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N. HORANGSE

v.

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M. TSUBONGSE

March 13, 1985

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[S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ.]

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*Election law—Corrupt practices under section 123(1), 123 (3A) and 123 (6) of the Representation of People Act, 1951—Appreciation of evidence—Burden of proof of election of Corrupt practice is upon the election petitioner and not upon the elected candidate—Presentation by way of exchange of gifts under the custom of the village long before the election process commenced and given not to procure votes or to induce the recipients to cast their votes cannot fall under expression “corrupt practice”.*

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Tsubongse the election petitioner and the respondent herein who contested from the Longkhim-Chre constituency of the Nagaland Legislative Assembly as a Congress (I) candidate in the election held on 10.11.82 lost by a margin of 133 votes to Horangse the appellant and who was the Deputy Speaker of the last legislative Assembly. The respondent filed an election petition on the ground that the appellant was guilty of four instances of corrupt practice falling under Section 123(1) of the Representation of People Act, 1951 and on three other grounds, namely; (1) display of a banner with the caption “do not sell Nagaland to India”, a corrupt practice within the meaning of Section 123 (3A) of the Act; (2) exceeding the limit of expenditure amounting to corrupt practice within the meaning of Section 123(6) of the Act and (3) use of government vehicles for the purpose of the election. The learned Single Judge, who tried the election petition, found only one of the aforesaid grounds of corrupt practice, namely, presentation of four red waist coats proved and the other grounds not proved, and therefore, he allowed the election petition and set aside the appellant's election on that ground. Hence the appeal.

Allowing the appeal, the Court

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HELD :In an election petition, the petitioner who alleges corrupt practice must prove his case which is disputed by the returned candidate indepen-

dently of the fact whether the returned candidate has proved his defence or not. [348E]

Here on the evidence of R.Ws. 1 to 5, the appellant got the waist coats distributed through P.W. 14 who was then a staunch worker of the Naga National Democratic Party in September, 1982 long before the election process had started, as per the custom of Nagas to make gifts in return for the gifts received by dignitaries. The evidence let in by the respondent election petitioner to prove the item of alleged corrupt practice on the part of the appellant is wholly insufficient and unacceptable to prove the charge satisfactorily. Though in the election petition it is clearly alleged that the appellant gave red waist coats to P.Ws. 11 to 13 and Lithsabha at 4 p.m. on 27.10.82 for inducing them to cast their votes in his favour in the presence of P.Ws. 14 and 15 and they witnessed the offer and reported the matter subsequently to the respondent, P. Ws. 14 and 15 do not claim in their evidence personal knowledge about the offer on presentation of the waist coats by the appellant to these four persons and about the inducement of the appellant to cast their votes in favour. Admittedly, P.W. 14 had asked P.Ws. 11, 12 and 13 to remember the date and time of the appellant's visit to their houses where he claims to have gone along with P.W. 15 soon after the departure of the appellant from each of those places. It is clear that these three witnesses, P.Ws. 11 to 13 have mentioned the date and month of the appellant's visit only on the basis of what P.W. 14 told them to remember. P. W. 14 who was a staunch worker of the NNNDP and had switched over to the Congress (I) Party to which P.W. 15 belongs, sometime before the election, and P.W. 16 are interested witnesses. P.W. 15 has stated in his evidence that the appellant appealed to the people of the village to cast their votes in his favour and that he went to the houses of P.Ws. 11 to 13 in Lirise village only thereafter. If that is so, it is not likely that the appellant, then the Deputy Speaker would have carried the gunny or hessian bag containing the waist coats himself without being accompanied even by a single worker or sympathiser of the NNNDP when he is stated to have visited those four houses for presenting the waist coats and inducing the recipients to cast their votes in his favour. The evidence of P.Ws. 11 to 13 that P.Ws. 14 and 15 came to their houses within minutes after the appellant left the places and asked them about what had been given to them by the appellant and that when they told them that red waist coats have been given to them with a request to favour him with their votes, and they asked them to remember the date and time and not to deny the matter later—P.W. 14 has stated so in his evidence—is artificial and unreliable. The evidence of P.Ws. 11 to 15 about the date of the appellant's visit to Lirise village and the presentation of the red waist coats to P.Ws. 11 to 13 and another is equally not impressive. Therefore, the appellant cannot be said to have committed any "corrupt practice".

