filled up simultaneously it is impossible to believe that while filling up one entry he was perturbed and while filling up the next entry he was in a composed state of mind. In other words, the explanation comes to this: his mental state of mind by a miraculous process cooled down and led him to make the observations which he did in column No. 21(4). It seems to us that what had really happened was that the plea of intimidation, as alleged by the appellants, is a cock and bull story and when the witness was confronted with a contradictory situation and found himself in a tight corner he invented this ridiculous explanation which has to be stated only to be rejected. This affords an intrinsic proof of the fact that no threat or intimidation was given by the respondent or his men during his presence and in order to save his skin the witness may have made the entry in column No. 21(4) subsequently as an afterthought. Thus, no reliance can be placed on a witness like PW 8 for any purpose whatsoever.

Ex.P-16 is a certified copy of the FIR (No.103) lodged by the Presiding Officer implicating Col. Ram Singh and making some allegations. This document also appears to us to be a spurious one as discussed by the High Court.

So far as the documents produced on behalf of the respondent are concerned, they are R-1 to R-9 consisting of letters written by Col. Ram Singh to various authorities including the Chief Election Commissioner of India complaining about the misuse of powers by the polling officials in the conduct of election.

This is all the documentary evidence that matter- and, in our opinion, nothing turns upon these documents.

This now brings us to the last and inevitable step of the drama starting with P.W. 1 and ending with R.W.22. In order to understand the admissibility, credibility and the truth of the statements contained in the cassette, we might give a brief summary of the manifest defects and incurable infirmities from which the statements recorded on tape recorder suffer. Our conclusion on this question is arrived at not only after going through the tape recorded statements but also hearing the cassette ourselves in this Court on big amplified speakers. The defects/infirmities may be pointed out thus:

1. The voices recorded at number of places are not very clear ant there is tremendous noise while the statements were being recorded by the D.C. (P.W. 7)

2. A good part of the statements recorded on the cassette has been denied not only by the respondent but also by R.Ws. 1 and 3. No other witness has come forward to depose to the identification of the voice of the respondent or those of R.Ws. 1 and 3.

3. There are erasures here and there in the tape and besides the voice recorded being / t very clear, it is extremely hazardous to base our decision on such an evidence.

4. One of the important infirmities from which the tape recorded statements suffer is the question of custody. P.W. 7, the D.C. has clearly admitted in his evidence that though he was supplied a tape recorder or a dictaphone but he was not asked by the Government to record the statements on the tape-recorder which was really meant for recording his own impressions and not those of the witnesses. However, even though P.W. 7 violated the instructions of the Government he gravely erred in not placing the recorded cassette in proper custody, that is to say, in the official record room after duly sealing the same, and instead keeping the same with himself without any authority.

Thus, the possibility of tampering with the tape recorded statements cannot be ruled out and this is almost a fatal defect which renders the tape recorded statements wholly inadmissible.

5. P.W. 7 himself admits that the transcript of the tape recorded statements was prepared in his office under his supervision by his stenographer. He further admits that when the transcript was being prepared he was temporarily absent from his office to attend to certain other works. This appears to us to be a very serious matter because he had no legal authority to leave the recorded cassette with his stenographer, who was transcribing the same, even for a single moment as the possibility of its being tampered with by his stenographer or by anybody else cannot be safely ruled out. He further admits that even a copy of the transcript was not deposited in the official record room.

6. One important aspect as part of the manifest defects may now be mentioned. R.Ws. 1 and 3 have denied the identity of their voice in the cassette and, therefore, that part of the evidence becomes clearly inadmissible. The respondent, Col. Ram Singh, however, appears to us to be a truthful,

upright and straight forward person because while he chose to admit some parts of the tape recorded statement to be in his voice and as being correct but denied the rest: he could have, if he wanted, denied the whole of it. It seems to us that as the respondent was a trained and disciplined soldier he told the truth as far as appeared to him. In fact, if he had failed to identify his voice, then nothing could have been done and his statement would have been per se inadmissible.

7. As it is, the statements on the tape recorder seem to have been recorded in a most haphazard and unsystematic manner without following any logical or scientific method. This will be clear from the fact that the tape recorded statements do not indicate the polling booth where it was recorded, the name of the person whose statement was recorded, the time of recording, etc.

A proper methodology which the D.C. should have followed was to first indicate the place, time and name of the person by himself speaking and then recorded the statement. No such scheme was followed and the court is left to chance and conjecture to find out as to when and where and whose statement was recorded. As it is, we can only say that the statement of the respondent was recorded only at Kalaka and this fact seems to be admitted by the appellants in their written submissions (Vol. III, p.59) thus :-

"It is not the petitioners' case that Col. Ram Singh came to the polling station or polling booth. The petitioners' witnesses (P.W. 27, P.W. 28 and P.W. 29) have only stated that Col. Ram Singh came to Burthal Jat at 8.00 a.m., instructed his supporters not to allow any voters to vote for Congress (I) candidate and thereafter left the place.

" It is, therefore, clear that if at all Col. Ram Singh visited Burthal booth, he did it only at 8.00 a.m. when the D.C. had not even reached there and, therefore, the question of recording his statement at Burthal Jat does not arise.

In our opinion, the best course of action for the D.C. should have been to record 'the statements of the respondent and other persons himself in writing instead of recording the same on a taperecorder which has led to 80 many complications. And, if he wanted to use a taperecorder he should have taken the necessary precautions to see that too many voices, interruptions, disturbances are completely excluded. He ought not to have allowed any person to speak while he was recording the statements. Unfortunately, this confusion has resulted from his conduct in flouting the instructions of the Government by not using the dictaphone only for recording his own impressions but instead recording the statements of the persons concerned.

Thus, in short, the manner and method of recording the statements in the taperecorder by the D.C. has resulted in a total mess making confusion worse confounded. P.W. 7 has not given the details to complete the picture as to what the respondent had done. Therefore, the evidence of D.C. On this point is conspicuous by the absence of any such description or comments. Indeed, the D.C. has just acted as a silent machine to whatever was recorded instead of applying his mind as to at what stage the respondent denied his voice and where he admitted the same. We should have at least expected the D.C. to give better details in a case like the present one which, as already mentioned, entails

serious consequences for the respondent if his election were to be set aside.

Having regard to the reasons mentioned above, we are absolutely satisfied that the tape recorded statements of the witnesses are wholly inadmissible in evidence and, at any rate, they do not have any probative value so as to inspire any confidence. Hence, it is extremely unsafe to rely on such tape recorded statements apart from the legal infirmities pointed out above.

That should have closed the whole chapter as far as the tape recorded statement of the respondent is concerned. We shall, however, mention below a few glaring defects, omissions and imperfections:

1. some statements said to have been recorded by P.W. 7 have been flatly denied by R.Ws. 1 and 3, one of whom was a polling officer and the other a constable.
2. A good part of the tape recorded statement has been vehemently and persistently denied by him (respondent) rightly or wrongly.
3. It is true that the searching and gruelling cross- examination of the respondent in this court by Mr. Sibbal, counsel for the appellants, seems to have forced the respondent to admit certain innocuous facts though he might just as well admitted those facts which caused no harm to him.

We might mention here that our object in examining the respondent as a court witness in this court and subjecting him to cross examination by both the parties was not to fish out technicalities by putting all sorts of queries and questions, relevant or irrelevant. In such a complex state of affairs, the statement of the respondent, torn from the context, cannot form the basis of a judicial decision. Take for instance, one statement of the respondent which was repeated to him by Mr. Sibbal several times in different forms. The occasion was if the respondent had sent Ram Kishan and Tula Ram or other persons to the police station or he himself had gone there along with them. The respondent admitted that these persons alongwith others had come to his house and complained that they had been beaten up and harassed by the members of the Congress (I) candidate and also showed in priers on their persons. He repeatedly said that he himself did not go to the police station but sent them there. Perhaps in view of the serious situation arising from the severe altercation that took place between the supporters of Col. Ram Singh and those of the other party, it is quite possible that on humanitarian grounds he may have personally gone to the police station with the injured persons but as at the time of his deposition he happened to be the Speaker of the Vidhan Sabha he may have felt that his vanity would be injured if he admitted that he himself had gone to the police station. Even if he had given this reply, It would not have improved the case of the appellants. This is just a sample of the questions put by the counsel to him.

Another important feature of his evidence is that he tacitly admits at various places that while his statement was being recorded, a number of gaps were there, a number of other people were speaking together, leading to great confusion which must have made him lose his wits. On hearing the entire conversation ourselves, we are of the opinion that the statement of the respondent is not coherent particularly because of gaps, noises, sounds, and that the statements was recorded in an atmosphere surcharged with emotions.

In this view of the matter, we do not consider it necessary to delve deeper into the various statements made by the respondent. It is sufficient to indicate that on the appellants' own case he had not gone to Burthal Booth after 8.00 a.m. and, therefore, the D.C. who reached there at 12 Noon could not have recorded his statement. We are, therefore, not in a position to hold that implicit reliance should be placed on the evidence led by the appellants. Even if the respondent made some admissions in his unguarded moments that would not strengthen the case of the appellants in view of the standard of proof required in an election matter where the allegations of corrupt practice have to be proved beyond reasonable doubt almost just like a criminal case.

It was urged by Mr. Sibbal that in view of our recent decision in Ram Sharan Yadav's (supra) the impact of the evidence on the court would show that the respondent was lying and that was sufficient to prove the appellants' case. We are unable to agree with the broad interpretation put by the learned counsel on our decision.

In fact, if we apply the principles laid in Ram Sharan Yadav's case, the appellants' case must fail at the threshold.

Lastly, we might consider the argument advanced before us by the learned counsel for the respondent who submitted that even if the case of capturing of booths as alleged by the appellants against the respondent is made out that would at best be an electoral offence and not a corrupt practice within the meaning of the provisions of the Representation of the People Act, 1951. We are, however, not called upon to go into this question as no clear case of capturing of booths has been made out. The learned Judge of the High Court has dealt with the case of capturing of booths very extensively and has written a very well reasoned judgment annotated with convincing reasons and conclusions. It would indeed be extremely difficult to displace the judgment of the High Court on the ground sought by the appellants. The High Court has considered even the minutest details so as not to invite any comment that the Judge has not applied his mind. Even as regards the tape recorded statements the learned Judge has pointed out several infirmities and defects which despite the ingenious and charming arguments of Mr. Sibbal have not been rebutted.

On a careful consideration, therefore, of the evidence, circumstances, documents and probabilities of the case, we are fully satisfied that the appellants have failed to prove their case that the respondent was guilty of indulging in corrupt practices. We, therefore, affirm the judgment of the High Court and dismiss the appeal but in the circumstances without any order as to costs.

VARADARAJAN J. : This appeal under section 116A of the Representation of People Act, 1951, hereinafter referred to as 'the Act', is directed against the dismissal of Election Petition No. 13 of 1982 on the file of the Punjab & Haryana High Court.

The appellants are registered electors of Rewari Constituency No. 86 of the Haryana Legislative Assembly. In the election held for that Constituency on 19.5.82 Col. Ram Singh, hereinafter referred to as 'the respondent' who contested as the Congress (J) candidate was declared elected on 21.5.1982 after the counting was over on 20.5.82, defeating his nearest rival, Sumitra Devi who is said to be the sister of Rao Birendra Singh and had contested in that Constituency as the 'Congress (I)

candidate. Sumitra Devi lost by a margin of 8,760 votes. The appellants sought in the election petition a declaration that the respondent's election is void under section 100 of the Act. They alleged that there was direct and indirect interference and attempt to interfere on the part of the respondent and his agents and other persons with his consent with the free exercise of the electoral right of the electors. The respondent stoutly opposed the election petition. After considering the evidence and hearing the counsel of both the parties the learned Judge who tried the election petition found that the appellants failed to prove their case beyond all reasonable doubt and dismissed the petition with costs of Rs. 2,000.

Mr. Kapil Sibal, learned counsel for the appellants 1) confined his arguments in this Court to the instances of corrupt practice alleged in respect of only two polling stations Kalaka and Burthal Jat. It is, therefore, necessary to confine our attention to the case of the parties in regard to only those instances.

The appellants' case in regard to the Kalaka polling, station started and continued smoothly until 10.30 a.m. on 19.5.1982. But at about 10.30 a.m. the respondent came there along with 60 or 70 persons including Desh Raj, Ram Krishan and Krishan Lal of Kalaka and Sheo Lal Gujar, Rishi Dakot, Umrao Singh, Raghubir Singh, Balbir Singh Gujar, Abhey Singh Gujar and Suresh of Rewari. The respondent was carrying a gun while some of those who accompanied him were armed with guns, lathis and swords. The respondent and his companions threatened with arms and terrorised the electors who were waiting outside the polling station to exercise their right to vote as a result of which Sheo Chand, Gurdial, Puran, Mangal, Basti Ram, Ishwar and Amar Singh ran away without exercising their right to vote. The respondent and some other armed persons amongst his companions entered the polling station and brandished their guns towards the Presiding Officer and other members of the polling staff as well as the polling agents of the various candidates and ordered everyone to stand still. They threatened the voters who were in the polling station when they raised objections to their conduct and made them to quit as also.

the polling agents Amar Singh and Suraj Bhan. The respondent directed a Sikh amongst one of his companions carrying a sword to hit Mangal Singh who strongly objected to the respondent's behaviour and he was accordingly assaulted and injured. One Basti Ram who too objected to the respondent's behaviour was hit by one of the companions of the respondent with the butt of a rifle. Ishwar, a Lambardar was also hit by the barrel of a gun. The respondent and his companions snatched about 50 ballot papers from the polling staff at gun point and they were marked in favour of the respondent and put into the ballot boxes after one of the respondent's companions thumb-marked the counter foils of the ballot papers as directed by the respondent. Tula Ram, Desh Raj, Ram Krishan and Krishan Lal and others helped the respondent in marking the ballot papers. The police at the polling station was outnumbered and remained as silent spectators. But when a number of people of the village came and additional police arrived the respondent and his companions made good their escape leaving behind two motor cycles bearing registration Nos. A.S.W. 5785 and H.R.P. 534. Two of the respondent's companions were caught by the public and handed over to the police. Suraj Bhan, Amar Singh, Ishwar Singh and Basti Ram made a report about the incident to the Returning Officer, Rewari Constituency at about 12 noon on the same day. On the arrival of the police the Presiding Officer of the polling station lodged a detailed report,

giving his version of the incident and thereupon F.I.R. No. 103 of 1982 was registered by the police. The Deputy Commissioner of the District and the Returning Officer of the Constituency also came to the polling station and made enquiries and tape recorded the statements of some of the concerned persons. The process of polling got disrupted for over one hour and a number of voters had to refrain from voting. It is clear from these facts that the respondent and his companions with his consent attempted to interfere with the free exercise of the electoral right of a large number of electors and the respondent succeeded in his plan to scare away and compel some of the electors to refrain from voting at the election.

As regards the incident at Burthal Jat polling station the appellants' case is this :- As per his pre-planned strategy the respondent visited Burthal Jat village at about 8 a.m. on 19.5.1982, accompanied by 50 or 60 persons including Anil Kumar, Satbir Singh, Raghubir, Sheo Lal Gujar, Rishi Dakot, Umrao Singh, and Balbir Singh Gujar. Many persons including Mahabir Singh, Hira Singh, Mam Chand, Dharam Vir, Thavar Singh and Amar Chand gathered there. The respondent told his supporters to ensure that electors who were likely to vote for the Congress (I) candidate A are not allowed to go into the polling station and that he was leaving behind Anil Kumar and Satbir Singh with 10 or 15 musclemen to help them in preventing electors of the Congress (I) candidate. A jeep containing lathis and other weapons was left at the disposal of those persons. While leaving the place the respondent told Anil Kumar and Satbir Singh who were on their motor cycle that he was depending upon them and they should ensure that no votes are cast in favour of the Congress (I) candidate and maximum votes are polled in his favour. Those persons kept on obstructing and threatening the voters who were coming to the polling station to exercise their electoral right. Some of the persons who were thus terrorised were Surjit, Raghubir Singh and Lal Singh. When the Sarpanch Shamsheer Singh who came to vote was about to reach the polling station, Anil Kumar and Satbir Singh came by the motor cycle and told him that he must vote for the respondent and otherwise he will not be allowed to proceed further. When Shamsheer Singh said that he would vote freely according to his choice Anil Kumar and Satbir Singh assaulted him with sticks and gave him slaps and fish blows. Some respectable persons of the village including Kishori, Ram Narian and Lambardar Mam Chand who were present nearby rescued Shamsheer Singh. The Assistant Sub Inspector Kalayan Singh who was on election duty came there by a jeep and seen the fight arrested Anil Kumar and Satbir Singh. The Deputy Commissioner of the District and the Returning Officer [Sub Divisional Magistrate] also came there and took the jeep along with lathis and other weapons into their custody. Thus it is clear that Anil Kumar and Satbir Singh who are related to the respondent committed the aforesaid corrupt practice at the instance of and with the consent of the respondent.

