A PRADIP BURAGOHAIN

v.

PRANATI PHUKAN

(Civil Appeal No. 5561 of 2008)

B JULY 7, 2010

[D.K. JAIN AND T.S. THAKUR, JJ.]

Representation of the People Act, 1951:

C *ss. 80, 100(1)(b) and 123(1) – State Assembly elections – Election petition, challenging election of returned candidate on grounds of corrupt practices of bribery – Dismissed by High Court – HELD: Standard of proof required for establishing a charge of corrupt practices is the same as is* D *applicable to a criminal charge – In an election dispute it is unsafe to accept oral evidence at its face value unless it is backed by unimpeachable and incontrovertible documentary evidence – As regards election petitioner's explanation for non-production of documentary evidence that election petition* E *was filed hurriedly to save the limitation, presumption would be drawn against him as per s.114, Illustration (g) of Evidence Act – There is no sufficient material to upset the judgment of High Court – Evidence Act, 1872 – s.114, Illustration (g).*

Maxim: Omnia praesumuntur contra spoliatorem – F *Applicability of.*

The election of the respondent to the Assam Legislative Assembly held in March 2006 was challenged in an election petition before the High Court, by the G **appellant, who lost to the respondent by a margin of nearly 20,000 votes. The grounds of challenge alleged were seven acts of corrupt practices out of which six were alleged to have been committed by the respondent at different places where the voters residing in the localities**

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within the Constituency had assembled and the respondent requested the gathering to cast their votes in her favour and gave Rs.500/- each to the voters present at the respective places. The seventh act of corrupt practice stated to have been committed by the respondent was that her party workers, with the help of the money given by her, organized a feast on the date of the poll in the premises near a polling station within the Constituency; that she visited the said premises with her supporters, and inaugurated the feast. It was also alleged that the respondent invited the voters to the feast and requested them to vote in her favour. The allegations were refuted by the respondent in her written statement. The High Court dismissed the election petition. Aggrieved, the election petitioner filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1 From a conspectus of the pronouncements of this Court, three distinct aspects emerge that need to be kept in view while dealing with an election dispute involving commission of corrupt practices. Firstly, a charge of corrupt practice is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of corrupt practice is the same as is applicable to a criminal charge. This implies that a charge of corrupt practice is taken as proved only if there is clear cut evidence which is entirely credible by the standards of appreciation applicable to such cases. [para 9] [898-A-C]

Sarju Pershad Ramdeo Sahu v. Raja Jwaleshwari Pratap Narain Singh and Ors. 1950 SCR 781 =AIR 1951 SC 120; *Rahim Khan v. Khurshid Ahmed and Ors.* 1975 (1) SCR 643 = (1974) 2 SCC 660; *D. Vankata Reddy v. R. Sultan and Ors.* 1976 (3) SCR 445 = (1976) 2 SCC 455 and *Ramji Prasad Singh v. Ram Bilas Jha and Ors.* 1977 (1) SCR 741 =

A **(1977) 1 SCC 260, relied on.**

1.2. Secondly, in an election dispute it is unsafe to accept oral evidence at its face value unless the same is backed by unimpeachable and incontrovertible documentary evidence. [para 10] [898-E]

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Rahim Khan v. Khurshid Ahmed and Ors. **1975 (1) SCR 643 = (1974) 2 SCC 660;** *M. Narayana Rao v. G. Venkata Reddy & Ors.* **1977 (1) SCR 490 = (1977) 1 SCC 771;** *Dadasaheb Dattatraya Pawar & Ors. v. Pandurang Raoji* C *Jagtap & Ors.* **1978 (2) SCR 524 = (1978) 1 SCC 504; and** *Laxmi Narayan Nayak v. Ramratan Chaturvedi & Ors.* **1989 (2) Suppl. SCR 581 = (1990) 2 SCC 173; and** *Thakur Sen Negi v. Dev Raj Negi and Anr.* **1993 Supp (3) SCC 645 – relied on.**