[351B-C; 350C-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1236 (Nce) Of 1975

Appeal under Section 116A of the R.P. Act from the order date 1.2.84 of the Gauhati High Court in E.P. No. 3 of 1983.

*C. S. Vaidyanathan* for the Appellant.

*Kapil Sibal, K. K. Lahiri and Mrs. Manik Karanjwala* for the Respondent.

The Judgment of the Court was delivered by

A           VARADARAJAN, J. This appeal by the respondent in Election  
Petition No. 3 of 1983 on the file of Gauhati High Court is directed  
against the judgment of a learned Single Judge, allowing the election  
petition and setting aside the election of the appellant Horangse  
B           from the Longkhim-Chre constituency of the Nagaland Legislative  
Assembly on the ground of corrupt practice, namely, presentation of  
four red waist-coats to three Gaon Burahs and one Barik of Lirise  
village on 27-10-1982 to induce them to cast their votes in his  
favour.

C           The respondent/election petitioner, M. Tsubongse who contested  
as a Congress (I) candidate lost to the appellant who contested  
as a Naga National Democratic Party candidate (for short 'NNDP')  
by a margin of 133 votes in the election held on 10-11-1982. He  
filed his election petition seeking the appellant's election to be set  
aside on the ground that he was guilty of four instances of corrupt  
practice falling under s. 123(1) of the Representation of People Act,  
D           1951 (for short 'the Act') and on three other grounds, namely: (1)  
display of a banner with the caption "Do not sell Nagaland to  
India", a corrupt practice within the meaning of s. 123(3A) of the  
Act. (2) exceeding the limit of expenditure amounting to corrupt  
practice within the meaning of s. 123(6) of the Act and (3) use of  
E           government vehicles for the purpose of the election. The learned  
Single Judge, who tried the election petition, found only one of the  
aforesaid grounds of corrupt practice, namely, presentation of four  
red waist coats proved and the other grounds not proved, and he  
allowed the election petition and set aside the appellant's election on  
that ground. It is, therefore, necessary to set out the case of the  
parties briefly in regard to this single ground.

F           The result of the election held on 10-11-1982 was announced  
on the day of counting 12-11-1982 by the Returning Officer, Tuesung.  
The respondent had secured 3082 valid votes while the appellant,  
who was the Deputy Speaker of the last Legislative Assembly of  
Nagaland had secured 3215 valid votes and was declared elected by  
G           a majority of 133 votes. The respondent alleged in the election  
petition that the appellant gave four red waist coats to the voters  
Lischem, P.W. 11, Lithrongse, P.W. 12, Murimong, P.W. 13 and  
Lithsaba at 4.00 p.m. on 27-10-1982 for inducing them to cast their  
votes in his favour in the presence of B. Tsarise, P.W. 14 and Tselongse,  
H           P.W. 15 of Lirise village who witnessed the offer and reported  
the matter later to the respondent.

The appellant denied that the waist coats were given either by himself or in order to induce the recipients to cast their votes in his favour. His case was that he visited Lirise village some time prior to October 1982 and was received by the villagers who considered him as one of their leaders. In view of the custom of Nagas to receive guests or others and exchange gifts, he sent five waist coats to be given to four Gaon Burahs and the eldest Barik of the village long before the election process started. The waist coats were not given to procure votes or to induce the recipients to cast their votes in his favour. Thus he denied that he committed and corrupt practice and contended that the election petition is not bona fide and has been filed only to harass him.

During the trial the appellant's case was that he sent the five waist coats as gifts through Tsarise, P.W. 14 in September 1982 and that he did not personally distribute them after the election process had started in order to induce the recipients to cast their votes in his favour. The dispute was thus confined to the date of distribution of the waist coats, namely, whether they were given in September 1982 or on 27-10-1982, as to whether the appellant gave them personally or sent them through P.W. 14 and as to whether they were given to induce the recipients to cast their votes in favour of the appellant or only to keep up the appellant's promise made in August 1982 to send some gifts in return for the gift made to him earlier as per custom.

The respondent examined Lisechem, P.W. 11, Lithrongse, P.W. 12, Murimong P.W. 13, B. Tsarise, P.W. 14 and Tselongse, P.W. 15 for proving this item of corrupt practice. On the side of the appellant there is the evidence of the appellant R.W. 1, Chupongse, R.W. 3, Krishna Kumar, R.W. 4 and Yanstsasi, R.W. 5 about this charge.