The defence of the respondent as regards the incident in and at the Kalaka polling station is one of complete denial and he contended that if there is any report lodged by Suraj Bhan, Amar Singh, Ishwar Singh and Basti Ram it must be a manoeuvred affair to create evidence in the election petition and that the report of the Presiding Officer is not his own version but a false document prepared at the instance of the respondent's political opponent Rao Birendra Singh and other state agencies on whom he exercised powerful influence. The FIR No. 103 of 1982 dated 19.5.1982 does not support the appellant's case of any interference or attempt to interfere with the free exercise of the electoral right of any elector on the part of the respondent or any one else with his consent and

does not directly disclose the commission of any corrupt practice of undue influence. On the other hand, the truth is that the men of Rao Birendra Singh captured the booth at Kalaka and the supporters and voters of the respondent were badly out-manoeuvred which could be gathered from the fact that whereas Sumitra Devi obtained 484 votes the respondent obtained only 53 votes in that polling station.

The allegation that the respondent and some of his companions entered the polling station and brandished their guns at the Presiding Officer and ordered the other polling staff and polling agents of the various candidates to stand still does not attract any provision of the Act regarding the commission of corrupt practice. The allegation that the polling agents Suraj Bhan and Amar Singh were threatened and turned out of the polling station does not constitute corrupt practice as they are not alleged in the election petition to be electors. Mangal Singh, Balbir Singh and Ishwar who are alleged to have been assaulted and injured are not alleged in the election petition to be electors of the Constituency and therefore that allegation does not constitute corrupt practice. The allegation that 50 ballot papers were snatched from the polling staff and polled in favour of the respondent does not constitute corrupt practice.

The respondent's defence regarding the incident at Burthal Jat is one of complete denial of the allegations in the election petition in regard to that incident but there is no denial of the allegation that Anil Kumar and Satbir Singh are related to him. He has contended that it is wholly incorrect to allege that any jeep with which he had any connection was carrying lathis and other weapons and that it was taken into custody by the officials. The allegation that Anil Kumar and Satbir Singh committed any corrupt practice with or without the consent of the respondent is False, malicious and mischievous. Those two persons were falsely implicated in the case under sections 107 and 151 of the Code of Criminal Procedure and a clumsy attempt was made to implicate them by the subordinate police officials who were under the powerful influence of Rao Birendra Singh whose sister Sumitra Devi was losing and ultimately been defeated by the respondent. Two independent alleged corrupt practices, one by the respondent and the other by the others, have been clubbed together in the election petition.

It is necessary to note all the issues framed by the Tribunal. They are:

- (1) Whether the allegations of corrupt practice alleged in the election petition have not been supported by an affidavit? If so, what is its effect?
- (2) Whether petitioners Nos. 2 to 5 have not deposited the security under section 117 of the Representation of People Act, 1951? If so, what is its effect? (3) Whether petitioners Nos. 2 to 5 have not complied with section 81 (3) of the Representation of People Act by not attesting the copy of the election petition to be true copy under their own signatures? If so, what is its effect?
- (4) Whether petitioners Nos. 2 to 5 have not verified the election petition? If so, what is its effect?
- (5) Whether allegations of corrupt practice alleged in the petition lack material facts/legal ingredients and do not disclose complete cause of action? If so, what is its effect?

(6) Whether the allegations of corrupt practice alleged in the election petition are vague and lack full particulars? If so, what is its effect?

(7) Whether the averments in paragraph 7 of the petition are unnecessary, scandalous, frivolous or vexatious and calculated to prejudice a fair trial? If so, whether the same are liable to be struck out under rule 6, order 16 Civil Procedure Code?

(8) Whether the respondent himself and/or through his agents and other persons with his consent, committed corrupt practice of undue influence, as alleged in paras 9 to 13 of the election petition or not? If so what is its effect?

The learned Judge of the High Court took up for trial issues 1 to 7 as preliminary issues. By order dated 10.12.1982 he found issues 2 to 6 in favour of the appellants and issue 1 against them but permitted them to carry out certain amendment and remove the defects pointed in his order. He declined to consider issue 7 as a preliminary issue on the ground that evidence is necessary to record any finding on that issue. On the question whether the allegations in paras 9 to 12 of the election petition constitute corrupt practice he held that prima facie they do not disclose any defect in form or substance but they contain material facts and allegations of corrupt practice. It may be noticed that the allegations relating to the incidents at Kalaka and Burthal Jat polling stations are contained in paragraphs 9 to 11 of the election petition.

On the issue regarding the corrupt practice alleged in relation to Kalaka polling station the learned Judge held that the Presiding Officer's diary Ex.P-5 appears to have been prepared by the Presiding Officer, Hari Singh (PW 8) later under the pressure and influence of the defeated candidate, Sumitra Devi through her brother Rao Birendra Singh and that FIR No. 103 of 1982 dated 19.5.1982 contained in Ex.P-6 is inadmissible in evidence to corroborate the evidence of PW 8 about the incident of Kalka polling station on the ground that the original report of PW 8 to the police had not been summoned by the appellants. He found that the tape-record Ex.P.W 7/1 prepared by the Deputy Commissioner of Mohindergarh District, (PW 7) has been tempered with later, disbelieving the evidence of PW 7 that a portion of what he had recorded at the Burthal Jat polling station was erased by his own voice inadvertently on the same day. He also found that the authenticity of the transcription of the tape record in Ex.P-1 is not proved with definiteness. He relied upon the evidence adduced on the side of the respondent in preference to that of the other side and held that the appellants have failed to prove this item of corrupt practice beyond reasonable doubt.

Regarding the incident at the Burthal Jat polling station the learned Judge found that the appellants have failed to prove that Anil Kumar and Satbir Singh are related to the respondent. For coming to this conclusion he relied upon Ex.P-9 which purports to be a report of Man Chand (PW

35) who has, however, disowned it while holding the Anil Kumar and Satbir Singh were canvassing for their candidate at Burthal Jat as stated by Mahabir Singh (PW 26) but it is not made out who their candidate was. He found that the appellants have failed to prove this item of corrupt practice. On the findings recorded by him in regard to these and the other items of corrupt practice alleged by the appellants he dismissed the election petition with costs as stated above.

The points arising for consideration in this appeal are:

- (1) Whether the incident in and at the Kalaka polling station alleged by the appellants is true and has been proved beyond reasonable doubt?
- (2) Whether the incident alleged in and at the KaLaka polling station does not constitute corrupt practice within the meaning of the Act? and (3) Whether the incident at Burthal Jat polling station alleged by the appellant is true and had been proved beyond reasonable doubt?

Before considering the evidence on record in regard to the incidents at Kalaka and Burthal Jat polling stations it is desirable to note certain provisions in the Act and certain decisions to which the Court's attention was drawn by Mr. Kapil Sibal, learned counsel appearing for the appellants and Mr. P.P.Rao, learned counsel appearing for the respondent.

Section 87 of the Act relates to the procedure before the High Court and clause (1) thereof reads thus:

"Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be ruled by the High Court, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits.

Order 8 rule 1 to 3 and 5 of the Code of civil Procedure relating to written statement read thus:

"1.(1) The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality-

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

5. (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under a disability, but the Court, may, in its discretion, require any such fact to be proved."

Section 116 A of the Act relating to appeal against certain orders of the High Court lays down inter alia that an appeal shall lie to the Supreme Court against the dismissal of an election petition under

section 98 of the Act. In the present case the election petition has been dismissed by the High Court under that section.

Section 116 of the Act relates to procedure in the appeal. Sub-section (1) of that section reads thus:-

"116C. (1) Subject to the provisions of this Act and of the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil procedure, 1908 (5 of 1908) and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the Court) shall, so far as may be, apply in relation to such appeal.

Section 100 of the Act mentions the grounds for declaring an election to be void- Section 100(1) (b) reads thus:

"Subject to the provisions of sub-section (2) if the High Court is of opinion - that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent the High Court shall declare the election of the returned candidate to be void."

Section 123 of the Act lays down what are corrupt practices A and sub-section 2 thereof reads thus:-

"123(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right. Instruction 74 of the Instructions to Presiding Officers issued by the Election Commission of India reads thus: "74. Preparation of the diary - You should draw up the proceedings connected with the taking of the poll in the polling station in the diary to be maintained for the purpose. You should go on recording the relevant events as and when they occur and should not postpone the completion and filing of all entries in the diary till the completion of the poll. You should mention therein all important events particularly....." in the form given which is the same as the one in which Ex.P-5 in this case has been recorded.

Mr. Kapil Sibal learned counsel for the appellants relied upon certain decisions of the English Courts and of this Court in regard to the admissibility of tape-recorded evidence. I shall refer to them.

In *R. v. Maqsood Ali* [1965] (2) All E.R. 464, the following observation has been made:

"The position on the evidence was that a very important part of that evidence was made up by a tape recording taken in circumstances that I must now indicate.....  
On April 29, 1964 the two appellants were at the Town Hall at Bradford and they

were taken there into a room..... There is a reason to suppose that both of the appellants were not there on this occasion voluntarily..... In that room there had been set up a microphone behind a waste paper basket which was connected to a recorder in another room..... it is almost unnecessary to say that none but the police knew of the presence of the microphone in position..... so it ran for just one minute over the hour..... The tape, after it had been recorded, remained in the custody of the police and there is a suggestion that it was in any way interfered with. The conversation that took place between the two appellants was of course in their native tongue..... and..... the tape, it should now be stated, had a number of imperfections..... If the jury could come to the conclusion that here was something which amounted to a confession that they were both involved in the murder, it can be seen that this tape recording was a matter of the utmost importance. It was, indeed, highly important evidence and the defence sought strenuously to keep it out This is not the first time that the question of admissibility of tape recordings as evidence has come before the courts of this country. In 1956, in a trial at Wiltshire Assizes Hilbery, J., admitted as evidence a tape-recording of a conversation in Salisbury Police Station and further admitted a transcript of the recording to assist the jury.

We can see no difference in principle between a tape recording and a photograph. In saying that we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of recording can be proved and the voices recorded properly indentified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case.

In *R. v. Robson* [1972] (2) All E.R. 699, which arose out of a case where the accused was charged with corruption the prosecution sought to put in evidence certain tape- recordings. The defence contended that they were inadmissible in evidence as inter alia they were in many places unintelligible. It was however not contended that the tape recordings was inadmissible evidence of what are recorded in them. The originality and authenticity of the tape were left to the jury in that case.

In *Yusufalli Esmail Nagree v. State of Maharashtra* [1961] (3) S.C.R. 720 this Court has observed:

"Like a photograph of a relevant incident a contemporaneous dialogue of a relevant conversation is a relevant fact and is admissible under section 7 of the Indian Evidence Act.

Reference has been made in that case to *Roop Chand v. Mahabir Parshad and Anr.* A.I.R. 1956 Punj. 173; *Mahindra Nath v. Biswanath Kundu* 67 C.W.N. 191; *Pratap Singh v. The State of Punjab* [1964]

4 S.C.R. 733 and B. v. Maqsd Ali [1965] 2 All E.R. 464.

In Shri U. Sri Rama Reddy Etc. v. Shri V.V. Giri [1971] 1 S.C.R. 399, a decision of five learned Judges of this Court the following observation made in Yusufalli's case (supra) has been quoted with approval:

"The contemporaneous dialogue between them formed part of the *res gestae* and is relevant and admissible under s.8 of the Indian Evidence Act. The dialogue is proved by Shaikh. The tape record of the dialogue corroborates his testimony. The process of tape-recording offers an accurate method of storing and later reproducing sounds. The imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape- record of a relevant conversation is a relevant fact and is admissible under s.7 of the Indian Evidence Act.  
"

In R.M. Malkani V. State of Maharashtra [1973] 3 S.C.R. 417, this Court observed:

"Tape recorded conversation is admissible, provided first that the conversation is relevant to the matters in issue; secondly, there is identification of the voice, and thirdly, the accuracy of the tape-recorded conversation is proved by eliminating the possibility of erasing the tape-record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 8 of the Evidence Act. It is *res gestae*. It is also comparable to a photo graph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under section 7 of the Evidence Act.

In Ziyauddin Burhanduain Bukhari v. Brijmohan Ramdas Mehra Ors. [197] Suppl. S.C.R. 281, this Court approved the High Court relying upon the tape recorded reproduction of the successful candidates' speeches to voters for holding that he had appealed to them in the name of religion.

Mr. Rao learned counsel for the respondent relied upon the following four decisions in regard to the proof required in cases where election or returned Candidates is alleged to be void on the ground of corrupt practice.

In Chenna Reddy v. R.C.Rao E.L.R. 1972 Vol. 40 396, this Court observed:

This Court has held in a number of cases that the trial of an election petition on the charge of the commission of a corrupt practice partakes of the nature of a criminal trial in that the finding must be based not on the balance of probabilities but on direct and cogent evidence to support it. In this connection, the inherent difference between the trial of an election petition and a criminal trial may also be noted. At a criminal trial the accused need not lead any evidence and ordinarily he does not do so unless his case is to be established by positive evidence on his side, namely, his insanity or his acting in half-defence to protect himself or a plea of alibi to show that

he could not have committed the crime with which he was charged. The trial of an election petition on the charge of commission of corrupt practice is somewhat different..... the procedure before the High Court is to be in accordance with that applicable under the Code of Civil Procedure to the trial of suits with the aid of the provisions of the Indian Evidence Act. Inferences can therefore be drawn against a party who does not call evidence which should be available in support of his version."

In *Balakrishna v. Fernandez* [1969] 3 S.C.R. 603, this Court observed:

"Although the trial of an election petition is made in accordance with the Code of Civil Procedure, it has been laid down that a corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent.

In *Sultan Salhuddin Owasi v. Mohd. Osman Shaheed and Others.* [1980] 3 S.C.C. 281, this Court observed:

It is now well settled by a large catena of the authorities of this Court that a charge of corrupt practice must be proved to the hilt, the standard of proof of such allegation is the same as a charge of fraud in a criminal case. C In *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh and Others.*, [1984] (4) S.C.C. 649, this Court observed:

"As the charge of a corrupt practice is in the nature of a criminal charge, it is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a court that a candidate has been guilty of 'undue influence' then he is likely to be disqualified for a period of six years or such other period as the authority concerned under Section 8-A of the Act may think fit..... while insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process."

In regard to what constitute election offences Mr. Rao invited attention to the decision of Ramaswami, J. in *Nagendra Mahto v. The State* A.I.R. 1954 Patna, where it was stated in the complaint that the criminal revision petitioner before the High Court insisted upon going into the room where the ballot papers were kept though the Presiding Officer had warned him to go out of the room and also the petitioner himself attempted to put the ballot papers to the box of one Nitai Singh Sardar and it has been held that there was proper evidence to record a finding of guilt and sufficient to sustain the conviction under section 131 (1) (b) and section 136 (1) (f) of

the Act.

On the other hand, Mr. Sibal invited attention to this Court's decision in *Ram Dial v. Sant Lal & Ors.* [1949] Suppl. (2) S.C.R. 739, in support of his contention about what is required to be proved in regard to an alleged corrupt practice. After quoting the provisions of section 2 of 46 and 47, Victoria. c 51 three learned Judges of this Court have observed:

The words of the English statute, quoted above, laid emphasis upon the individual aspect of the exercise of undue influence. It was with reference to the words of that Statute that Bramwell, B., made the following observations in *North Dursham* [1874] 2 O'M & H. 152 "When the language of the Act is examined it will be found that intimidation to be within the statute must be intimidation practised upon an individual. The Indian Law on the other hand, does not emphasise the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian Law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. Decisions of the English Courts, based on the words of the English statute, which are not strictly in *pari materia* with the words of the Indian statute, cannot, therefore, be used as precedents in this country. In the present case, we are not concerned with the threat of temporal injury, damage or harm. On the pleadings and on the findings of the Tribunal and of the High Court, we are concerned with the undue exercise of spiritual influence which has been found by the High Court to have been such a potent influence as to induce in the electors the belief that they will be rendered objects of divine displeasure or spiritual censure if they did not carry out the command of their spiritual head.