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1.3. The third aspect is that while as a court of first appeal there are no limitations on the powers of this Court in reversing a finding of fact or law which has been recorded on a misreading or wrong appreciation of the E **evidence or law, it would not ordinarily disregard the opinion by the trial Judge more so when he happens to be a High Court Judge who has recorded the evidence and has had the benefit of watching the demeanour of the witnesses in forming first-hand opinion regarding their credibility. [para 14] [901-F-G]**

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Sarju Pershad Ramdeo Sahu v. Raja Jwaleshwari Pratap Narain Singh and Ors. **1950 SCR 781 =AIR 1951 SC 120; and** *P.C. Thomas v. P.M. Ismail & Ors.* **(2009) 10 SCC 239, relied on.**

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1.4. In the instant case, the evidence adduced by the appellant to substantiate the charges leveled against the respondent comprises oral depositions only. The High Court has critically evaluated the said evidence and given H **reasons why the same was insufficient to prove the**

charge of corrupt practice leveled against the respondent. The High Court rightly noted that the evidence adduced by the appellant did not inspire confidence and was, therefore, insufficient to establish the charge of corrupt practice leveled against the respondent. There is no reason much less any compelling reason to take a view different from the one taken by the High Court regarding credibility or sufficiency of the evidence led by the appellant to prove the charge. [para 17] [903-A-D]

2.1 It is significant to note that neither the appellant nor his election agent (PW 30) claims to have been a witness to any act of corrupt practice alleged against the respondent. The entire case of the appellant as set up before the High Court and even before this Court is that the acts of corrupt practice allegedly committed by the respondent were reported to the appellant or his election agent by different individuals from time to time. [para 17] [903-E-F]

2.2. Further, the affidavit sworn by the witnesses in regard to each incident of alleged corrupt practice is a carbon copy of the other. The witnesses have admitted in their cross-examination that the affidavits were drawn by the counsel for the appellant in his chamber. A parrot like story has thus emerged from the depositions of the witnesses in regard to each one of the incidents which is unsafe to believe for purposes of setting aside an electoral process in which the appellant has lost the election by a huge margin of nearly 20000 votes. [para 17] [903-F-H; 904-A]

2.3. Besides, the witnesses examined by the appellant appear to be partisan in character. Suffice it to say that the depositions of the witnesses have been evaluated by the High Court and rejected for cogent reasons. In the absence of a palpable error in the

A appreciation of the said evidence, there is no reason to strike a discordant note. [para 18]

3.1. There is no documentary evidence to show that any complaints were filed by the appellant or his election B agent before the Election Commission of India or any other authority upon receipt of reports regarding commission of the corrupt practice by the respondent. The appellant's version in cross-examination and that given by his election agent is that such complaints were filed before the Chief Election Commission, the Chief C Election Officer of the District, the Returning Officer and the Constituency Magistrate in writing and against proper acknowledgement. But neither any copy of complaint so made nor the acknowledgment regarding their receipt by the authorities concerned has been produced at the trial. D What is important is that copies of the alleged complaints relating to the incident of bribery were said to be available with the election agent of the appellant but the same were not annexed to the petition nor were they produced at the trial. The explanation offered for this omission on the part E of the appellant and his election agent that the election petition had been filed hurriedly, has been rightly rejected by the High Court as totally unacceptable. [para 19] [904-H; 905-A-E]

F 3.2. Illustration (g) to s.114 of the Evidence Act, 1872 permits the Court to draw an adverse presumption against the party in default to the effect that evidence which could be but is not produced would, if produced, have been unfavourable to the person who withholds it. G The rule is contained in the well-known maxim : *omnia praesumuntur contra spoliatorem.* If a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted. [para 19] [905-G-H; 906-A]

H 3.3. In an election dispute where oral evidence is

generally partisan in character, as has been demonstrated in the instant case, non-production of documentary material that could lend support to the appellant's charge of bribery against the respondent would assume great importance. Absence of a plausible explanation for non-production of the documentary evidence would completely discredit the version which the oral evidence attempts to support. [para 19] [906-A-C]