On a consideration of the oral and documentary evidence the learned Judge of the High Court found that this item of charge of corrupt practice is proved beyond reasonable doubt and he accordingly allowed the election petition and set aside the appellant's election as stated above. However, the learned Judge did not rule out that the appellant had distributed red waist coats in September 1982 as observed by him in paragraph 15 of his judgment which will be extracted in due course.

A The appellant, R.W. 1 has denied in his evidence that he went  
to Lirise village on 27-10-1982 or presented the waist coats perso-  
nally. He has stated that he visited that village two or three days  
after 15-8-1982 at the request of the Head Gaon Burah, R.W. 3,  
B and was welcomed by the Gaon Burahs and others where P.W. 14,  
then a leading worker and member of the NNDP was also present  
and was taken to the house of R.W. 3 and presented with a shawl  
as per the custom of the Nagas and that as he had gone there  
urgently and had not taken anything to make a gift by way of  
return as per the custom, he promised to send some gifts later and  
C he thereafter ordered under Ex. C dated 2-9-1982 for the  
making of five red waist coats through Krishna Kumar, R.W. 4 and  
got them from him on 10-9-1982 and sent them in the same month  
through P.W. 14 being distributed to the Gaon Burahs of Lirise  
village. He has stated that he filed the nomination paper on  
13-10-1982 and that P.W. 14 who was Area Council Member joined  
D the Congress (I) party in the midst of the election and supported the  
Congress (I) candidate. Krishna Kumar, R.W. 4, the proprietor of  
a tailoring firm at Kohima has corroborated the evidence of R.W. 1  
about placing of the order Ex. C on 2-9-1982 and taking delivery of  
the waist coats on 10-9-1982. He has stated that Ex. C written by  
the appellant is signed by him and that as the appellant was a  
known person he delivered the waist coats though Ex. C was not  
E surrendered to him on 10-9-1982. The Head Gaon Burah, R.W. 3  
has corroborated the evidence of R.W. 1 that he met the appellant  
at Longkhim in August 1982 and requested him to visit Lirise village  
and that he accordingly came to Lirise village and was received in the  
F Mong Mong month and presented with a cloth, and that the appel-  
lant regretted that he had not brought anything to be presented by  
way of return and promised to send--waist coats later. He has further  
stated that P.W. 14 subsequently told him that the waist coats had  
arrived and he thereupon asked him to distribute them and give one  
of them to him also and they were given to him and other Gaon  
Burahs. Yanstasi, R.W. 5 has corroborated the evidence of R.W. 3  
G about the appellant's visit, saying that two months before the elec-  
tion held in November 1982 he had gone to Lirise to meet the  
appellant, and that the appellant was received by the villagers and  
taken to the Head Gaon Burah's house and presented with a sangtam  
cloth and that the appellant regretted that he had not brought any  
present to be given by him and assured that he would send waist  
H coats later. R.W. 5 was Head Gaon Burah and he became Special

D B. at Seotsing from 15-9-1983. He has denied that he had worked for the appellant in the elections held in 1977 and 1982, in both of which he had been declared duly elected. R.W. 3 has not been cross-examined seriously about the month of the appellant's visit to Lirise village, namely, Mong Mong month, which according to the evidence of R.W.5 is September in which the Mong Mong festival is celebrated by the Nagas. Ex. C was not filed in the court at the earliest stage. R.W.1 has stated in his evidence that his wife came across it after he had filed his written statement in the election petition and gave it to him for being produced during the trial. Maybe, no reliance could be placed on Ex.C to find out when the waist coats were ordered to be made and about when they were actually delivered by R.W.4 to the appellant. P.W.14 has not been cross-examined regarding the month in which he left the NNDP and joined Congress (I) party, which according to his evidence, was in August 1982. Similarly R.W. 1 has not been cross-examined about when P.W.14 left the NNDP and joined the Congress (I) party, which according to his evidence, was in the midst of the election in which he filed the nomination paper on 13.10.1982. It is not improbable that the appellant had sent the waist coats through P.W.14 who was a prominent member of the NNDP and the Area Council member at that time for being distributed to the Gaon Burahs by way of return of the present of the shawl made to him during his earlier visit as per the custom amongst Nagas to exchange gifts during the visit of important persons like M.L.As. and others. The appellant was the Deputy Speaker of the Nagaland Legislative Assembly at that time. The said custom amongst the Nagas is spoken to even by respondent P.W.1 who has stated in his evidence that normally villagers also would present gifts to visiting M.L.As. and the visiting M.L.As. also would make presents to the villagers as per the custom of the Nagas. We find no satisfactory reason for rejecting the evidence of R.Ws. 1 to 5. As a matter of fact, even the learned counsel for the respondent in this appeal before the trial court does not appear to have seriously challenged the acceptability of the evidence of these witnesses in the course of his arguments before the learned Judge. The learned Judge has stated in his judgment in regard to this matter thus: "It has been contended that even if it is assumed that the respondent (appellant in this appeal) had taken delivery of five red waist coats on 10-9-1982 as reflected in Ex. C, this would not rule out the distribution in October 1982. It is further submitted by the learned counsel for the petitioner. (respondent in this appeal) that even if