I shall now consider the evidence relating to the incidents at Kalaka and Burthal Jat Polling stations one after the another. The incident in and at the Kalaka and Burthal Jat polling station consists of two parts, namely, (1) alleged booth-capturing by the respondent and his companions, all of them armed with deadly weapons like pistol and sword or kirpan and the polling of bogus votes marked in favour of the respondent after threatening the polling officers and polling agents who were in the polling station with violence and making them to Stand still, and (2) the respondent scaring away electors who were standing in the queue outside the polling station awaiting their turn for casting their votes. Regarding the first part of the incident at Kalaka there is the evidence of P.Ws. 7 to 10, 12, 14, 17 and 18 on the side of the appellants and of R.W.. 1 to 6 and 22 on the side of the respondent. P.Ws. 7 to 10 are official witnesses while P.Ws. 12, 14, 17 and 18 are private individuals. Similarly, R.W.. 1 to 4 are official witnesses while R.W.. 5, 6 and 22 are private individuals.

Tara Chand (P.W.12) is one of the appellants. He was the polling agent of the Congress (I) candidate, Sumitra Devi who has been referred to at some places in the evidence as Sumitra Bia, along with Amar Singh (P.W.17). His evidence is that he retired as polling agent after one hour and P.W. 17 took over as polling agent and thereafter he was arranging the voters in the queue. He has stated that the respondent and 5 or 7 of his companions, all of them armed, entered the polling

station when he was standing at the gate and they threatened the polling staff at gun point and asked them to stand aside. Thereafter the respondent asked his companions to do their work and they tore off the ballot papers from the bundle and affixed the seal in favour of the respondent and put those ballot papers into the ballot box. The respondent's companions, Tula Ram who was his polling agent, Ram Krishan (R.W.5), Desh Raj and Krishan Lal put the seals on the counterfoils and the thumb impressions on the counterfoils of the ballot papers. Amar Singh (P.W.17), appellants' polling agent, Mangal Singh (P.W.18) and Basti Ram were present. When Mangal Singh (P.W.18) protested, the respondent's Sikh companion caused injury to him with his sword at the respondent's instance. When Basti Ram raised objection to the behaviour of the respondent and his companions he was injured with the butt of a gun. The police-Men who were present in the polling station did not intervene but some time later the people of Kalaka village and some other police personnel arrived. Then the respondent and his companions fled away, abandoning two motor-vehicles at the spot. The Deputy Commissioner (P.W.7) and the Returning Officer (P.W.10) came there one hour later. P.W.7 interrogated the polling staff and tape-recorded their conversation. The polling was stopped for over one hour and many people got frightened and went away from the polling station without casting their votes. P.W. 12 has admitted in his cross-examination that he had canvassed for the Congress(I) candidate for five to ten days prior to the date of poll and had worked as polling agent of Congress (I) candidates even earlier. He claims to have reported to the police after the completion of the poll and has stated that the police did not send for anybody. He has also stated that he did not see Ajit Singh son of Rao Birendra Singh at Kalaka during the poll. He has denied the suggestion that the Congress (I) workers beat the respondents polling agent, Tula Ram and drove him out of the polling station about one hour of the commencement of the poll.

Amar Singh (P.W.17) of Kalaka was the polling agent of Sumitra Devi alongwith P.W.12. He claims to have taken over as polling agent from Tara Chand (P.W.12) one hour after the commencement of the poll. He has stated that at about 10.30 a.m. the respondent came inside the polling station accompanied by 3 or 4 persons. The respondent was armed with a rifle while one of his companions had a sword and the other had a pistol and the rest sticks. The respondent asked P.W.17 and the polling staff to stand aside and directed his companions to poll votes. Thereupon the respondent's companions took the ballot papers and affixed thumb impressions and marked the ballot papers and put them into the ballot box. When P.W.18 objected to the high handed behavior of the respondent his Sikh companion thrust the sword at Mangal Singh (P.W.18). When Basti Ram also raised objection the respondent gave him a thrust with the butt of a rifle. P.W.17 and others who were in the polling station were pushed outside. The police-men who were inside the polling station did not interfere. Some time later the people from Kalaka village and some police personnel arrived and thereupon the respondent and his companions left the place. P.W.17 and others detained two motor-cycles of the respondent's party and T caught hold of two of the fleeing persons and produced the motor cycles before P.W.7 who came there alongwith P.W.10. P.W.17 has denied in his cross-examination that Ajit Singh son of Rao Birendra Singh visited the Kalaka Polling station. He has denied the suggestion that he and other Congress (I) supporters beat Tula Ram and drove him out of the polling station and that he has given false evidence being a sympathiser of the Congress (I) party. Mangal Singh (P.W.18) of Kalaka has stated in his evidence that when he was in the polling station and his particulars were being checked before he could cast his vote the respondent armed with a gun and accompanied by 3 or 4 persons, one of them armed with a pistol and the other with a

sword and the rest with lathis came inside the polling station. The respondent asked P.W. 18 and others who were in the polling station to stand aside under threat of being killed otherwise. When P.W. 18 objected to the respondents behavior the respondent asked his men to beat him and turn him out of the polling station. Thereupon the respondent's Sikh companion thrust the tip of his sword near his right foot. When Basti Ram who was behind R.W. 18 protested against the behavior of the respondent and his companions the respondent caused an injury to him with the butt of a rifle. Later the people of Kalaka village and some police personnel arrived and the respondent and him companions ran away. P.W. 18 and others informed P.W. 10 and the police about what happened. P.W. 18 has admitted in his cross-examination that he had canvassed for the Congress (L) candidate but he has denied the suggestion that he has always been helping the Congress (I) Party and has therefore given false evidence.

Hari Singh (P.W.8) who was a teacher in one of the Ahir Educational Institutions was the Presiding Officer at the Kalaka polling station. He has stated that at about 10.30 a.m. until which time the polling went on smoothly, the respondent accompanied by some other persons reached the polling station and came into the polling station along with four or five persons, carrying a small gun with him while one of his companions was carrying a pistol and another a sword and the others sticks. The E respondent who appeared to be in a rage pointed the gun towards P.W.8 and others saying that the remaining votes should be polled. The respondent's companions snatched ballot papers from the officials in the polling station and tore off about 25 or 26 ballot papers and marked them in favour of the respondent and put them into the ballot box. They put their thumb- impressions on the counter-foils of the ballot papers. There was noise outside when the respondent and his companions were inside the polling station. The respondent and his companions went out the polling station after 25 or 26 ballot papers had been put into the ballot box as stated above. Soon after the respondent and his companions left the place a Sub-Inspector of Police came there. P.W. 8 was writing the report when P.Ws.7 and 10 accompanied by the Superintendent of Police arrived. After completing his report P.W. 8 got it signed by all the polling staff and handed it over to P.W. 7 and he recorded his statement. Ex.P-5 is the diary prepared by P.W. 8 in accordance with Instruction-74 of the Instructions to Polling Officers given by the Election Commission of India. P.W. 8 had deposited Ex.P-5 along with the other records in the Election Office. He has stated the Ex.P-5 was prepared by him and that it is correct. In his cross-examination he has stated that nee dose not know if the High School run by the Ahir Education Board where he was employed since 1972 does or does not belong to Rao Birendra Singh. He has denied that he and the members of his family had been supporting Rao Birendra Singh in the elections. he has admitted that he has not mentioned anything in column 20-E of Ex.P-5 relating to intimidation of voters and other persons except crossing it and has stated that it is because he was very much perturbed at that time. Reference will be made in detail later to the contents of the Presiding Officer's diary Ex.P-5 and the report of P.W. 8 to the police contained in Ex.P-6 on the basis of which FIR No. 103 of 1982 dated 19.5.1982 had been registered by Dharam Pal (P.W.9) Assistant Sub-Inspector of police on 19.5.1982. Suffice it to say at present that reference has been made in Ex.P-5 to the respondent putting pressure on the polling staff and getting 25 or 26 bogus votes polled in his favour when there was a lot of noise and commotion in the polling station from 10.30 to 11.30 a.m. as a result of which the polling had stopped. In his report the police also P.W. 8 has stated that the respondent armed with a pistol came inside the polling station along with four or five his companions named, one of them with a sword and the others with sticks and hurled

abuses and forcibly polled about 25 or 26 ballot papers at gun point on account of which he could not stop them from doing so. The Assistant Sub-Inspector of police (P.W.9) who had been posted at Sadar Rewari police station on 19.5.1982 has deposed about the registration of FIR No. 103 of 1982 on that day on the receipt of a rukka from Sub-Inspector, Deep Chand. He has stated that the FIR Ex.P-6 is in his hand-writing and that it is correct according to the material on the basis of which it has been registered. He has not been cross-examined about the registration of FIR No. 103 of 1982 dated 19.5.1982.

Bala Bhaskar (P.W.7), the Deputy Commissioner of Mohindergarh was District Election Officer for the election to the Haryana Legislative Assembly held in May, 1982. He has stated that when he was travelling by car at about 10.30 a.m. between Monoddola and Zainabad villages in the course of his visits to some of the polling stations in the Rewari Constituency on 19.5.1982 he received a wireless message to the effect that the respondent had complained against Congress (I) workers saying that 40 or 50 of them had attacked Congress (J) workers at Kalaka. P.W. 7 reached Kalaka polling station at 12.30 p.m. after instructing the police over the wireless to take action on that complaint of the respondent. When he reached Kalaka polling station he received oral complaints about the detention of a motor-cycle belonging to the workers of the Congress (J) party. He went inside the polling station and tape-recorded the conversations with the officers in Ex.P.W. 7/1 of which Ex.P-1 is the transcript prepared under his supervision. He has stated that he compared the transcript Ex.P-1 with the original tape-record and found it to be correct and that it bears his signature by way of authentication. He has admitted that there are some gaps in Ex.P-1 as the voices in the tape were not clear and audible. He has stated that the tape record remained in his custody throughout and was not tampered with either himself or by anyone else and that it contains the voices of the Presiding Officer (P.W.8), the polling officer Roop Chand (R.W.7) and the Police Constable, Mohinder Singh (R.W.3) whose number is

498. Reference will be made later to the contents of the tape-record and to the report Ex.P-2 submitted by P.W. 7 to the Government about the incident which took place on 19.5.1982 during the elections as it had come to his notice. In his cross-examination P.W. 7 has admitted that he could not now identify the persons whose voices were recorded in the tape and that the tape is Government property which had been issued to him by the Government and that the tape-recorder remained with him all the time and the tape-recorder and tape-record and the transcript Ex.P-1 had not been placed in the record room. It has to be noticed that the respondent (R.W. 22) has admitted in his evidence that though he had made several reports to the Election Commission and other Election Authorities before and after the election with which we are concerned in this-appeal he had not made any report against P.W. 7.

Shri Krishan (P.W. 10) was the Sub-Divisional Officer, Rewari and Returning Officer for the Rewari Constituency in the election held to the Haryana Legislative Assembly in May, 1982. In the course of his tour of the Constituency after 10 a.m. On 19.5.1982 he reached Chalky polling station at about 11 or 11.30 a.m. On receipt of a complaint from the polling station to the effect that the respondent alongwith some other persons intimidated the polling staff and the public at that polling station. He was with P.W. 7 when he reached Chalky polling station and he found the polling at a stand-still at that time. When he reached Chalky polling station the Station House Officer of Sadar Rewari was

present there alongwith a Head-Constable and some other police personnel. The Deputy Commissioner (P.W.7) conducted an enquiry and interrogated the polling staff and the police personnel and tape-recorded their conversation. One of the polling officers told P.W. 10 that the polling agents were turned out by the respondent and his companions and that a bundle of ballot papers was taken away and the ballot papers were marked and put into the ballot boxes and that the voters who were in the polling booth were turned out. He found two motor-cycles stranded near the polling station. It is seen from his evidence that he was transferred from the Rewari Sub-Division on 1.6.1982 and that a file had been handled in a way different from the one in which it had been handled until he handed over charge of his office. He has denied the suggestion that the file was created in a particular manner by insertion of some papers for fabricating evidence in favour of the appellants. It has to be noticed in this connection that the respondent had complained Ex.R.7 dated 4.5.1982 that P.W. 10 is married in the locality and was interfering with the election.

On the other hand, it is the evidence of Roop Chand (R.W.1) who was Steno-Typist in the office of the Project Officer, Agricultural Department in Haryana and the alternate Presiding Officer in Kalaka polling station on 19.5.182 that after the polling started at 7.30 a.m. Ajit Singh son of Rao Birendra Singh came to the polling station at about 8.30 a.m armed with a rifle and accompanied by 15 or 20 persons and asked for the respondent's polling agent Tula Ram and that Ajit Singh's companions pushed Tula Ram out of the polling station. Ajit Singh remarked that the polling at the Kalaka polling station had always been one- sided and directed his companions to poll votes. When the polling staff resisted, Ajit Singh abused R.W.1 and others and asked his companions to beat them and they slapped the polling staff. Ajit Singh's companions picked up some ballot papers and tore them off from their counter-foils and put them into the ballot box for about on hour and left the polling station thereafter. The respondent came to the polling station about one hour later and told the Presiding Officer (P.W.8) that he should not be partial to any party and he came to know that his polling agent had been beaten and that bogus votes had been polled in the polling station. Thereupon P.W. 8 assured the resondent that he would not permit anything of that sort to be repeated. About half an hour after the departure of the respondent from the polling station many people of Kalaka village gathered at the polling station and proclaimed that they would poll votes forcibly. When R.W. 1 and others resisted and collected the voting material those persons beat the polling staff and snatched the voting material and in the struggle which ensued P.W. 8 was dragged upto the door of the polling station and was rescued by the police-men on duty. Since the police present in the polling station could not persuade the crowd to disperse polling was stopped at about 10.15 a.m. and P.Ws. 7 and 10 arrived there subsequently and arranged for the polling to restart after making the electors to stand in a queue. He has denied that P.W. 7 asked for his name and profession and that he told him that he was Roop Chand and a Stenographer. He has stated that he asked P.W. 8 to record the visit of Ajit Singh and his companions into the polling station and that P.W. 8 told him that he has recorded it in his diary. The appellants' case regarding forcible polling by the respondent's companions at his instance and the tape-record was put to R.W. 1 and has been denied by him. He has admitted that a few days after the election the police obtained an affidavit from him on judicial stamp paper but he has denied that it was done under pressure of the respondent.

Deen Dayal (R.W.2), a teacher was the polling officer along with Dhani Ram (R.W.4) who is also a teacher. He has stated that after the polling at the Kalaka polling station went on peacefully for about an hour Ajit Singh, armed with a pistol, came with 15 or 20 persons at about 8.30 a.m. and entered Kalaka polling station forcibly and asked for the polling agent of the respondent and told his companions to remove him from there. Ajit Singh asked his companions to beat R.W. 2 and others and they were accordingly beaten, and P.W. 8 told them to allow Ajit Singh's companions to do whatever they liked and thus avoid being beaten saying that he would make a complaint about the latter. Ajit Singh and his companions polled bogus votes for about half an hour and left the polling station. The respondent came there half an hour later and told P.W. 8 that he had been informed that his polling agent had been beaten and that bogus votes had been polled and protested against it to P.W.8. P.W.8 told the respondent that whatever had happened and that he would conduct the poll in a proper manner thereafter. About half an hour after the respondent left the place the people of Kalaka village came in a crowd and entered the polling station and told the polling staff that they would poll votes forcibly in favour of Sumitra Devi. When the polling staff refused to act according to their desire they beat them and try to snatch the ballot box from R.W. 4. Meanwhile, Constable Mohinder Singh, (R.W. 3) came inside the polling station wrested the ballot box from the crowd and placed it at its original place. Soon thereafter a Sub- Inspector of Police and some other constables came and tried to remove the crowd from the polling station. About half an hour later P.W. 10 came there and left the place after talking with P.W. 8. P.W. 7 came there about half an hour thereafter and directed P.W. 8 and the polling staff to conduct the polling properly and polling started again at about 12 noon. He had stated in his cross-examination that he did not make any report either to the police or to P.Ws. 7 and 10 though slaps and fist blows had been given to him by the miscreants but he asked P.W. 8 after P.Ws. 7 and 10 left the place as to whether he had reported about the maltreatment meted out to polling officers and he answered in the affirmative. He has stated that P.W.7 talked only to P.W. 8 and to no other polling staff and did not tape-record any conversation in his presence and that he does not know if P.W. 7 had talked with the police constable who was posted at the polling station. He has denied that Ajit Singh had not come to the polling station at all and that no incident of the kind stated by him took place in the polling station.