3.4. Besides, in her deposition the respondent has denied her presence on 29th and 31st March, 2006 at the places alleged. She also denied in no uncertain terms that she had organized any public feast on 3rd April, 2006 at the place alleged. It is significant that these statements and denials of the respondent have not been seriously questioned in cross-examination, which would imply that the statement made by the respondent has not been seriously disputed by the appellant. At any rate, there is nothing in the cross-examination to discredit the version of the respondent. [para 20] [906-D-G]

4. Even taking the most charitable view of the evidence which the appellant has adduced in support of his case, all that may be said is that a second opinion on the same material was possible. That, however, is not by itself sufficient for this Court to upset the judgment of the High Court or interfere with the result of a hard earned electoral victory.Having regard to the seriousness of the charge of corrupt practice, and the nature of the evidence that has been adduced by the appellant, it is a fit case where this Court ought to give the benefit of doubt to the respondent and leave her election untouched. [para 21-22] [907-B-F]

Ram Singh and Ors. v. Col. Ram Singh 1985 (Supp) SCC 611 – relied on.

A **Case Law Reference:**

1950 SCR 781	**relied on**	**para 9**
1975 (1) SCR 643	**relied on**	**para 9**
B **1976 (3) SCR 445**	**relied on**	**para 9**
1977 (1) SCR 741	**relied on**	**para 9**
1977 (1) SCR 490	**relied on**	**para 11**
1978 (2) SCR 524	**relied on**	**para 12**
C **1989 (2) Suppl. SCR 581**	**relied on**	**para 12**
1993 Supp (3) SCC 645	**relied on**	**para 13**
(2009) 10 SCC 239	**relied on**	**para 16**
D **1985 (Supp) SCC 611**	**relied on**	**para 21**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5561 of 2008.

E From the Judgment & Order dated 21.07.2008 of the High Court of Gauhati in Election Petition No. 5 of 2006.

K.V. Viswanathan, Manish Goswami, Abantee Dutta, Subramanyan P.B., Abhishek Kaushik (for Map & Co.) for the Appellant.

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Anoop G. Chaudhary, Navneet Kumar (for Corporate Law Group) for the Respondent.

The Judgment of the Court was delivered by

G **T.S. THAKUR, J.** 1. This appeal under Section 116 A of the Representation of People Act, 1951 arises out of an order passed by the High Court of Assam at Gauhati whereby election petition No.5 of 2006 filed by the appellant herein challenging the election of the respondent to the Assam State Legislative H Assembly has been dismissed. The factual backdrop in which

the election petition and the present appeal came to be filed may be summarised as under: A

2. General elections to the Assam Legislative Assembly were held in March 2006 in terms of a schedule announced by the Election Commission of India. The appellant was an independent candidate for No.120 Naharkatiya Assembly Constituency that went to poll on 3rd April, 2006. The result announced by the Returning Officer for the said constituency, however, declared the respondent Smt. Pranati Phukan set up by the National Congress Party elected by a margin of nearly 20,000 votes over the appellant who emerged as her nearest rival. Aggrieved by the outcome of the electoral contest the appellant filed election petition No.5 of 2006 before the High Court at Gauhati assailing the election of the respondent on the ground that the same was vitiated by several acts of corrupt practice allegedly committed by the respondent. The appellant enumerated seven specific instances of corrupt practices in support of his case. The first of these acts of corrupt practices alleged by the appellant was committed on 29th March, 2006 at Langherjan Tea Estate where some voters residing in the said locality and enrolled in the electoral rolls for polling stations no.38 and 39 of the constituency had assembled. According to the appellant, when the respondent arrived at the place mentioned above she requested the gathering to cast their votes in her favour and gave Rs.500/- each to the voters present there. B C D E F

3. The second act of corrupt practice allegedly committed by the respondent was on the same day at about 9.00 p.m. when she along with her supporters and party workers went to Line No.9, Baghmara village near M/s Makum Motors and requested the voters of polling stations no.77, 78 and 79 assembled there to cast their votes in her favour by offering Rs.500/- each to those present there. G

4. The third act of corrupt practice allegedly committed by the respondent was at about 12.00 noon on 31st March, 2006 H

A when she is alleged to have visited labour line of Desam Tea Estate situated near the playground of Desam Tea Estate and induced the voters present there to cast their votes for her by offering them Rs.500/- each. Shri Hiranya Mantri, election agent of the respondent, is also alleged to have offered Rs.500/- each B to some of the voters named in the petition when he visited the labour line of Desam Tea estate on the same at about 4.00 p.m., constituting the fourth act of corrupt practice committed in the course of the electoral process.