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A distribution of some waist coats had taken place in September 1982 as deposed by R.Ws. 4 and 5, the same is not enough to discard the allegation of distribution of other waist coats in October 1982. This submission is apparently right inasmuch as because some persons had been given in September 1982 in pursuance of assurance made in August 1982, it would not by itself rule out the giving of such gifts in October, more so when the price of one waist coat seems to be around Rs. 100'

C The sum of Rs. 100 per piece mentioned by R.W.1 in his evidence is the price of each of the blankets which he had distributed to some persons in the village in 1981 and not of each of the waist coats given in 1982. It is not the case of any of the parties that waist coats were presented by or at the instance of the appellant once in September 1982 and again to the same Gaons Burah in October 1982. Nor is it probable that only waist coat would have been presented on both the occasions to the same individuals. Even if the evidence of R.Ws. 1 to 5 is considered to be unsatisfactory to prove that the red waist coats were presented only in September 1982 and not in October 1982, that does not mean that the respondent's case that the red waist coats were given to P.Ws. 11, 12 and 13 on 27.10.1982 to induce them to cast their votes in favour of the appellant stands proved. The respondent has to prove his case which is disputed by the appellant independently of the fact whether the appellant has proved his defence or not.

F Now we proceed to consider the evidence of P.Ws. 11 to 15, Lisechem, P.W.11, a Gaon Burah of Lirise village mentioned the date of the appellant's visit first as 27.9.1982 and then corrected it as 27.10.1982 and again stated that he does not remember the month or date of receipt of the waist coat by him from the appellant and he has added that it was after the date of the election. He has stated that the appellant came to his house on 27.10.1982 and gave him a red waist coat and asked him to cast his vote in his favour and not to inform others about the presentation of the waist coat and that soon after the appellant left his house, P.Ws. 14 and 15 came to his house and asked him about what had been given to him by the appellant and he thereupon showed that waist coat to them and told them that it was given to him.

H Lithrongse' P.W.12, another Gaon Burah of Lirise village has

stated that the appellant came to his house at 4.00 p.m. on 27.10.1982 and presented a red waist coat to him and asked him to cast his vote in his favour and that soon after the appellant left his house, P.Ws. 14 and 15 came there and asked him as to what was given to him and he thereupon told them that the appellant gave him a waist coat and they asked him to remember it and not to deny it later. He is unable to deny that appellant visited the village in August or September 1982 or to say whether it was in 1981 when admittedly he received a blanket from the appellant on a prior occasion when the appellant was the Deputy Speaker of the Legislative Assembly. It is seen from his evidence that P.W. 15 belongs to the Congress (I) party and that P.W. 14 was previously in the NNDP and had subsequently joined the Congress (I) party.

Muri Mong, P.W. 13 of Lirise village has stated in his evidence that the appellant came to his village after 4.00 p.m. on 27.10. 1982 and presented a red waist coat to him and asked him to cast his vote in his favour and that a minute after the appellant left his house, P.Ws. 14 and 15 came there and asked him if a waist coat was presented to him by the appellant. He has denied that P.W. 14 gave the waist coat to him in the first party of September 1982 and that the appellant did not visit his village or present the waist coat on 27.10.1982. He has stated that he is an old man and that he does not remember months and dates.