Mohinder Singh (R.W. 3) who was on duty as a police constable at Kalaka polling station on 19.5.1982 has stated that about half an hour after the polling started at 7.30 a.m. he heard shouts that Ajit Singh had come and saw Ajit Singh, armed with a pistol, coming in to the polling station along with 15 or 20 persons and that in spite of the fact that he obstructed 2 or 3 companions of Ajit Singh pushed the respondent's polling agent out of the polling station and stated beating him and he rescued him. He also stated that he does not know what Ajit Singh and his companions did inside the polling station where they remained for about 30 to 45 minutes and that the respondent come there by a motor-car with 2 or 3 persons about half an hour after Ajit Singh and his companions left the place and left the place 2 or 3 minutes later after going inside the polling station. He has further stated that about half an hour thereafter about 50 to 60 persons came from Kalaka village and entered the polling station forcibly and snatched the ballot boxes after beating the polling staff and they were turned out of the polling station by Sub-Inspector, Deep Chand and some police constables who arrived there some time later. He has stated that P.W. 10 come there about 30 or 45 minutes thereafter and left the place after talking with P.W. 8 and that P.W. 7 arrived there about 30 to 45 minutes after P.W. 10 left the place and talked to the polling staff and arranged for the polling

starting again at about 12 noon. He has denied in his cross-examination that P.W. 7 had any talk with him in the polling station and has stated that he did not make any report about the incident or the treatment meted out to him by Ajit Singh and his companions though the respondent's polling agent was bleeding and his clothes were torn. He has denied that the voice recorded in the tape (Ex.P.W. 7/1) put to him is his voice and also that P.W. 7 interrogated him and he made a statement. The appellants's case of forcible polling by the respondent's men was put to R.W. 3 and has been denied by him.

The evidence of R.W. 4 is more or less the same as that of R.Ws. 1 to 3 as regards the alleged forcible polling of bogus votes by Ajit Singh and his companions. He too has stated that at the instance of P.W. 7 who arrived there about half an hour after P.W. 10 left the place after talking to P.W.8 the polling started again. He has admitted in his cross-examination that P.W. 8 had some conversation with P.Ws. 7 and 10 but he has denied that the respondent came to the polling station armed with a revolver and accompanied by 15 to 20 persons and got some votes polled at gun point and ran away along with his companions on the arrival of the police and the villagers.

Ram Krishan (R.W. 5), the brother of the respondent's polling agent Tula Ram who has not been called as a witness admittedly supported the respondent in the election held in May, 1982. He has stated that t he went to the polling station for casting his vote at about 7.30 a.m. when the polling started and that Ajit Singh, armed with a pistol, came to the polling station at about 8.30 a.m. accompanied by 40 or 50 persons and entered the polling station with 15 or 20 persons. Some persons who entered the polling station along with Ajit Singh dragged Tula Ram out of the polling station and beat him and when he intervened they started beating him also as a result of which his clothes got torn and he was rescued by the police constable (R.W. 3). He went with his brother by his scooter to Rewari and reported to the respondent about the incident and leaving Tula Ram at Rewari he came along with the respondent and 2 or 3 other persons by a motor-car to Kalaka village where the respondent went into the polling station and left the place 5 or 7 minutes later for Rewari. He has stated in his cross- examination that both himself and his brother Tula Ram bled from different parts of the bodies because of the injuries sustained by them and that they did not however get themselves medically examined or make any complaint to any authority because there were only abrasions from which there was some bleeding. It is seen from his evidence that Tula Ram who has not been examined is alive and is in service as a Clerk in some department at Chandigarh where the election petition was tried.

Suresh (R.W. 6) has stated that when he reached Kalaka polling station at 8.30 a.m. in May, 1982 Ajit Singh, armed with a revolver, came there with 40 to 50 persons and went inside the polling station with about 15 to 20 persons. The respondent's polling agent Tula Ram was dragged out of the polling station and beaten. When R.W. 5 rushed for his help he too was beaten and was rescued by a police constable who may on duty at the polling station. The respondent came there by a car about half an hour after Ajit Singh and his companions left the place and went away after remaining in the polling station for about 5 or 6 minutes. The appellants' case of forcible polling by the respondent's men had been put to R.W. 6 and denied by him. He too has stated in his cross-examination that P.W.. 7 and 10 came to the polling station after the respondent left the place and that on their intervention polling restarted and the people started forming a queue and he himself cast his vote

thereafter.

The respondent R.W. 22 has stated that when he was in his house at Rewari on 19.5.1982 after deciding not to go out of the house on that day R.W. 5 and his polling agent Tula Ram came there at 8.45 a.m. from Kalaka polling station with their clothes torn and appearing to have been beaten badly and told him that Ajit Singh accompanied by 50 or 60 persons entered the polling station and beat them and indulged in forcible polling and that he thereupon went by a car to Kalaka village alongwith R.W. 5 at about 9.15 or 9.30 a.m. On that day. Leaving his car at some k distance he walked to the polling station and found 50 or 60 villagers collected there and he entered the polling station protested to P.W. 8 and brought the complaint given to him by R.W. 5 and Tula Ram to his notice. After P:W. 8 assured him that nothing of that sort will be allowed to happen in the remaining part of the day he returned from Kalaka 7 or 8 minutes later and sent a written report to the police about the incident with copies to P.W. 7 and the election authorities and received a message from the police station at 10.30 a.m. that his complaint had been flashed to P.W.. 7 by wireless message and that appropriate action was expected to be taken soon. He has further stated that in his letter Ex. R. 7 dated 4.5.1982 he requested for the appointment of an observer because of official interference and had stated that P.W. 10 was married in that area and was interfering in the election. He has stated in his cross-examination that FIR No. 103 of 1982 was connected at a later stage at the instance of Rao Birendra Singh. He was the Speaker of Haryana Legislative Assembly until the first meeting of the newly constituted Legislative Assembly was held after the election held on 19.5.1982 and after having succeeded in the election as a Congress (J) candidate he joined the Congress (I) Party and is now the Transport Minister. He has admitted that he is not made any mention in any of his complaints sent to the Chief Election Commissioner and other election authorities prior to 19.5.1982 that P.W. 7 was acting in any way against him in a prejudicial manner. He has admitted that he has not stated in his written statement that he complained to the police in writing about the incident in Kalaka polling station and had sent copies thereof to the Election Commissioner and P.W. 7. He has stated that he did not make any complaint naming Ajit Singh specifically about the incident at Kalaka because the picture was not clear to him at that time and not because such an incident never happened. The appellants' case of booth-capturing and bogus polling by the respondent in Kalaka polling station had been put to R.W. 22 and denied by him. The tape-record (Ex. P.W. 7/1) was played before him and he has stated that it does not contain his voice and that it is rather the voice of Rao Birendra Singh.

The oral evidence of R.Ws. 1 to 6 that Ajit Singh came along with some of his companions and dragged out Tula Ram from Kalaka polling station and beat him and that they snatched ballot papers and ballot boxes and got bogus votes polled in that polling station and the evidence of R.W. 22 that R.W. 5 and Tula Ram came and told him that Ajit Singh accompanied by 50 or 60 persons entered the polling station and beat them and indulged in forcible polling cannot be accepted for two important reasons, namely, that no such plea had been put forward in the written statement of the respondent where no doubt he has stated vaguely that the men of Rao Birendra Singh captured the booth at Kalaka and the supporters and voters of the respondent were badly out- manouevered and it could be gathered from the fact that whereas Sumitra Devi had obtained 484 votes he had obtained only 53 votes in that polling station and not that Ajit Singh and his companions came to Kalaka polling station and indulged in forcible voting or that they beat R.W. 5 and his brother Tula

Ram. The respondent has denied in his written statement that the process of polling got disrupted for over an hour at Kalaka polling station and that a number of voters had to refrain from casting their votes; but, as mentioned above it has been admitted by R.Ws. 1 to 4 that the polling was suspencial at Kalaka polling station on 19.5.1982 and that it re-started after the arrival of P.Ws. 7 and 10 at the polling station some time after the departure of the respondent and his companions. though the case of the respondent that there was forcible polling at the Kalaka polling station by Ajit Singh and his men cannot be accepted for want of any such plea in the written statement Mr. Sibal was justified in requesting the Court to accept the admission on the part of the respondent's witnesses that there was forcible polling at the Kalaka polling station in the morning of 19.5.1982 and that the polling got disrupted as a consequence thereof and that it was recommended after the arrival of P.Ws. 7 and 10 and to reject their evidence that Ajit Singh and his men were the cause.

Under instruction 74 of Instructions to Presiding Officers issued by the Election Commission of India, extracted above, the Presiding Officer is bound to draw up the proceedings connected with the taking of the poll in the polling station in the diary to be maintained for the purpose in the form in which Ex.P.-5 had been filled up by the Presiding Officer (P.W. 8). The Presiding Officer is directed by the instruction to go on recording the relevant events as and when they occur and not to postpone the completion and filling of all the entries in the diary to the completion of the poll and he has to mention therein all the important events. Even the alternate Presiding Officer (R.W. 1) has stated in his evidence that the Presiding Officer (P.W. 8) told him that it was his duty to report about the incident and he would do so. It is seen from Column 18 of Ex.P-5 relating to the number of votes polled that 195 votes were polled from 8 a.m. to 10 a.m., 205 from 12 noon to 2 p.m., 106+3 from 2 p.m. to 4 p.m. and to on upto 4.30 p.m. and that in the disputed period from 10 a.m. to 12 noon only 51 votes were polled. In column 21 it is stated that the polling was interrupted and disrupted by rioting and open violence and that from 10.30 a.m. to 11.30 a.m. the respondent put pressure on the polling party and got 25/26 bogus votes polled in his favour and there was a lot of noise and commotion outside. In column 22 relating to the question whether the poll was vitiated by any ballot paper being unlawfully marked by any person and deposited in the ballot box it is stated that 4 or 5 persons who came with the respondent snatched ballot papers and forcibly put them into the ballot boxes. The Presiding Officer (P.W. 8) who has deposed about the incident has stated in his evidence that Ex.P.-5 is the diary which he submitted after the poll, that it was prepared and signed by him and is correct and that he deposited it along with the other records in the election office. As stated earlier, what has been elicited in his cross-examination is that apart from crossing column 20(E) relating to intimidation of voters and other persons he has not mentioned anything in that column and that he failed to fill up that column in full because he was very much perturbed at that time. It has not been suggested to P.W. 8 that he had prepared Ex.P-5 later under the pressure and influence of the defeated candidate Sumitra Devi through her brother Rao Birendra Singh. Nor is there any positive evidence to that effect on the side of the respondent. Therefore, it is not known on what basis the learned trial Judge has observed in his judgment that Ex.P-5 appears to have been made up by P.W. 8 under the pressure and influence of the defeated candidate Sumitra devi through her brother Rao Birendra Singh. In the absence of any material on record or even a suggestion to that effect to the Presiding Officer (P.W. 8) who has stated that he filled it up correctly and deposited it alongwith the other records in the election office it is not possible to agree with the view of the learned trial Judge that Ex.P-5 has been got up later by P.W. 8 under the pressure and influence of

the defeated candidate Sumitra Devi through her brother Rao Birendra Singh. Ex.P-5, a contemporaneous document prepared by the Presiding Officer (P.W. 8) as required by Instruction 74 (supra) and deposited by him in the election office after the poll was over alongwith the other records is a very valuable piece of documentary evidence corroborating the oral evidence of the Presiding Officer (P.W. 8) and other witnesses examined on the side of the appellants who have deposed about the first part of the incident in the Kalaka polling station.

The next contemporaneous document corroborating the oral evidence of P.W. 8 is the copy of the report of P.W. 8 to the police appended to FIR No. 103 of 1982, Ex.P-6 dated 19.5.1982, prepared by the Assistant Sub-Inspector of Police, P.W. 9 on receipt of a rukka from the Sub-Inspector of police, Deep Chand. P.W. 9 has stated that it is in his hand-writing and correct according to the material on the basis of which it was registered. Ag stated earlier, PSHAW. 9 has not been cross-examined as regards the FIR contained in Ex.P-6. The learned trial Judge has rejected Ex.P-6 as being inadmissible in evidence for corroborating the evidence of P.W. 8 about the incident in Kalaka polling station on the ground that the original report of P.W. 8 to the police had not been summoned by the appellants. It is no doubt true that the original had not been summoned by the appellants before P.Ws. 8 and 9 deposed about Ex.P-6 in their evidence. P.W. 8 has stated in his evidence that when he was writing the report soon after the Sub-Inspector of police came to the polling station after the respondent and his companions had left the place, P.Ws. 7 and 10 accompanied by Superintendent of police came there and that after completing that report he got it signed by the polling officials and handed it over to the police officer and he recorded his statement. It is stated in the copy of P.M. in complaint to the police appended to Ex.P-6 that at about 10.30 a.m. when the polling was going on smoothly the respondent came into the polling station, armed with a small pistol and accompanied by 4 or 5 persons, one of the armed with a sword and the others with sticks, and hurled abuses and forcibly polled about 25/26 ballot papers at gun point on account of which P.W. 8 could not stop them from doing so. He also stated that the polling staff was threatened with danger to their lives and, therefore, they kept standing there for some time and that the companions of the respondent dragged the polling agent (P.W. 17) of Sumitra Devi and appropriate action may be taken by the police. It is seen from the record that the appellants had taken steps to summon FIR No. 103 of 1982 dated 19.5.1982 and the Head Constable of Sadar Rewari Police station to prove the incident at Kalaka. The record further shows that the respondent also had applied for summoning the orders of Court disposing of FIR No. 103 of 1982 as also FIR No. 104 of 1982 to which reference will be made in the course of the discussion relating to the incident at Burthal Jat polling station. The respondent had also applied for summoning the Inspector of Police, Kedar Singh to appear with the relevant records showing the disposal of the above two FIR. But subsequently he filed CMP 31 (E) of 1983 for substituting and their person in the place of Inspector Kadar Singh and though that petition was opposed by the appellants the trial Court allowed the petition on the same day i.e. 21.2.1983 itself. The appellants also had filed CMP 41(E) of 1983 for summoning the file relating to those two FIRs from Sadar Rewari Police station. That application was dismissed by the learned Trial Judge on 25.2.1983. Thus it is seen that the appellants who had doubt not taken steps for summoning the original complaint given by P.W. 8 to the police at the Kalaka polling station in the first instance probably because the respondent himself had originally sought the production of the relative records from the police station had later taken necessary steps to summon the original complaint as also to recall P.W. 8 for deposing about that

fact. In these circumstances, I find that the necessary foundation must be held to have been laid for adducing secondary evidence by way of the copy appended to FIR No. 103 of 1982 (Ex.P-6) and that the appellants are therefore entitled to adduce secondary evidence of the contents of that complaint. The complaint of P.W. 8 to the police given immediately after the incident was over and soon after the arrival of the police personnel and the officials P.Ws. 7 and 10 and the Superintendent of Police is another contemporaneous document and a valuable piece of documentary evidence corroborating the evidence of P.W.8 and other witnesses examined on the side of the appellants to prove the first part of the incident in the Kalaka polling station.