C 5. The fifth act of corrupt practice is alleged to have been committed by the respondent at Chakalia Harimandir at Panibura village at about 1.30 p.m. on 1st April, 2006 when she offered Rs.500/- each to the voters named in the petition to induce them to vote for her. Shri Hiranya Mantri, the election agent of the respondent, accompanied by Shri Rajen Lahon is D also alleged to have visited Nabajyoti L.P. School premises at Panibura Pathar village on the same day and offered Rs.500/ - each to some of the voters named in the petition who were present there, constituting the sixth act of corrupt practice.

E 6. The seventh act of corrupt practices committed by the respondent was in the form of a feast allegedly organized by her on the date of the poll i.e. 3rd April, 2006 in a premises belonging to a garden employee of Namrup Tea Estate near polling station no.88 of the constituency. According to the F averments made in the election petition the respondent visited the aforesaid place with her supporters Smt. Runu Arandhara, President of Dibrugarh Zila Parishad at about 10.00 a.m. and inaugurated the feast. The feast was enjoyed by the voters of polling station no.88 and was arranged by congress workers with the help of the money allegedly given by the respondent. It G is also alleged that the respondent herself invited the voters to the feast and requested them to vote in her favour.

7. In the written statement filed by the respondent the allegations made in the election petition were strongly refuted H giving rise to fifteen issues. Six out of these issues pertained

to the maintainability of the election petition while the remaining nine dealt with the commission of the corrupt practices alleged against the respondent and the consequences flowing from the same.

8. In support of his case the appellant examined as many as twenty nine witnesses apart from getting his own deposition recorded. The respondent also stepped into the witness box but remained content with examining her election agent as RW 2. By the judgment impugned in this appeal, the High Court decided Issues 1 to 6 in favour of the appellant. Issue nos.7 to 13 relating to the acts of corrupt practices alleged by the appellant were, however, decided against the appellant and in favour of the respondent, resulting in the dismissal of the election petition. The High Court held that the oral evidence adduced by the appellant in support of his allegations did not establish the truthfulness thereof. The High Court was also of the view that although complaints were alleged to have been made to the authorities conducting and supervising the election process yet copies of the said complaints had not been produced. The explanation offered by the appellant for non-production of the said complaints was rejected by the High Court as unacceptable. The witnesses examined by the appellant were found to be either partisan or untrustworthy on account of their association with the appellant and the Naharkatia Sports Association of which he is the President. Relying upon the decisions of this Court, the High Court held that a corrupt practice ought to be established by cogent and reliable evidence which evidence the appellant had failed to adduce. The present appeal assails the correctness of the said order, as noted above.

9. The law relating to proof of corrupt practices under the Representation of People Act has been authoritatively declared by this Court in a long line of decisions starting with *Sarju Pershad Ramdeo Sahu v. Raja Jwaleshwari Pratap Narain Singh and Ors.* (AIR 1951 SC 120). It is not, in our opinion,

A necessary to refer to all the decisions that have been delivered by this Court on the subject over the past six decades since *Sarju Pershad's* case (supra). Reference to some of them only should suffice. From a conspectus of the pronouncements of this Court three distinct aspects emerge that need to be kept B in view while dealing with an election dispute involving commission of corrupt practices. The first and foremost of these aspects to be borne in mind is the fact that a charge of corrupt practice is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required for C establishing a charge of corrupt practice is the same as is applicable to a criminal charge. This implies that a charge of corrupt practice is taken as proved only if there is clear cut evidence which is entirely credible by the standards of appreciation applicable to such cases. (See *Rahim Khan v.* D *Khurshid Ahmed and Ors.* (1974) 2 SCC 660, *D. Vankata Reddy v. R. Sultan and Ors.* (1976) 2 SCC 455 and *Ramji Prasad Singh v. Ram Bilas Jha and Ors.* (1977) 1 SCC 260.)