Tsarise, P.W. 14 who was admittedly in the NNDP and a supporter of that party previously claims to have joined the Congress (I) party in August 1982. He has stated in his evidence that the appellant came to Lirise village on 27.10.1982 and visited the houses of P.W. 11, Lithsabha and P.Ws. 12 and 13 in that order at about 4.00 p.m. and that he and P.W.15 went to those houses within a few minutes after the appellant's departure from there and those persons individually told them that the appellant gave them a waist coat and asked them to cast their votes in his favour. He has admitted that when he visited the house of P.Ws. 11 to 13 and Lithsaba he asked them to remember the date and the time and not to deny it later. He has denied that the appellant sent the red waist coats through him in the early part of September 1982 for distribution amongst Gaon Burahs of Lirise village.

Tsalongse, P.W. 15 does not remember the date of the appellant's visit to Lirise village. He has stated in his evidence that the

A. appellant came to the village in the election period and asked the people to cast their votes in his favour. He claims to have gone to the house of P.W. 14 and to have seen from there the appellant visiting the houses of P.W. 11, Lithsaba and P.Ws. 12 and 13 one after, the other. He has stated that he and P.W. 14 went to those  
B. houses soon after the appellant left the places and they individually told them that the appellant gave red waist coats and asked them to cast their votes in his favour. He has denied that the appellant neither visited Lirise village nor presented waist coat on 27.10.1982.

C. It is significant to note that though in the election petition it is clearly alleged that the appellant gave red waist coats to P.Ws. 11 to 13 and Lithsaba at 4.00 p.m. on 27.10.1982 for inducing them to cast their votes in his favour in the presence of P.Ws. 14 and 15 and they witnessed the offer and reported the matter subsequently to the respondent P.Ws. 14 and 15 do not claim in their evidence  
D. personal knowledge about the offer presentation of the waist coats by the appellant to these four persons and about the inducement of the appellant to cast their votes in his favour. Admittedly, P.W. 14 had asked P.Ws. 11, 12 and 13 to remember the date and time of the appellant's visit to their houses where he claims to have gone alongwith P.W. 15 soon after the departure of the appellant from  
E. each of those places. It is clear that these three witnesses, P.Ws. 11 to 13 have mentioned the date and month of the appellant's visit only on the basis of what P.W. 14 told them to remember. P.W. 14, who was a staunch worker of the NNNDP and had switched over to the Congress (I) party to which P.W. 15 belongs, some time before the election, and P.W. 15 are the interested witnesses. P.W. 15 has  
F. stated in his evidence that the appellant appealed to the people of the village to cast their votes in his favour and that he went to the houses of P.Ws. 11 to 13 in Lirise village only thereafter. If that is so, it is not likely that the appellant, then the Deputy Speaker would have carried the gunny or hessian bag containing the waist coats himself without being accompanied even by a single worker or  
G. sympathiser of the NNNDP when he is stated to have visited those four houses for presenting the waist coats and inducing the recipients to cast their votes in his favour. The evidence of P.Ws. 11 to 13 that P.Ws. 14 and 15 came to their houses within minutes after the appellant left the place and asked them about what had  
H. been given to them by the appellant and that when they told them that red waist coats have been given to them with a request to

favoured him with their votes, they asked them to remember the date and time and not to deny the matter later—P.W. 14 has stated so in his evidence—is artificial and unreliable. We are, therefore, not impressed with the evidence of P.Ws. 11 to 15 about the date of the appellant's visit to Lirise village and the presentation of the red waist coats to P.Ws. 11 to 13 and others. On the evidence of R.Ws. 1 to 5, which we accept, we find that the appellant got the waist coats distributed through P.Ws. 14 who was then a staunch worker of the NNDP in September 1982 long before the election process had started as per the custom of Nagas to make gifts in return for the gifts received by dignitaries. The evidence let in by the respondent to prove this item of alleged corrupt practice on the part of the appellant is wholly insufficient and unacceptable to prove the charge satisfactorily. We are, therefore, unable to uphold the judgment of the learned Judge, setting aside the appellant's election on the ground of the alleged corrupt practice. We accordingly allow the appeal with costs in both the courts and set aside the judgment of the learned Judge.

S.R.

*Appeal allowed.*