The third piece of documentary evidence let in by the appellants for proving the first part of the incident in the Kalaka polling station is the tape-record (Ex.P.W. 7/1) of which Ex. P`1 is a transcript prepared under the instructions and mostly in the presence of P.W. 7 by his Stenographer. P.W. 7 has stated in his evidence that inside the polling station at Kalaka he tape-recorded the version given by the officers about the incident in that polling station in Ex.P.W. 711, and he compared the transcript (Ex.P-1) prepared by his Stenographer with the original and found it to be a correct reproduction of the original, and he has authenticated it by signing it and that there are some gaps in Ex.P-1 as the voices in the tape were not clear and audible. He has also stated that the tape-recorder which had been supplied to him by the Government, the tape Ex.P.W. 7/1 and the transcript Ex.P-1 remained in his custody throughout and had not been deposited by him in the election office. He has not been questioned as to why he retained the tape, the tape-recorder and the transcript in his custody without depositing them in the election office. Therefore, no adverse inference can be drawn against P.W. 7 or the appellants from the fact that the tape, the tape-recorder and the transcript had not been deposited by P.W.7 in the election office. No suggestion has been made to P.W. 7 in cross-examination that he had in any way tampered with the tape-record (Ex.P.W. 7/1) and he has stated in his examination in chief that a portion of the tape relating to the incident at Burthal Jat polling station has been erased inadvertently by his own voice. The learned trial Judge has rejected the tape-record (Ex.P.W. 7/1) holding (1) that it is tampered with later, disbelieving the evidence of the P.W. 7 that a portion of what he had recorded at the Burthal Jat polling station was erased by his own voice inadvertently on the some day and (2) that the authenticity of the transcript (Ex.P.1) has not been proved with definiteness. It is not reasonable to reject the tape merely because some portions thereof could not be made out on account of noise and interference not only outside but also inside the polling station when what was being elicited by P.W. 7 from the polling officers and the police-man (R.W. 3) was being H recorded. In R. v. Maqusud Ali (supra) tape recorded conversation of the two accused in a murder case has been held to be admissible in evidence for the purpose of proving the guilt of the accused and it has been observed that the tape- recording was a matter of the utmost importance and that it is indeed the highly important piece of evidence which the defence strenuously sought to keep out. In R. v. Robson (supra) in which reference has been made to K. v. Maqusud Ali (supra) tape-recording had been held to be admissible in the case in which the accused was charged with corruption, rejecting the plea of the defence that it was inadmissible inter alia because in many places it was unintelligible though it was however not contended that the tape-recording was as such inadmissible in evidence of what was recorded on it .

It is clear from these and the other decisions of this Court referred to supra that tape-recorded evidence is admissible provided that the originality and the authenticity of the tape are free from doubt. In the present case there is no valid reason to doubt them. In *Shri N. Sri Kara Reddy etc. v. Shri V.V. Giri* (supra) referred to above a bench of five learned Judges of this Court has held that the contemporaneous dialogue tape-recorded in that case formed part of *res gestae* and that it is relevant and admissible under sections 7 and 8 of the Evidence Act. If it is *res gestae* it is admissible in evidence even under section 6 of the Evidence Act illustration 1 where of reads thus:

"A is accused of the murder of by beating him. What ever was said or done by A or B or the by- standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

The following passage in regard to incidents forming part of the *res gestae* is found in para 509 of Halsbury's Laws of England (Vol. 15) Third Edition:

"There are many incidents, however which, though not strictly constituting a fact in issue may yet be regarded as forming a part of it, in the sence that they closely accompany and explain that fact. In testifying to the matter in issue, therefore, witnesses must state them not in their barest possible form, but with a reasonable fullness of detail and circumstance (g). These constituent or accompanying incidents are said to be admissible as forming part of the *res gestae* (h). When they consist of declarations accompanying an act they are subject to three qualifi- cations; (1) they must be contemporaneous or almost contemporaneous with the fact in issue and must not be made at such an interval as to allow of fabrication or to reduce them to the mere narrative of a past event (i) though this is subject to apparent exceptions in the case of continuing facts (k); (2) they must relate to and explain the act they accompany, and not independent facts prior or subsequent where to

(i); and (3) though admissible to explain, they are not always taken as proof of the truth of the matters stated, that is, as hearsay (m).

P.W. 7 has stated in his evidence that the voice of P.W. 8 who was the Presiding Officer at kalaka polling station is recorded in the tape, that the tape contains also he conversation of the alternate Presiding Officer, Roop Chand (R.W. 1) and that the voice of the Constable Mohinder Singh (R.W. 3) who was on duty at the polling station and had made a complaint to him is also recorded in the tape. It is true that he has admitted in his cross-examination that he cannot identify the voice with any of the persons mentioned by him. The transcript of the tape (P.W. 7/1) after it had been recorded in a larger tape with the help of a re sophisticated instrument in this Court was prepared by this Court and some portions thereof has been admitted by R.W. 22 to be in his voice and he has recognised in the larger tape the voice of even P.W. 7 in some portions of the conversation which admittedly took place between him and P.W. 7 in the office of R.W. 10 at about 7.30 p.m. On 19.5.1982. It is seen from the transcript that some one had answered the question about what his name and number were and that one Mohinder Singh had answered saying that his name and number were Mohinder Singh and 498 which tally with those of R.W. 3. In the answer to question as to how many persons

came inside the polling station Mohinder Singh had stated that four persons came inside and 20 or 30 persons were remaining outside and there were also 5 or 6 vehicles. In answer to the question whether he had seen arms or ammunitions in the hands of those persons who stood outside and of those four persons who entered the polling station Mohinder Singh had stated that perhaps Colonel Sahib, referring to the respondent, was armed with a gun while some persons were armed with swords and some 2 or 3 persons were armed with lathis. It is further seen that in answer to the question as to what he was and what was his name one Roop Chand informed the question that he was Roop Chand and a Stenographer in the Project Office of the Agricultural Department in Haryana. These particulars tally with those of R.W. 1. It is seen from the tape that P.W. 17 had also answered certain questions saying inter alia that he was Amar Singh, polling agent of the Congress (I) candidate and that there were 5 or 6 vehicles with a number of persons in them. It is also seen from the tape that during the course of conversation between the respondent and P.W. 7 at the office of P.W. 10 the fact that P.W. 7 had gone to Kalaka polling station immediately after the respondent and others left the place and that he got the statements tape-recorded there was mentioned by P.W. 7 to the respondent. In these circumstances great reliance has to be placed on the tape (Ex.P.W. 7/1) and its contents not only for corroborating the evidence of P.Ws. 7 and 8 to the extent they go but also as *res gestae* evidence of the first part of the incident. The learned trial Judge was not justified in rejecting the tape-record (Ex.P.W. 7/1) and the transcript (Ex.P-1). It must be remembered that the respondent who had openly disowned any part of the tape as containing his voice and had, on the other hand, gone to the extent of saying in the trial Court that it rather contained the voice of Rao Birendra Singh has admitted in this Court portions of that tape as being in his voice and that he has stated that he cannot identify any voice other than those of himself and P.W. 7.

Coming now to Ex. P-2, P.W. 7 has stated in that report that around 10.30 a.m. when he was proceeding by his car between Manodola and Zainabad villages he received a message on the 4 police wireless that in Rewari Constituency the Congress (J) candidate had complained that about 50 to 60 Congress (I) workers had attacked his workers in Kalaka village. He immediately directed the Station House Officer of Sadar Rewari to rush to the village. At 11.35 a.m. he received a message on the police wireless that villagers had refused to vote in Kalaka alleging that Congress (J) workers had polled some bogus votes in Kalaka polling station. Therefore he proceeded to Kalaka polling station and interrogated the Presiding Officer and the polling officers of the polling station and recorded the conversation in his tape-recorder. When he was told that Congress (J) workers came into the polling station and snatched ballot papers from the polling staff and polled them in favour of the respondent, he advised the polling officer to accept tendered votes from the electors if they came to the polling station for voting and he thereafter went to Burthal Jat. This report submitted by P.W. 7 some time after the results of the poll were announced corroborates the evidence of P.W. 7 about what he did at the polling station soon after he went there on receipt of a wireless message about the polling of bogus votes in favour of the respondent.

With respect to the office which he holds, the respondent, as a party and his own witness, is wholly unreliable. In his written statement he had vaguely alleged that the men of Rao Birendra Singh captured the booth at Kalaka and the supporters and voters of the respondent were badly out-manoeuvred and that the said fact could be gathered from the fact that whereas Sumitra Devi had obtained 484 votes he had obtained only 53 votes in that polling station. The only suggestion

made to P.Ws. 12 and 17 who have denied it is that Ajit Singh visited the Kalaka polling station. No suggestion was made to any of the witnesses examined on the side of the appellants in the cross-examination that Ajit Singh came armed with some armed companions and beat R.W. 5 and Tula Ram and dragged them out and that they forcibly polled bogus votes. Such a case was projected by the respondent only after the respondent started to let in oral evidence on his side after the appellants had closed their evidence. In these circumstances, when questioned as to why he had not made any complaint naming Ajit Singh specifically for the incident at Kalaka R.W. 22 has stated in his evidence that it is not because such an incident never happened but because the picture was not clear at that time. It is impossible to accept this explanation of R.W. 22, for the polling took place on 19.5.1982 and the respondent filed his written statement in the election petition long thereafter on 14.9.1982. If, as the respondent would have it, Tula Ram and R.W. 5 came to his residence at Rewari in the morning of 19.5.1982 and informed him about the incident at the Kalaka polling station and there after he went there and complained to P.W. 8 about it, he should have come to know about the details of the incident before he filed his written statement long thereafter on 1.9.1982. If by 14.9.1982 the picture of what happened at the Kalaka polling station 19.5.1982 was not clear it is not known how it would have become clear only after appellants had closed their evidence and just before the respondent began to let in oral evidence on his side. Therefore, the explanation of R.W.22 that he had not named Ajit Singh specifically in relation to the incident at the Kalaka polling station not because it never happened in the manner stated by his witnesses but because the picture was not clear at that time cannot be accepted at all.

R.W. 22 had stoutly denied in the trial Court that the tape record (Ex. P.W. 7/1) contained his voice but added that it is rather the voice of Rao Birendra Singh. But after the tape was recorded with the aid of a more sophisticated instrument by playing it in this Court in the presence of the respondent in the office and also in the open Court, R.W. 22 has admitted some portions of his conversation with R.W. 7 in the office of P.W. 10 at about 7 or 7.30 a.m. On 19.5.1982. In the cross examination made in this Court after R.W. 22 had heard the re-recorded larger tape being played in the Court R.W. 22 has stated that he could not recognise the voice of any person in the tape other than those of himself and P.W. 7. If the tape used by P.W. 7 for recording the conversation could not be followed and understood clearly when it was played in the trial court with the very same instrument by which it was recorded what R.W. 22 could have said was that he cannot say whether it contains his voice but he could not have gone to the extent of saying that it does not contain his voice but it rather contains the voice of Rao Birendra Singh. This also shows that the evidence of R.W. 22 is not reliable.

In his cross examination in this Court R.W. 22 has stated that he was the Speaker of the Haryana Legislative Assembly until the new Legislative Assembly met after the elections in May, 1982 and could therefore have summoned any officer to his office and he did not go to the police station on 19.5.1982 and he is quite positive about it. But in the later portion of his evidence in this Court he has stated that not only his admission of the transcript of the tape (Ex. P-1) to the effect that he went to the police station but also his written statement that he did not go to the police station on 19.5.1982 are both correct and that he would emphasize that he did not go to the police station at all on that day. He has also stated that although the voice in the tape says that he went to the police station and that voice appears to be his own voice he did not go to the police station because he was

the Speaker of the Haryana Legislative Assembly on that day and could have summoned any police officer to his office. However, it is his own evidence that he did go to the office of P.W. 10 to meet P.W. 7 at about 7 or 7.30 p.m. On 19.5.1982. This also shows that the evidence of R.W. 22 is not reliable.

R.W. 22 has admitted the voice in the tape that when P.W. 7 asked him about when he received the message about the incident at the Kalaka polling station he answered by saying that it was about 11.30 a.m. and that it is correctly recorded in the tape. It is seen from the transcript that the respondent had stated in that conversation that he thereafter went to the Kalaka polling station and questioned his men as to whether they were not ashamed that two or three 'chaps' belonging to the same village had been beaten. However, he would say in his evidence that he went to Kalaka only once on 19.5.1982 and that it was about 9 or 9.30 a.m. There is abundant unimpeachable evidence on the side of the appellants to show that the respondent, armed with a rifle, visited Kalaka polling station accompanied by some armed persons at about 11.30 a.m. or 12 noon, and indulged in the polling of bogus votes. P.W. 7 had stated in the course of his tape recorded conversation with the respondent in the office of P.W. 10 at about 7 or 7.30 p.m. on 19.5.1982 that he visited Kalaka polling station soon after the respondent had left that place. R.W. 22 has admitted in his cross examination in this Court that the statement of P.W. 7 that he was there at about 12 noon or 12.05 p.m. refers to Kalaka polling station and that P.W. 7 told him that the Presiding Officer told him a different story about the incident which took place in that polling station. It is, therefore, clear that the respondent has attempted to make a futile effort to show that he visited the Kalaka polling station with R.W. 5 and others only at about 9 or 9.30 a.m. On 19.5.1982 and not at the time of the first part of the incident alleged by the appellants.

The written statement is silent on the question whether the respondent visited Kalaka polling station on 19.5.1982 except a mere denial. The respondent unsuccessfully attempted to file an additional or amended written statement to the effect inter alia that he had decided not to move out of his house and had not gone out of his house on 19.5.1982. This portion of the additional or amended written statement which had not been received by the Court was put to him in cross examination by Mr. Sibbal. R.W. 22 has stated that there appears to be a typing error in that statement that he did not move out of his house on that day and that what he meant to say was that as a consequence of the assurance of his supporters that he was going to succeed he acceded to their wish and had decided not to move out of his house on that day. He would say that he did not read that amended written statement and had no sufficient time to read it properly but that he did not give specific instructions to his counsel on that matter and was told by his supporters not to move out of his house on 19.5.1982 and that the fact that he went to Kalaka village on 19.5.1982 is not mentioned in that amended written statement though in spite of deciding not to move out of his house on that day he did go to Kalaka village on that day. This also shows that the evidence of R.W. 22 is not reliable.

In the election petition it is alleged in relation to the incident at the Burthal Jat polling station that Anil Kumar and Satbir Singh are the relatives of the respondent. There is no denial much less any specific denial of this allegation in the written statement of the respondent though it is a material fact which ought to have been denied specifically if it was not admitted. Therefore, under O.8 r. 5 of the

Code of Civil Procedure which applies to proceedings in election petitions it must be deemed to have been admitted by the respondent. Order 8 rule 5 reads:

Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

But during the trial R.W. 22 had repeatedly denied that Anil Kumar and Satbir Singh were in any way related to him though in a portion of his evidence he would say that satbir Singh is the adopted son of Jagmal Singh, father of his wife who was divorced in 1962 and that he does not know if Anil Kumar is the brother of his brother-in-law, Surinder Kumar and he could not deny or admit that he is the brother of his brother-in-law, Surinder Kumar as Surinder Kumar has 6 or 7 brothers. He has stated that he does not know whether Anil Kumar and Satbir Singh are the two persons who were arrested in Burthal Jat village on 19.5.1982 for offences under section 107 and 151 of the Code of Criminal Procedure and that he had not exhibited grave concern about Anil Kumar and Satbir Singh in the course of his conversation with P.W. 7 in the office of P.W. 10 at 7 or 7.30 p.m. On 19.5.1982 or told P.W. 7 that they were his relatives. But in his cross examination in this Court he has admitted that Anil Kumar and Satbir Singh had been arrested by the police at the instance of P.W. 7 at the burthal Jat polling station on 19.5.1982 and that he had referred to them as his relations only because P.W. 7 had not taken any steps inspite of his repeated representation in regard to the arrest of those two persons. It is not possible to accept the evidence of R.W. 22 that because no steps were taken by P.W. 7 on his repeated requests for the release of Anil Kumar and Satbir Singh he told P.W. 7 that they were his close relatives, for he had admitted in his evidence in this Court that he would have left no stone unturned if his partymen and workers were harassed even though they may not be his relatives. It appears from this portion of the evidence of R.W. 22 that it would have been unnecessary for him to claim Anil Kumar and Satbir Singh to be his close relatives merely to prevent them from being harassed by the police after their arrest on A 19.5.1982. He has stated in his evidence in this Court that because he was told by his workers that two of his relatives had been arrested and their identity was not clear to him when he had the Conversation with P.W. 7 in the office of P.W. 10 on 19.5.1982. he referred to them in the course of his conversation as his relatives. He has also stated that it is only after P.W. 7 mentioned their names and identity that he new that they were Anil kumar and Satbir Singh and that they were not his relatives. In the subsequent portion of his evidence he has stated that he had never deposed in this Court that P.W. 7 mentioned the name of Anil Kumar to him. In an other portion of his evidence in cross examination in his Court he has admitted that the statement in that conversation that he told P.W. 7 that Anil Kumar and Satbir Singh were his relatives is correct. Thus, it is seen that R.W.. 22 has given varying versions on the question whether Anil Kumar and Satbir Singh were his relatives or not though he has admittedly informed P.W. 7 in the course of his conversation with him in the office of P.W. 10 on 19.5.1982 that they were his close relatives. This also shows that the evidence of R.W. 22 is not reliable.