10. The second aspect that distinctly emerges from the E pronouncements of this Court is that in an election dispute it is unsafe to accept oral evidence at its face value unless the same is backed by unimpeachable and incontrovertible documentary evidence. The danger underlying acceptance of such oral evidence in support of a charge of corrupt practice was lucidly F stated by this Court in *Rahim Khan's* case (supra) in the following words:

> "We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must G be remembered that corrupt practices may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and dis-interested, to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal H vices. There is no X-ray whereby the dishonesty of the

story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkenny-cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."

11. To the same effect is the decision of this Court in *M. Narayana Rao v. G. Venkata Reddy & Ors.* (1977) 1 SCC 771 where this Court observed:

"A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous document to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged."

12. Reference may also be made to the decision of this Court in *Dadasaheb Dattatraya Pawar & Ors. v. Pandurang Raoji Jagtap & Ors.* (1978) 1 SCC 504 where this Court expressed a similar sentiment and *Laxmi Narayan Nayak v. Ramratan Chaturvedi & Ors.* (1990) 2 SCC 173 where this Court upon a review of the decisions on the subject held the following principles applicable to election cases involving corrupt practices:

"(I) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all

A necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi* (1987) Supp. SCC 93 and *Kona Prabhakara Rao* v. *M. Seshagiri Rao* (1982) 1 SCC 442.

B (II) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh* v. *Surinder Singh* (1973) 2 SCC 599, C *Kona Prabhakara Rao* v. *M. Seshagiri Rao Rao* (1982) 1 SCC 442 and *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi* (1987) Supp. SCC 93.

(III) The evidence adduced in support of the pleadings D should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya* v. *Lachhi Ram* AIR 1954 SC 686 and *Rahim Khan* v. E *Khurshid Ahmed* (1974) 2 SCC 660.

(IV) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav* v. *Thakur* F *Muneshwar Nath Singh* (1984) 4 SCC 649.

(V) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide G *Rahim Khan* v. *Khurshid Ahmed* (1974) 2 SCC 660, *M. Narayana Rao* v. *G. Venkata Reddy* (1977) 1 SCC 771, *Lakshmi Raman Acharya* v. *Chandan Singh* (1977) 1 SCC 423 and *Ramji Prasad Singh* v. *Ram Bilas Jha* (1977) 1 SCC 260.

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(VI) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan* v. *Khurshid Ahmed* (1974) (2) SCC 660, *Mohan Singh* v. *Bhanwarlal* AIR 1964 SC 1366 and *Ramji Prasad Singh* v. *Ram Bilas Jha* (1977) 1 SCC 260." A B

13. The decision of this Court in *Thakur Sen Negi v. Dev Raj Negi and Anr.* 1993 Supp (3) SCC 645 also states the same proposition and highlights the danger underlying acceptance of oral evidence in an election dispute as witnesses in such disputes are generally partisan and rarely independent. This Court observed: C

"It must be remembered that in an election dispute the evidence is ordinarily of partisan witnesses and rarely of independent witnesses and, therefore, the court must be slow in accepting oral evidence unless it is corroborated by reliable and dependable material. It must be remembered that the decision of the ballot must not be lightly interfered with at the behest of a defeated candidate unless the challenge is on substantial grounds supported by responsible and dependable evidence." D E

14. The third aspect that is equally important and fairly well-settled is that while as a Court of first appeal there are no limitations on the powers of this Court in reversing a finding of fact or law which has been recorded on a misreading or wrong appreciation of the evidence or law, it would not ordinarily disregard the opinion by the trial Judge more so when the trial Judge happens to be a High Court Judge who has recorded the evidence and who has had the benefit of watching the demeanour of the witnesses in forming first-hand opinion regarding their credibility. F G

15. In *Sarju Pershad's* case (supra) this Court stated the approach to be adopted in an appeal arising out of an election dispute in the following words: H

A "The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the B witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is - and it is nothing more than a rule C of practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there D is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact."