The evidence of the private witnesses examined by the appellants to depose about the first part of the incident in the Kalaka polling station is fully corroborated by the evidence of the Presiding Officer (P.W.8) and received ample corroboration from the evidence of P.Ws. 7 and 10. Their evidence is corroborated by the reliable and contemporaneous documentary evidence by way of Exs. P-5, P-6 and the tape record Ex. P.W.7/1 which are unimpeachable and also by what has been stated by P.W. 7 in his report (Ex. P-2) submitted by him to the Government some time after the results of the election held in May 1982 were announced. Therefore, I reject the evidence of the respondent and the other witnesses who have deposed on his side in regard to this part of the incident in the Kalaka polling station and accept the evidence of P.W. 8 and the other witnesses who have deposed about the same on the side of the appellants election petitioners and hold that the appellants have proved satisfactorily and beyond reasonable doubt the first part of the incident in Kalaka polling station, namely that the respondent went armed with a rifle with 25 or 30 companions and entered the polling station with 4 or 5 armed companions and threatened the Presiding Officer (P.W. 8) and others including the polling agents who were present in the polling station with the use of force and got some ballot papers marked in favour of the respondent polled forcibly by his companions in the ballot box and that they left the polling station on seeing the villagers of Kalaka and police personnel coming towards the Kalaka polling station. There is no doubt that there is some discrepancy in the evidence regarding the time of the incident. But it is not a material discrepancy.

I shall now consider the evidence relating to the second part of the incident at the Kalaka polling station.

Mr. Sibbal did not press the case of the appellants regarding the second part of the incident at the Kalaka polling station in his principal argument but he pressed that portion of the appellants' case after Mr. Rao contended in the course of his argument that what is alleged to have happened inside the polling station, even if true, will not constitute any corrupt practice but would amount only to an electoral offence. Regarding this part of the case there is the evidence of Tara Chand (P.W. 12), Sheo Chand (P.W. 13), Puran (P.W. 14), Inder Singh (P.W. 16) and Mangal Singh (P.W. 18), on the side of the appellants. Gur Dial who has been referred to in the election petition in this connection was tendered as P.W. 15 for cross-examination but he has not been cross-examined by the learned counsel for the respondent. P.W. 12 who was one of the electors and the polling agent of Sumitra Bai in the election with which we are concerned at the Kalaka polling station has stated that when he was arranging the electors to stand in a queue for the purpose of voting, the respondent came there with 60 or 70 persons at about 10.30 a.m., The respondent armed with a gun while some of his companions were armed with swords, pistols and sticks. The respondent and his companions threatened PWs. 14,15,17 and others including Kesar Lal who had come to the polling station for the purpose of casting their votes and asked them to go away from there and they consequently ran away from the polling station. Amongst the respondent's companions who did so P.W. 12 knows only Desh Raj Krishan Lal and Ram Krishan (R.W. 5) of Kalaka and Balbir Singh, Raghubir Singh and Umrao Singh. P.W. 12 has not been seriously examined on this portion of his evidence. What has been elicited in his cross-examination is that he was the polling agent of Congress (I) candidates even in the earlier elections and he had canvassed for the Congress (I) candidate in the election with which we are concerned for 5 or 10 days and that he reported to the police after the completion of the poll but the police did not send for anybody on that complaint.

P.W. 13 has stated that when he was standing in the queue awaiting his turn for casting his vote after reaching Kalaka polling station at about 10 a.m. the respondent came there at about 10 a.m. alongwith 50 or 60 persons in two or three vehicles namely, a truck and two motor cycles. The respondent was armed with a gun while his companions including Desh Raj, Krishan Lal and Ram Krishan (R.W. 5) were armed with swords, rifles and lathis. Lambardar Ishwar (P.W. 16), Puran (P.W. 14), Ram Singh and others were standing in the queue at that time. The respondent threatened P.W. 13 and others saying that they cannot cast their votes and he asked them to go away under threat of being beaten and shot, and out of fear P.W. 13 and others who were standing in the queue ran away. It has been elicited in his cross-examination that he came back and cast his vote at 2 p.m. and that he cannot say whether the others who were in the queue and had run away had come again or not for casting their votes.

P.W. 14 has stated that he had gone to the polling station at about 10 or 11 a.m. for casting his vote and was standing in the queue alongwith others. The respondent came there armed with a gun, accompanied by 50 or 60 persons including Desh Raj, Krishan Lal, Balbir Singh, Ram Krishan (R.W. 5) and a Sikh armed with a kirpan.. The respondent's companions created a commotion and the respondent threatened P.W. 17 and others who were in the queue to run away on pain of being killed otherwise and out of fear all the persons who were in the queue ran away. In his cross-examination he has stated that about 15 or 20 persons were standing in the queue when the respondent and his companions arrived at the polling station and that he cast his vote later at about 3 p.m. after calm prevailed all around. He has denied the suggestion that he had given false evidence being a Congress (I) worker.

Ishwar Singh (P.W. 16) the Lambardar of Kalaka village has stated that when he was standing in the queue along with 14 or 15 persons at about 10 or 10.30 a.m. awaiting his turn for casting his vote the respondent came there, accompanied by 3 or 4 persons including Desh Raj and Krishan Lal (R.W.

6) of his village and threatened to kill him and he was hit with the butt of a gun by one of the companions of the respondent and he ran away. He has also stated that P.Ws. 13,14,15 and 17 were also standing in the queue alongwith him and that after he informed the people of the village that the respondent had come and threatened him the people of the village collected and came towards the polling station whereupon respondent and his companions ran away leaving behind two motor-cycles by which respondent's companions had come there. There is abundant evidence on the side of the appellants, referred to above, to show that when P.W. 7 and other officials arrived after the incident in and at the Kalaka polling station they found two motor-cycles abandoned at that place. P.W. 16 has denied the suggestion that he has deposed falsely being the supporter of the Congress (I) party.

P.W. 18 has stated that when he was inside Kalaka polling station and his particulars were being checked before he could be allowed to vote the respondent came there and that 20 or 25 persons were standing in the queue ran away. He has admitted in his cross-examination that he had canvassed for the Congress (I) party but has denied the suggestion that he has always been helping the Congress (I) candidates and has given false evidence on account of that reason.

This is all the oral evidence on the side of the appellants regarding the respondent threatening electors who were standing in the queue at the Kalaka polling station awaiting their turn for casting their votes in the morning on 19.5.1982 and scaring them away under threat of violence against their person and thereby preventing them from exercising their electoral right. The evidence on the side of the respondent has been referred to above in the discussion relating to the first part of the incident at the Kalaka polling station and has been found to be not reliable. It has been found earlier that the evidence of R.W. 22 and his witnesses that R.W. 22 went to Kalaka polling station by a car with some of his men only at about 9 or 9.30 a.m. on 19.5.1982 could not be accepted and that the respondent had received information at about 10.30 a.m. about some Congress (J) workers having been beaten by Congress (I) workers in Kalaka, which message had been flashed by the police wireless and received by P.W. 7 and he went there only thereafter. There is unimpeachable evidence on the side of the appellants to show that when the respondent went inside Kalaka polling station he was in a rage. In these circumstances, it is probable that while in such a mood after receipt of some report that his workers were beaten by Congress (I) workers he went there and asked his men whether they were not ashamed about 2 or 3 of their men of the same village having been beaten and that he thereafter indulged in the acts alleged in the election petition both outside and inside the polling station at Kalaka. P.W. 7 who reached Kalaka polling station soon thereafter received oral report about the detention of a motor cycle belonging to Congress (J) workers. In these circumstances, I accept the evidence of P.Ws. 12, 13, 16 and 18 referred to above and find that the respondent came to the Kalaka polling station at about 10.30 a.m. on 19.5.1982, armed with a rifle and accompanied by his companions some of whom were armed with deadly weapons and that he threatened the electors who were standing in the queue awaiting their turn for casting their votes on account of which they ran away and he had thus interfered with the exercise of the electoral right of those persons. There is some discrepancy in the evidence about the time of arrival of the respondent and his men. It is not a material discrepancy.

About the incident at Burthal Jat polling station there is the evidence of P.Ws. 7, 9 and 10 who are official witnesses and of Mahabir Singh (P.W. 26), Dharam Vir (P.W.

27), Thavar Singh S (P.W. 28), Amir Chand (P.W. 29), Surjit Singh (P.W. 30), Raghubir Singh (P.W. 31), Shamsheer Singh (P.W. 32), Kishori Lal (P.W. 33), Ram Narain (P.W. 34) and Mam Chand (P.W. 35) on the side of the appellants. There is evidence of Ravi Datt Sharma (R.W. 11), Parbhathi (R.W. 12), Ami Lal (R.W. 13), Sheo Chand (R.W. 14) and the respondent (R.W. 22) on the side of the respondent.

P.W. 26 of Burthal Jat village was the polling agent of the respondent himself and he had filed the form (Ex. P-16) dated 18.5.1982 for the same. He has stated in his evidence that he had gone to the polling station at 7 a.m. and had not seen any incident at that place. It is clear that P.W. 26 was not prepared to go the whole hog to support the case of the appellants as regards the incident at the Burthal Jat polling station but he has stated in his cross-examination that when he went to the polling station he saw Anil Kumar and Satbir Singh were canvassing votes for their candidate and that he also saw a jeep with sticks. The learned trial Judge has stated in his judgment that though the evidence establishes that Anil Kumar and Satbir Singh were canvassing votes for their candidate it is not known from the evidence as to who their candidate was. But it is clear from the evidence

referred to already showing the concern of the respondent for Anil Kumar and Satbir Singh who had been arrested by the police at the Burthal Jat polling station that the candidate for whom they were canvassing could not have been any other than the respondent. P.W. 26 has admitted in his cross-examination that Satbir Singh was known to him previously and that he (P.W. 26) was on duty inside the polling station.

P.W. 27 of Burthal Jat village has stated in his evidence that he had gone to Burthal Jat polling station at 8 a.m. for casting his vote in the election held in May, 1982. The respondent came there at about 8 a.m. accompanied by 50 or 60 persons and told his polling agents, Mahabir and Udhey Bhan that he was leaving some persons behind and he asked them to see that no one is permitted to vote for the Congress (I) candidate and that they should ensure to have maximum votes polled in his favour in that polling station. The respondent left behind 15 or 16 persons including Anil Kumar and Satbir Singh, one of them a Sikh armed with a sword and the others with pistol and sticks and the other persons who came with the respondent went away with him. In his cross-examination he has stated that the respondent came to Burthal Jat polling station in a car while his companions came by a motor-cycle, a jeep and a truck. No doubt he is unable to mention the numbers or colour of the vehicles or the colour of the turban of the respondent's Sikh companion and he has stated that he cannot identify Satbir Singh. He has denied the suggestion that he is a supporter of Rao Birendra Singh and his sister and that the respondent did not come to Burthal Jat polling station at all on that day.

P.W. 28 who belongs to Burthal Jat village has stated in his evidence that after he went to the polling station the respondent came there accompanied 50 or 60 persons at about 8 a.m. The respondent was armed with a small gun while his companions were armed with rifles, ballas and sticks. The respondent called his polling agents Mahabir and Udhey Bhan and told them that they should not permit even a single vote to be cast in favour of the Congress (I) candidate and he was leaving behind Anil Kumar and Satbir Singh alongwith 15 or 20 persons for their help. The other people left behind by the respondent were armed with lathis. He has admitted in his cross-examination that he was the polling agent of Sumitra Devi but he has denied the suggestion that the respondent did not go to the polling station at all on that day and that he has given false evidence.

P.W. 29 who belongs to Burthal Jat village has stated in his evidence that he went to the polling station at about 8 a.m. for casting his vote in the election with which we are concerned. The respondent accompanied by 50 or 60 persons came there at about 8 a.m. and sent for his polling agents Mahabir and Udhey Bhan and told them they should not permit anyone to vote in favour of the Congress (I) candidate. PWs. 27 and 28 and many other persons were present when the respondent said so. The respondent told Mahabir and Udhey Bhan that he was leaving behind Anil Kumar and Satbir Singh for their help alongwith 15 or 20 persons who were found by P.W. 29 to be armed with sticks. P.W.

29 was not permitted to cast his vote earlier and he therefore, came again and cast his vote at 3 p.m. He has stated in his cross-examination that he returned to his house after 8 a.m. Out of fear and went back to the polling station at 3 p.m. for casting his vote and stayed there till the afternoon. He has denied the suggestion that the respondent did not visit Burthal Jat polling station on that day.

P.W. 30 who belongs to Burthal Jat village has stated in his evidence that he started to go to the polling station at about 10.30 a.m. for casting his vote in the election with which we are concerned. When he emerged from his village to proceed to the polling station for casting his vote Anil Kumar and Satbir Singh met him and asked him as to whom he was going to cast his vote and they insisted that he should vote for the respondent. On his refusal to do so Anil Kumar and Satbir Singh threatened P.W. 30 when 2 or 3 persons armed with sticks were present with those two persons and he therefore returned to his house. He went to the polling station at about 3.30 p.m. for casting his vote and learnt that Anil Kumar and Satbir Singh had been arrested by the police. He has stated in his cross-examination that he does not know to which place Anil Kumar and Satbir Singh belong and that when he came to the polling station later at about 3 p.m. he was told that those two persons were Anil Kumar and Satbir Singh. He has denied the suggestion that he had been a supporter of Rao Birendra Singh in all the elections and that he has given false evidence.

P.W. 31 who belongs to Burthal Jat village has stated in his evidence that when he went to the polling station at 11 a.m. for casting his vote in the election with which we are concerned he was accosted by Anil Kumar and Satbir Singh who were present there alongwith 20 or 30 persons armed with sticks about 25 yards away from the boundary of the polling station and they asked him as to the person for whom he was going to cast his vote and they insisted that he should vote for the respondent and threatened him when he replied that he would vote for the candidate of his own choice. In view of the threat he went back to the village and came later for casting his vote a, about 3. p.m. and learnt that Anil Kumar and Satbir Singh had been taken into custody by the police. He has admitted in his cross-examination that he did not complain to anybody about the threat but he has denied the suggestion that he has given false evidence.

P.W. 32 is the Sarpanch of Burhtal Jat village. He was admittedly the polling agent of Sumitra Devi. He has stated in his evidence that he went to Burthal Jat polling station for the second time at 2.30 p.m. When he approached the main gate of the polling station he met Anil Kumar and Satbir Singh and they asked him to support the respondent and when he told them that it was open to him to vote for the candidate of his own choice there was an altercation and they started beating him and he was rescued by P.Ws. 33, 35 and others of his village. Meanwhile, an Assistant Sub- Inspector of police came there by jeep and they hurled abuses at him even in the presence of the Assistant Sub-Inspector of police and thereupon that police officer arrested Anil Kumar and Satbir Singh. He saw a jeep containing sticks parked there, and the people who were in the jeep ran away when the police arrived. He brought these facts to the notice of P.Ws. 7 and 10 when they came there and they took the jeep and the sticks into their custody. Anil Kumar was sitting on the motor-cycle while Satbir Singh was standing on the road-side when they confronted him as stated above and their motor-cycle was taken into custody by the police. In his cross-examination It has been elicited that he did not report in writing to P.Ws. 7 and 10 or get himself medically examined or file any complaint in any Court against Anil Kumar and Satbir Singh. He has denied the suggestion that he had strained relations with Satbir Singh because of his election to a cooperative society and that he has given false evidence because he was the polling agent of Sumitra Devi.

P.W. 33 who is the chowkidar of Burthal Jat village has stated in his evidence that when he went to the polling station at about 2.30 or 3 p.m., during the last election to the Haryana Legislative

Assembly he saw Anil Kumar and Satbir Singh abusing and beating P.W. 32. P.W. 33 and Lambardar Mam Chand (P.W. 35) and another Lambardar Ram Singh and others of Burthal Jat village separated P.W. 32 from Anil Kumar and Satbir Singh. Meanwhile, an Assistant Sub-Inspector of police came there, and about 10 or 15 other persons who were with Anil Kumar and Satbir Singh ran away on seeing the police after leaving behind a jeep and a motorcycle which were taken into custody by the police. P.W. 32 informed P.Ws. 7 and 10 about what happened when they came there some time later. In his cross-examination he has denied that P.W. 32 was not present at all at the Burthal Jat polling station but was in his village at the time of the poll. He has denied that he was appointed as Chowkidar by P.W. 32 and has stated that he is Chowkidar of the village since 1982 and that P.W. 32 became Sarpanch of Burthal Jat village only recently. He has denied the suggestion that no incident at all took place in the village and that he had given false evidence under the influence of P.W. 32.