16. Reference may also be made to the recent decision E of this Court in *P.C. Thomas v. P.M. Ismail & Ors.* (2009) 10 SCC 239 where this Court observed:

"This Court in *Gajanan Krishnaji Bapat* (1995) 5 SCC 347 has observed that although being the court of first appeal, F this Court has no inhibition in reversing such a finding, of fact or law, which has been recorded on a misreading or wrong appreciation of the evidence or the law, but ordinarily the appellate court attaches great value to the opinion formed by the trial Judge, more so when the trial Judge happens to be a High Court Judge, had recorded G the evidence and had the benefit of watching the demeanour of witnesses in forming first-hand opinion of them in the process of evaluation of evidence. This Court should not interfere with the findings of fact recorded by the trial court unless there are compelling reasons to do H so."

17. Coming to the facts of the case at hand the evidence adduced by the appellant to substantiate the charges leveled by him against the respondent comprises oral depositions of as many as 30 witnesses including the appellant himself. The High Court has critically evaluated the said evidence and given reasons why the same was insufficient to prove the charge of corrupt practice leveled against the respondent. The High Court noted, and in our opinion rightly so, that the evidence adduced by the appellant did not inspire confidence and was therefore insufficient to establish the charge of corrupt practice leveled against the respondent. We have been taken through the deposition of the witnesses examined by the parties at considerable length and we see no reason much less any compelling reason to take a view different from the one taken by the High Court regarding the credibility or the sufficiency of the evidence led by the appellant to prove the charge. We do not consider it necessary to discuss the deposition of each witness examined on behalf of the appellant for that exercise has been done by the High Court in detail which we find satisfactory. We may all the same note a few significant features that emerge from the deposition of the witnesses examined by the appellant and that impinge seriously upon the case of the appellant. The first and the foremost feature that needs to be noticed is the fact that neither the appellant nor his election agent (PW 30) claims to be a witness to any act of corrupt practice alleged against the respondent. The entire case of the appellant as set up before the High Court and even before us is that the acts of corrupt practice allegedly committed by respondent were reported to the appellant or his election agent by different individuals from time to time. The second aspect which is noteworthy is that the affidavit sworn by the witnessess in regard to each incident of alleged corrupt practice is a carbon copy of the other. The witnesses have admitted in their cross-examination that the affidavits were drawn by the counsel for the appellant in his chamber. A parrot like story has thus emerged from the depositions of the witnesses in regard to each one of the incidents which we consider unsafe to believe

A for purposes of setting aside an electoral process in which the appellant has lost the election by a huge margin of nearly 20000 votes.

18. The third aspect which we find noteworthy is that the witnesses examined by the appellant appear to be partisan in character. For instance PW-23 Smt. Gita Romoni has admitted in her cross-examination that she had come to depose before the Court at the instance of the election agent of the appellant. She has also admitted that she was a member of Naharkatia Sports Association of which the appellant is the President. She appears to have readily accepted the bribe offered to her but failed to report the matter to any authority except to the petitioner. Similarly, PW-23 Smt. Gita Romoni is also a sportsperson and plays football for Naharkatia Sports Association of which the appellant is the President. This is true even in regard to PWs 8 and 9 who happen to be father and daughter respectively, the latter being a football player associated with Naharkatia Sports Association. The incident of bribery alleged against the respondent at labour line of Desam ea Estate was not reported by these two witnesses to anyone and not even to the Manager of the tea garden concerned. So also PWs 15 and 16 are father and daughter whose testimony has been disbelieved by the High Court for good reasons while dealing with Issue No.13 pertaining to the commission of corrupt practice of bribery by Shri Hiranya Mantri, the election agent of the respondent at Nabajyoti L.P. School premises. Suffice it to say that the deposition of the witnesses has been evaluated by the High Court and rejected for cogent reasons. In the absence of a palpable error in the appreciation of the said evidence we see no reason to strike a discordant note.