P.W.34, the Lambardar of Kakoria village situate close to Burthal Jat village, has stated in his evidence that he went to Burthal Jat polling station at about 2.30 or 3 p.m. for casting his vote in the last election to The Haryana Legislative Assembly and saw Anil Kumar and Satbir Singh slapping and fisting P.W. 32. He and P.W. 35 and others intervened and separated them. Some time thereafter a Sub-Inspector of police came and saw Anil Kumar and Satbir Singh exchanging abuses with P.W. 32 and he arrested those two persons. P.Ws. 7 and 10 who came there later talked with Anil Kumar and Satbir Singh. The police took a motor-cycle and a jeep which was with Anil Kumar and Satbir Singh into their custody. In his cross-examination he has stated that he had not meet Anil Kumar and Satbir Singh previously and that he does not know the numbers of the jeep and the motor cycle. He has denied the suggestion that he had supported Rao Birendra Singh in the election to Parliament in 1980 and did not go to Burthal Jat village at all during the election in question and has deposed falsely under the influence of the appellants.

PW 35 son of Umrao Singh and Lambardar of Burthal Jat village was the polling agent of the Bhartiya Janata Party candidate in the last election of the Haryana Legislative Assembly. He has stated that after he reached Burthal Jat polling station at 7 a.m. the respondent came there at about 8 a.m. accompanied by 50 or 60 persons and called his polling agents and told them that they should see to it that the Congress (I) candidate does not get votes and he added that he was leaving Anil Kumar and Satbir Singh and 15 other persons for their help. At about 2.30 p.m. PW 35 saw Anil Kumar and Satbir Singh beating PW 32 of his village and thereupon he and PWs. 33 and 34 separated them. Meanwhile, an Assistant sub-Inspector of police took Anil Kumar and Satbir Singh into custody, and 10 or 15 persons who were left behind by the respondent fled on seeing the police leaving behind a motorcycle and a jeep containing sticks and other weapons. PWs. 7 and 10 came there some time later and the motor-cycle and the jeep were taken into custody by the police. In his cross-examination he has denied that Ex.P-9 to which reference would be made a little later contains his signature and he has stated that there are two other persons of his name and one of them is the son of Umrao Singh. He has further stated in his cross-examination that the respondent told Anil Kumar and Satbir Singh that they should see to it that no other candidate except himself gets votes in that polling station. He has denied that he had made a false statement before PWs 7 and 10 and that he has given false evidence being a member of the opposite faction.

The Deputy Commissioner and District Election Officer (PW.7) has stated in his evidence that on the day of poll he proceeded from Kalaka polling station to Burthal Jat polling station pursuant to the receipt of a complaint that a Congress(J) worker was attacked by the villagers of Burthal Jat. The polling officer of Burthal Jat polling station told him when he visited that place that nothing had happened inside the polling station but some of the officers in the polling station told him that there were some incidents outside the polling station though they were not sure about the identity of the persons responsible for the same. Some villages told PW 7 that Congress (J) workers had come in a jeep and tried to create trouble and that one of them ran away while the police had detained two of those persons. PW 7 interrogated those two persons and they then told him that they had nothing to do with the jeep whose number he has recorded in the tape Ex.PW 7/1. PW 7 found some sticks in the jeep and he asked the police to take the jeep and the sticks into their custody. Anil Kumar and Satbir Singh who had been attacked by the villagers were found detained by the police. The Sarpanch of Burthal Jat village (PW 32) made a complaint to him outside the Burthal Jat polling station. PW 7 recorded the conversation which he had with the Presiding Officer at the Burthal Jat polling station but some portion thereof was erased by his own voice by inadvertence. The respondent met PW 7 at about 7 p.m. in the office of PW 10 and informed PW 7 about some incidents which had taken place during the day and complained to him about them. The conversation which he had with the respondent at that time was recorded simultaneously in the tape (Ex. PW 7/1) and he later reported to the Secretary to the Government about the complaint which the respondent made to him against the Superintendent of Police. His stenographer prepared the transcript Ex.P-1 in his office, most of it under his supervision and he was temporarily absent to attend to some other work, and he compared it with the original tape and found it to be correct. The tape, tape-recorder and transcript remained with him throughout and were not deposited by him in the record room and there was no possibility of tampering. He had not created evidence in the form of the tape at the instance of Rao Birendra Singh to harm the respondent. Ex.P-2 is the copy of the report which he submitted about the incidents which took place on 19.5.1982 as had come to his notice. In his report Ex.P-2 sent to the Secretary to the Government, PW 7 has stated inter alia that when he went to Burthal Jat polling station from Kalaka polling station he was told that a few workers of the Congress (J) candidate had been detained by the villagers and he had conversation with the Presiding Officer and the villagers and found a jeep with about 15 or 20 lathis in it and directed the police to take the jeep with the lathis as also the two workers of the Congress (J) candidate who were standing near the jeep into custody.

The Returning Officer and Sub-Divisional Officer, Rewari (PW 10) who went to Burthal Jat polling station along with PW 7 has stated in his evidence that he saw Anil Kumar and Satbir Singh surrounded by the people of that village and a jeep containing some sticks parked there and that Anil Kumar and Satbir Singh and the jeep were taken into custody by the police under the orders of PW 7. He has further stated that Ex.P-9 was handed over to him by one Mam Chand of Burthal Jat village on that day. As stated earlier PW 35 who is Mam Chand son of Umrao Singh of Burthal Jat village has disowned Ex.P-9. In his cross-examination PW 10 has denied that he had discriminated between the candidates while disposing of the complaints about Kalaka and Burthal Jat polling stations. Ex.P-9 addressed by Mam Chand to PW 10 is to the effect that the respondent pointed out his gun at the Presiding Officer and other persons in Burthal Jat polling station after he came there at about 1.30 p.m. along with 65 or 70 persons and he ordered for the ballot papers being marked

with the symbol of scales and put into ballot boxes and to finish off anybody who interferes and that the whole village was terrorised and they were thereby prevented from exercising their electoral right. There is no specific reference in this report to Anil Kumar and Satbir Singh or to their arrest by the police at the instance of PW 7. Ex.P- 9 which was found in the file summoned from the office of the Sub-Divisional Officer, Rewari had been marked only through PW 10 and has been disowned by PW 35 who is no doubt Mam Chand son of Umrao Singh. For want of proof Ex.P-9 could not be taken into consideration, but the learned Trial Judge has relied very heavily upon that document for disbelieving the appellants' case regarding the incident at Burthal Jat polling station. He was not justified in doing so.

The Assistant Sub-Inspector of police (PW 9) who had been posted at Sadar Rewari police station has stated in his evidence that at the instance of Assistant Sub-Inspector Jagan Nath who returned to the police station at 3.30 p.m. on 19.5.1982 he recorded a Daily Diary Report of which Ex.P- 8 is a copy and that Ex.P-8 is a correct copy of the original report. It is mentioned in Ex.P-8 that Anil Kumar and Satbir Singh of Kutubpur and Dulana respectively were abusing and beating Sarpanch Shamsher Singh (PW 32) whereupon an Assistant Sub-Inspector of police along with other intervened and separated them, that Anil Kumar and Satbir Singh were creating a situation of breach of peace and were therefore taken into police custody and that the jeep bearing registration number DED-3203 was also taken into police custody. PW 9 has not been cross-examined regarding Ex.P-8. Ex.P-28 is a copy of the judgment in the case registered in the concerned FIR No.104 of 1982 dated 19.5.1982 under sections 107 and 151 of Code of Criminal Procedure against Anil Kumar and Satbir Singh. It is seen from that judgment that the Magistrate after considering the circumstances of the case and hearing Anil Kumar and Satbir Singh had come to the conclusion that the fight took place between those two accused and the Sarpanch Shamsher Singh in connection with polling of votes and that the incident pursuant to which the fight took place was over and the accused persons belonged to different villages and there is no likelihood of breach of the peace and therefore there is no necessity to take any further action against them and he accordingly discharged them. Ex.P-27 is a certified copy of the calender dated 19.5.1982 relation to that criminal case registered by the police. Exs.P-27 and P-28 were tendered by the learned counsel who appeared for the respondent in the trial court. That calender contains allegations to the effect that the Assistant Sub-Inspector of police with the help of Kalyan Singh separated PW 32 from Anil Kumar and Satbir Singh and stopped the fighting, that the complaint of PW 32 was that when he was going to cast his vote two persons riding on a motor-cycle came there and asked him to vote in favour of the respondent, that when he told them that he would cast his vote for the candidate of his own choice they assaulted him with danda and gave him slaps, and that during the investigation the Assistant Sub-Inspector of police found that those two persons were present there for procuring votes for the respondent. It was not disputed by Mr. Rao in this Court that though the complaint on the basis of which FIR No. 104 of 1982 had been registered may not be admissible in evidence in the absence of any foundation for letting in secondary evidence FIR No. 104 of 1982 registered by PW 9 would be admissible in evidence. It shows that on the complaint to the effect that Anil Kumar and Satbir Singh were abusing and beating PW 32 and they were separated from PW 32 by and Assistant Sub-Inspector of police and others a case under sections 107 and 151 of the Code of Criminal Procedure was registered against them and a jeep bearing number DED-3203 was also taken into custody by the police on 19.5.1982, and it is admissible in evidence. The FIR corroborates the

evidence of PW 32 and of some of the other witnesses referred to above who have deposed about this incident.

On the other hand, RW 11 a lecturer in a Higher Secondary School at Rewari who was a polling officer at Burthal Jat polling station during the election with which we are concerned has stated in his evidence that no untoward incident of any type took place and that the respondent did not visit that polling station on that day. In view of the documentary evidence and the other oral evidence referred to above which show that an incident did take place outside Burthal Jat polling station and that a jeep containing some lathis as also Anil Kumar and Satbir Singh were taken into custody and those two persons were prosecuted in a case registered against them under section 107 and 151 of the Code of Criminal Procedure it is not possible to accept the evidence of RW 11 that no incident took place and that the respondent did not go to Burthal Jat polling station at all on 19.5.1982. It must also be noted that RW 11 has admitted in his cross-examination that he could not have known that happened outside the polling station because he was inside. RW 12 who cast his vote in Burthal Jat polling station at 8 a.m. claims to have remained at the polling station till about 1.30 or 2 p.m. and he has stated that neither the respondent nor anyone on his behalf came to the polling station and there was no quarrel inside or near the polling station so long as he remained there. But in his examination-in-chief itself he has admitted that PW 32 was standing about 80 kadams away from the polling station with some people and he heard some altercation between them and that while the altercation was going on some police personnel arrived at the spot and removed two persons who were not known to him. He has further stated in his cross-examination that there was a jeep at some distance away from where the Sarpanch (PW 32) and the other persons had altercation. He has no doubt denied the suggestion that 10 or 15 other persons were with those two unknown persons and they were armed with sticks, that the respondent came there and left those 15 or 20 persons along with those two unknown persons and that those two unknown persons threatened many people as a result of which they could not cast their votes. RW 13 who went to Burthal Jat polling station at about 10.45 a.m. for casting his vote and cast his vote at that time claims to have stayed there along with some villagers until about 4 p.m. Though he has stated in a portion of his examination-in-chief that no incident took place with in or outside the polling station so long as he remained where he had admitted in his examination-in-chief itself that he saw PW 32 having a dispute with two unknown persons about 120 kadams away as also a jeep parked 80 kadams away from the polling station and that he heard people saying that the Superintendent of Police removed these two unknown persons. No doubt, he has denied that Anil Kumar and Satbir Singh were threatening the electors in the village and that he has given false evidence on account of pressure from the respondent. RW 14 who cast his vote at Burthal Jat polling station at 7.30 a.m. claims to have thereafter set under a tree by the road-side about half a furlong away from the polling station. He has stated that he did not see the respondent passing by that road in the direction of Burthal Jat village. His evidence is not helpful to either of the parties as he has merely stated that he had not seen the respondent passing by that road in the direction of Burthal Jat village. It is not possible that he would have closely looked into each and every vehicle which passed by that road to notice the respondent who appears to have been moving on that day by his car. RW 22 has stated that he did not go to Burthal Jat village or send anyone of his workers to that village on 19.5.1982 but he remained in his house throughout after he returned from Kalaka on that day. It is not possible to accept his evidence that he had not sent any of his workers to Burthal Jat village on the date of poll as it is unlikely that the

candidate contesting in the election would not have sent any of his workers to that polling station. It is seen from the aforesaid tape-recorded conversation between PW 7 and RW 22 in the office of PW 10 at about 7 or 7.30 p.m. On 19.5.1982 that the respondent expressed his anxiety to get his relatives Anil Kumar and Satbir Singh who had been arrested on that day by the police released and that his evidence that Anil Kumar and Satbir Singh were not his relatives at all is totally unreliable for reasons mentioned above in the discussion of the evidence relating to the incident at Kalaka polling station. The evidence of R.W. 22 as a whole is unreliable for the reasons already mentioned above.

Mr. Sibbal did not reply upon any portion of the tape relating to the conversation in Burthal Jat polling station but he has relied for the purpose of the appellants' case in relation to Burthal Jat polling station upon that portion of the tape which relates to the conversation between P.W. 7 and K.W. 22 in the office of P.W. 10 at about 7 or 7.30 p.m. On 19.5.1982. The fact that a portion of the tape-recorded conversation in Burthal Jat polling station got erased by P.W.7's own voice due to inadvertence is no reason for rejecting the remaining portion of the tape. It was demonstrated in this Court that the tape-recorded has only one knob for operating the recorder for three purposes, namely, recording, playing and rewinding. If by mistake the knob is pushed for rewinding and thereafter for recording at a particular point it is probable that what had been recorded earlier gets erased by the time the mistake in operating the knob is noticed. Therefore, there is no reason to reject the evidence of P.W.7 that a portion of the tape-recorded conversation in Burthal Jat polling station got erased by his own voice due to inadvertence.

The oral and documentary evidence regarding the incident at Burthal Jat polling station let in by the appellants receives corroboration to a certain extent from the evidence of some of the respondent's own witnesses. As stated earlier, R.W. 12 has admitted that P.W. 32 who was standing about 80 kadams away from the polling station was having an altercation with some people and that even when the altercation was going on some police personnel arrived there and they took into custody two persons and there was also a jeep at some distance away from the place where P.W. 32 and others were having an altercation. Even R.W. 13 has stated that P.W. 32 was having a dispute with two unknown persons about 120 kadams away from the polling station and soon thereafter he heard people saying that the Superintendent of Police took away those two unknown persons. The names of Anil Kumar and Satbir Singh had been specifically and clearly mentioned in the election petition in regard to the incident at the Burthal Jat polling station and they have been alleged to be the relatives of the respondent. The respondent has not specifically denied the said allegation in his written statement but during the trial he attempted to make it appear that they were not related to him. However, it has been found above that they are related to him. Still the respondent who had shown his serious concern to get them released from police custody on 19.5.1982 has not called those two persons as his witnesses to rebut the case of the appellants. Therefore, as observed in *Chenna Reddy v. B.C. Rao* (supra) in these circumstances an adverse inference has to be drawn against the respondent who has not called those two persons as his witnesses though their evidence should be available to him in support of his contention regarding the incident at Burthal Jat polling station. Therefore, I accept the oral and documentary evidence let in by the appellants as referred to above as being reliable and reject the evidence of the respondent and his witnesses in regard to the incident at Burthal Jat polling station and find that at the instance of the respondent his relatives Anil Kumar and Satbir Singh who were left behind by him along with 15 or 20 persons with a jeep

containing sticks interfered with the exercise of the electoral right of P.W. 32 and others as alleged in the election petition as a result of which they had to go away from the queue in which they were standing awaiting their turn for casting their votes though they had subsequently come to the polling station and cast their votes.