19. The last but not the least of noteworthy aspects to which we must refer at this stage is the absence of any documentary evidence to show that any complaints were filed by the appellant or his election agent before the Election

Commission of India or any other authority upon receipt of reports regarding commission of the corrupt practice by the respondent. The appellant's version in cross-examination and that given by his election agent is that such complaints were filed before the Chief Election Commission, the Chief Election Officer of the District, the Returning Officer and the Constituency Magistrate in writing and against proper acknowledgement. But neither any copy of complaint so made nor the acknowledgment regarding their receipt by the concerned authorities has been produced at the trial. What is important is that copies of the alleged complaints relating to the incident of bribery were said to be available with the election agent of the appellant but the same were not annexed to the petition or produced at the trial. The explanation offered for this omission on the part of the appellant and his election agent is that the election petition had been filed hurriedly. The High Court has, in our opinion, rightly rejected that explanation as totally unacceptable. Even assuming that the election petition had been filed hurriedly on account of constraints of period of limitation prescribed for the same, nothing prevented the appellant from placing the said complaints on record or having the same summoned from the concerned authorities to whom they were addressed. Non-production of the documents admittedly available with the appellant that would lend credence to the version set up by the appellant that the incident of corrupt practice was reported to him and/or to his election agent would give rise to an adverse inference against the appellant that either such complaints were never made or if the same were made they did not contain any charge regarding the commission of corrupt practices by the respondent in the manner and on the dates and the places alleged in the petition. We may in this regard refer to illustration (g) to Section 114 of the Evidence Act which permits the Court to draw an adverse presumption against the party in default to the effect that evidence which could be but is not produced would, if produced, have been unfavourable to the person who withholds it. The rule is contained in the well-known maxim : *omnia praesumuntur*

A B C D E F G H

A *contra spoliatorem*. If a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted. We need to remind ourselves that in an election dispute where oral evidence is generally partisan in character as has been demonstrated in
B the present case, the non-production of documentary material that could lend support to the appellant's charge of bribery against the respondent would assume great importance. Absence of a plausible explanation for non-production of the documentary evidence would completely discredit the version
C which the oral evidence attempts to support.

20. Before parting with the discussion on the evidence adduced by the appellant we may note one other factor that needs to be mentioned. In her deposition the respondent has denied her presence at Langherjan Tea Estate on 29th March,
D 2006 or at any place near the said tea estate. She also denied her presence on 29th March, 2006 at 9.00 p.m. at Line No.9, Baghmara village near M/s Makum Motors where she is alleged to have committed the corrupt practice of offering bribe to the voters. The allegation that she was at the Desam Tea Estate
E on 31st March, 2006 and went to the labour line of the said estate has also been denied by her specifically in her examination-in-chief. The fact that she had organized a public feast at a quarter belonging to tea garden employee on 3rd April, 2006, has also been similarly denied in no uncertain
F terms. It is significant that the above statements and denials of the respondent have not been seriously questioned in cross-examination. In the absence of cross-examination on these aspects regarding the denial of the respondent about her presence at the places where she is alleged to have committed
G the corrupt practices would imply that the statement made by her has not been seriously disputed by the appellant. At any rate, there is nothing in the cross-examination to discredit the version of the respondent leave alone suggest that she was making a false statement regarding her presence at the places

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where she is alleged to have committed the acts of corrupt practices. A

21. In conclusion we would say that even taking the most charitable view of the evidence which the appellant has adduced in support of his case, all that may be said is that a second opinion on the same material was possible. That, however, is not by itself sufficient for this Court to upset the judgment of the High Court or interfere with the result of a hard earned electoral victory. We may gainfully extract the following passage from the decision of this Court in *Ram Singh and Ors. v. Col. Ram Singh* 1985 (Supp) SCC 611: B C

> "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 the benefit of the doubt. This is more so where allegations of fraud or undue influence are made." D E

22. Having regard to the seriousness of the charge of corrupt practice, and the nature of the evidence that has been adduced by the appellant the present is a fit case where we ought to give the benefit of doubt to the respondent and leave her election untouched. F

23. In the result this appeal fails and is hereby dismissed but in the circumstances without any order as to costs.

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R.P. Appeal dismissed.