Now I shall consider the respondent's contention raised in the written statement that the allegation that the respondent and some of his armed companions entered the polling station and brandished their guns at the Presiding Officer and ordered the other polling staff and polling agents of various candidates to stand still does not constitute any corrupt practice and that the allegation that the polling agents Amar Singh and Suraj Bhan were threatened and turned out of the polling station does not constitute corrupt practice as they are not alleged to be electors of Kalaka village. Mr. Rao submitted that these acts, even if proved, would amount to only electoral offences under section 136 (b) (f) and (g) read with section 8 and would not constitute corrupt practice under section 123(2) read with section 79(d) of the Act. In support of his contention Mr. Rao invited this Court's attention to the decision in *Nagendra Mahto v. The State* (supra) where it has been held, as stated earlier, that the L) criminal revision petitioner before the High Court who had insisted upon going into the room where the ballot papers were kept though the Presiding Officer had warned him to go out of the room and also attempted to put some ballot papers into the box of one Nitai Singh Sardar was rightly convicted under section 131 (1) (b) and section 136 (L) (f) of the Act. On the other hand, Mr. Sibbal submitted that casting bogus votes forcibly would amount to corrupt practice as it would indirectly interfere with the electoral right of the voters whose ballot papers have been so polled, whether they had intended to come to the polling station and exercise their right to vote or had intended otherwise. In this connection, he invited this Court's attention to the decision in *Ram Dial v. Sant Lal and Others* (supra) where, as extracted above, this Court has held that while the law in England laid emphasis on the usual aspect of the exercise of undue influence, under the Indian law what is material was not the actual effect produced but the doing of such acts as were calculated to interfere with the free exercise of any electoral right. According to section 79(d) of the Act 'electoral right' means the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate, or to vote or refrain from voting at an election. Section 123 (2) of the Act lays down that "undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right ..... shall be deemed to be corrupt practice for the purpose of the Act.

What constitute electoral offences are detailed in sections 125 to 136 which fall under Chapter III of the Act. S.125 relates to promoting enmity between classes in connection with election. S.126 relates to prohibition of public meetings on the day preceding the election day and on the election day. S.127 relates to disturbances at election meetings. S.127A relates to restrictions on the printing of pamphlets, posters etc. S.128 relates to maintenance of secrecy of voting. S.129 relates to prohibition of Officers etc., at elections acting for candidates or to influence voting. S.130 relates to prohibition of conversing in or near polling stations. S.131 provides for penalty for disorderly conduct in or near polling stations. S.132 provides for penalty for misconduct at the polling station. S.133 provides for penalty for illegal hiring or procuring of conveyances at elections. S.134 relates to breaches of official duty in connection with elections. S.134A prohibits Government servants from acting as election

agent, polling agent or counting agent. S.135 relates to removal of ballot papers from polling station. S.135 relates to other offence and penalties therefore, namely, fraudulent defacement or fraudulent destruction of any nomination paper; fraudulent defacement, destruction or removal of any list, notice or other document affixed by or under the authority of the returning officer; fraudulent defacements fraudulent destruction of any ballot paper or the official mark of any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; supply of any ballot paper to any person or being in possession of any ballot paper without due authority, fraudulently putting into any ballot box anything other than the ballot paper which the person putting the same is authorised to put in; destroying, opening or otherwise interfering with any ballot paper; and fraudulently or without due authority attempting to do any of the foregoing acts or wilfully aiding and abetting the doing of any such acts. It would appear that forcible marking of ballot papers removed from polling officers in the polling station, marking the same in favour of any candidate and putting the them in the ballot box is not one of the offences mentioned in them. Therefore, as rightly submitted by Mr. Sibbal it cannot be contended that in this country forcible polling of bogus votes, as mentioned above, is neither a corrupt practice nor an electoral offence. I agree with Mr. Sibbal and hold that forcible polling of bogus votes in the circumstances and manner found in this case would constitute indirect interference with the electoral right of the concerned electors whether they be persons who had decided to cast their votes in that election or those who had decided not to do so. It is significant, in this connection, to note that after having been informed about the forcible polling of bogus votes by the respondent's men at the Kalaka polling station P.W. 7 had instructed the polling staff to issue tendered ballot papers to any elector whose ballot paper had already been forcibly polled who might come for the purpose of exercising his right.

I have referred to and discussed the evidence somewhat in detail in view of the fact that I have disagreed not only with the learned Trial Judge but also with respect with my learned brother Fazal Ali, J. with whom my learned brother Mukharji, J. has agree. The respondent in this case had managed to keep away from the Court material evidence by way of the original report of the Presiding Officer, a copy of which is contained in Ex.P-6, by filing C.M.P.31 (E) of 1983 in the trial Court. He had cited the Observer (R.W. 20) as his witness to depose about his case regarding the allegations made by the appellants in paras 9 to 12 of the election petition regarding the corrupt practices. But he did not examine R.W. 20 for that purpose and had called him only for the purpose of production of some record without any oath being administered to him though in his tape-recorded conversation with P.W. 7 in the office of P.W. 10 on 19.5.1982 referred to above, he had admittedly asked P.W. 7 to get ever thing noted by P.W. 20 who was present there at that time. He had thus denied to the appellants the opportunity to cross examine R.W. 20. The respondent had come forward with a new case of alleged booth-capturing and forcible polling of bogus votes by Ajit Singh in the Kalaka polling station after the appellants had completed the examination of their witnesses to whom no such suggestion was made in the cross-examination. He had repeatedly denied in his evidence that Anil Kumar and Satbir Singh who had been arrested by the police at the Burthal Jat polling station on 19.5.1982 were his relatives though in his tape- recorded conversation referred to above he had informed P.W. 7 that they were his close relatives and he had shown his anxiety to get them released from police custody forthwith. He had neither cited them nor called them as his witnesses though they would have been material witnesses in regard to the incident at the Burthal Jat polling station. The respondent's evidence as R.W. 22 has been found to be wholly

unreliable for reasons already mentioned. In these circumstances what my learned brother Fazal Ali, J. has mentioned in the first para of his judgment barring the first sentence in that para would apply to the respondent alone. An election petition seeking a declaration that the election of the returned candidate is void under section 100 (1)(b) on account of corrupt practice as per section 132(2) of the Act, as in the present case, is a civil proceeding though the standard or degree of proof required is as in a criminal case. In any case, two views are not possible in the present case where the appellants have proved beyond all reasonable doubt that the respondent has committed the corrupt practices alleged in at the Kalaka and Burthal Jat polling stations. No lenient view can be taken in this case merely because the election petition is directed against the returned candidate for, only in the case of a returned candidate Parliament has provided, in the interest of purity in elections, for serious consequences of not only (1) declaring the election void under section 100 (1) (b) but also (2) disqualification under section 8A of the Act by the President for a period not exceeding six years when a finding of corrupt practice is recorded against a returned candidate. For all the reasons mentioned above I hold that the appellants have succeeded in proving the two instances of corrupt practice pressed in this Court and are entitled to succeed in this appeal. The appeal is accordingly allowed with costs of Rs. 5,000 payable by the respondent-turned candidate.

SABYASACHI MUKHARJI, J. Having had the advantage of reading the judgment of my learned brother Fazal Ali, J., I agree with the reasoning and the conclusions arrived at by my learned brother. I would, however, like to express my views on following four points involved in the appeal: firstly, this being appeal under section 116A of the Representation of the People Act, 1951 which is in the nature of first appeal to this Court, how should the appraisal of evidence by the trial Court be reviewed by this Court in this appeal, secondly, subject to what safeguards the tape-recorded evidence should be accepted, thirdly, this being election petition involving corrupt practice, the nature of evidence required to be proved by a contesting party in order to succeed, and fourthly, whether bogus votes or booth capturing itself is a corrupt practice because it deprives other genuine voters in general of the right to vote or the right to abstain from voting.

In this case, evidence of tape-recording made by the Deputy Commissioner, Shri Bhaskaran was produced before the High Court. In this tape-recorded evidence the Deputy Commissioner has recorded the incidents on the date of polling at several booths but reliance was placed only on the evidence relating to two booths namely Kalaka and Burthal Jat. For the reasons recorded in his judgment, the learned trial judge has not accepted the tape-recorded evidence. The tape-record purports to record statements made by some persons including polling agent, polling officer Col. Ram Singh and Deputy commissioner himself. About the acceptance and reliability of evidence on tape-recording, one should proceed very cautiously. In this connection on the analogy of mutilated document if the tape-recording is not coherent or distinct or clear, this should not be relied upon. See in this connection the observations in American Jurisprudence Vol. 30 page 939.

In the case of R. v. Maqsd Ali, [1965] 2 All E.R. page 464 in respect of criminal trial the question was considered by the Court of Appeal in England. A tape-recording, it was held, was admissible in evidence provided the accuracy of the recording can be proved and the voices recorded can be properly identified and that the evidence is relevant and otherwise admissible. The Court, however, observed that such evidence should always be regarded with some caution and assessed in the light

of all the circumstances of each case. There cannot, however, be any question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged. It was further observed that provided the jury was guided by what they hear themselves from the tape recording and on that they base their ultimate decision, there is no objection to a copy of the transcript of a tape recording, properly proved, being put before them. It is not necessary to set out the particular facts of that case. It may be noted, however, that Marshall, J. had observed at pages 469-70 of the report as follows:

"It is next said that the recording was a bad one, overlaid in places by street and other noises. This obviously was so and as a result, much of the conversation was inaudible or undecipherable. In so far as that was so, much of the conversation was never transcribed, but there still remained much that was transcribed, and the learned judge after full argument ruled that what was deciphered should be left for the jury to assess. We think that he was right. Lastly, it was said that the difficulties of language were such as to make any transcription unreliable and misleading. This argument the learned judge treated with great care and circumspection. The recorded conversation was in Punjabi dialect confined to a particular area of Pakistan. He was told that there were many such dialects in which similar words differed in or had more than one meaning, that the meaning of sentences often depended on the order of the words, that pronouns were matters of inference and R not represented by actual words. Often only parts of sentences were decipherable owing to the other extraneous noises. He decided, before admitting the evidence to have a trial within a trial in which translators were called by both aids which, I think I am right in saying, lasted 2-1/2 days. All matters were canvassed in very great detail. He discovered that there were certain passages common to translations and in the end, he decided that it was a question which should be left to the jury but he did not think this evidence was so unsatisfactory that I should withdraw it from the jury."

It has to be borne in mind that in England and in America, the mechanism of tape recording is well-advanced. In this country, it is not so as yet. Furthermore the infirmities, some of which have been noted by Marshall, J. of tape recording, are more evident in the instant case before us.

In *R. v. Robson*. [1972] 2 All E.R. page 699 the accused was charged inter alia, with corruption. The prosecution ought to put in evidence certain tape recordings. The defence contended that these were not admissible because (i) It had not been shown that these were the originals or in the absence of the originals true copies of them, and (ii) they were misleading and should not be relied on because in many places these were unintelligible and of poor quality and their potential prejudicial effect would therefore outweigh the evidentiary value claimed for these. It was held by the Court as follows:-

"The recordings were admissible for the following reasons-

(1) the Court was required to do no more than satisfy itself that a prima facie case of originality had been made out by evidence which defined and described the

provenance and history of the recordings up to the moment of production in Court and had not been disturbed on cross-examination; in the circumstances that requirement had been fulfilled (see p 701 f and p 702 a, post).

(ii) the Court was satisfied, on the balance of probabilities, that the recordings were original and authentic and their quality was adequate to enable the Jury to form a fair assessment of the conversations recorded in them and should not be excluded on that account (see p 703 f and 8, post)."

In the instant case, the tape recordings, as we have heard, were misleading and could not be relied on because in most places they were unintelligible and of poor quality and of no use therefore their potential prejudicial effect outweighs the evidentiary value of these recordings.

This Court had also considered this question in *Shri N.Sri Rama Reddy Etc v. Shri V.V. Giri*. [1971] 1 SCR page

399. There in case of an election trial it was held by this Court that the previous statement made by a person and recorded on tape, could be used not only to corroborate the evidence given by the witness in Court but also to contradict his evidence given before the court, as well as to test the veracity of the witness and also to impeach his impartiality. Apart from being used for corroboration, the evidence was admissible in respect of the other three matters under sections 146 (1), 153, Exception (2) and section 155 (3) of the Evidence Act. This Court observed after referring to some cases that two propositions are clear that (1) tape recorded conversation is admissible in evidence (2) if it contains the previous statement made by a witness, it may be used to contradict his evidence given before the Court. But the Court cautioned itself at page 411 that though tape recording may be admissible what weight it has to be put to such evidence depended upon the facts and circumstances and other relevant factors.

In the case of *R.M. Malkani v. State of Maharashtra* [1973] 2 S.C.R. page 417. This Court observed that tape recorded conversation was admissible provided firstly that the conversation was relevant to the matters in issue secondly, there was identification of the voice and thirdly, the accuracy to tape recorded conversation has to be proved by eliminating the possibility of erasing the tape.

In the facts of the present case, however, the dangers noted A by this Court were present. So therefore though in an appropriate case it may be possible to rely upon tape-recorded conversation, in the facts of this case and for the infirmities in the tape-recorded evidence as pointed out before, this cannot be relied in the instant case.

On the aspect of the nature of evidence, the question here is not who is a saint or who is a sinner. It has to be borne in mind that this is a quasi-criminal proceeding. It has been so held in numerous decisions. "Quasi means 'as if', 'similar to'. The question of nature of evidence was rather exhaustively examined by a decision of this Court in *M. Chenna Reddy v. V. Ramachandra Rao and Anr.*, [1972] E.L.R. Vol. 40 page 390. mere after discussing the evidence, G.K. Mitter, J. speaking for this Court reiterated the nature of evidence at pages 414-415 thus:

"This court has held in a number of cases that the trial of an election petition on the charge of the commission of a corrupt practice partakes of the nature of a criminal trial in that the finding must be based not on the balance of probabilities but on direct and cogent evidence to support it. In this connection, the inherent difference between the trial of an election petition and a criminal trial may also be noted. At a criminal trial the accused need not lead any evidence and ordinarily he does not do so unless his case is to be established by positive evidence on his side, namely, his insanity or his acting in self-defence to protect himself or a plea of alibi to show that he could not have committed the crime with which he was charged. In the trial of an election petition on the charge of commission of corrupt practice is somewhat different. More often than not proof of such corrupt practices depends on the oral testimony of witnesses- The candidate charged with such corrupt practice invariably leads evidence to prove his denial; 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. We cannot also lose sight of the fact that quite apart from the nature of the charge the trial itself goes on as if the issues in a civil suit were being investigated into. The petitioner has to give particulars of the corrupt practice with details in default whereof the allegations may be ignored; the petitioner has to ask for certain declarations and the procedure before the High Court is to be in accordance with that applicable under the Code of Civil Procedure to the trial of suits with the aid of the provisions of the Indian evidence Act. Inferences can therefore be drawn against a party who does not call evidence which should be available in support of his version.

In the case of Ram Sharan Yadav v. Thakur Muneshwar Nath Singh and Others [1984] S.C.C. page 649 this Court observed that the charge of a corrupt practice is in the nature of a criminal charge which if proved, entails a very heavy penalty in the form of disqualification. Therefore, a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate. It is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. However, while insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. See also in this connection the observations in the case of Sardar Harcharan Singh v. Sardar Sajjan Singh & Ors. Civil Appeal No. 3419 (NCE) of 1981-Judgment delivered on 29th November, 1984.

Judged by the aforesaid standard, for the infirmities mentioned in the judgment of my learned brother, it cannot be said that the appellants have proved their case to the extent required to succeed.

While in a first appeal, the entire evidence can be reviewed by the appellate Court, and this being the first appeal under Section 116A of the Representation of the People Act, one must, however, always bear in mind that where the question is whether the oral testimony should be believed or not, the

views of the trial judge should not be lightly brushed aside where the trial judge has to advantage of judging the manner and demeanour of the witness which advantage the appellate Court does not enjoy, This is a limitation on all appellate Courts whether be it the first appeal or second appeal. In believing the oral testimony of a witness, the view of the judge who has the advantage of watching the demeanour and the conduct of the witness cannot be lost sight of. See the observations of this Court in *Moti Lal v. Chandra Pratap Tiwari & Ora*. AIR 1975 SC page 1178 see also the observations of this Court in *Raghuvir Singh v. Raghubir Singh Kushwaha*. AIR 1970 S.C. page 442. In view of the nature of the evidence on record, we find no reason to disagree with the appraisalment of the evidence by the learned trial judge.

Last point indicated above is interesting as was sought to be raised by Mr. Sibbal, because preventing a person from casting his vote or causing a bogus vote purporting to be a vote of some one other than the genuine voter would be a serious interference with the electoral process, as grave as preventing a person from voting. Right to abstain from voting is recognised in our system of election. But in view of the evidence in this case, the point need not be pursued further.

For the reasons mentioned before, I agree that the appeal be dismissed.

ORDER In accordance with the decision of the majority, the appeal is dismissed without any order as to costs. P.B.R.