

Bhagwan Singh Vs. the State

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Court : Delhi

Decided On : Apr-29-1980

Reported in : ILR1980Delhi1487

Judge : G.R. Luthra, J.

Acts : [Official Secrets Act, 1923](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B; [Code of Criminal Procedure \(CrPC\) , 1973](#) -Sections 313

Appeal No. : Criminal Appeal No. 221 of 1979

Appellant : Bhagwan Singh

Respondent : The State

Advocate for Pet/Ap. : B.R. Prashar and; V.K. Agnihotr, Advs

Judgement :

G.R. Luthra, J.

(1) Bhagwan Singh who was a Corporal in Indian Air Force and was residing at New Willingdon Camp, Race Course, New Delhi was convicted on August 30, 1979 by Shri P. L. Singla, Addl Sessions Judge, Delhi, in respect of commission of offences punishable under Sections 3 and 5 of the Official Secrets Act (hereinafter referred to as the Act) and was sentenced on September 1, 1979 to undergo rigorous imprisonment for ten years and for two years respectively. He was further

convicted in respect of commission of an offence punishable under Section 120-B Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. All the three sentences were directed to run concurrently. The present appeal was filed by Bhagwan Singh through jail. At his request he was not produced in Court and Shri B. R. Prashar, Advocate was appointed as amicus curiae. I heard Shri B. R. Prashar, Advocate for the appellant and Shri V. K. Agnihotri, Advocate for the State.

(2) Criminal proceedings against Bhagwan Singh were started on a complaint under sub-section 3 of Section 13 of the Act filed by Deputy Commissioner of Police, North District, Delhi. According to the version of the prosecution Shri S. P. Jeitley, Assistant Commissioner of Police, Special Branch received an information that the present appellant was in conspiracy with some foreign agents and was collecting, communicating and passing on secret information and documents relating to defense services, which were calculated to be directly or indirectly useful to foreign and enemy country and that the appellant would meet one of the foreign agents on October 24, 1978 near Harding Library. On receipt of the information a case was registered at P. S. Kotwali and Inspector Raghubir Singh (P.W. 27) of Special Branch was deputed for the investigation who formed a raiding party inter-alia joining Prakash Chand (P.W. 1) and Dalip Singh (Public Witness . 3). The said raiding party kept a watch near Harding Library. At about 7.15 P.M., appellant was noticed approaching Harding Library from Gandhi statue side. Informer who was among the raiding party pointed out towards the appellant. The members of the raiding party were put on the alert. They saw that the appellant met a person, who was subsequently found to be Mohd Gustaf Rana of Pakistan Embassy in India at New Delhi, near Ladies Park. The appellant and said Mohd Gustaf Rana started conversation and thereafter former handed over some envelopes to the latter. Both of them were apprehended by raiding party. Official document containing secrets of Air Force were recovered from Mohd Gustaf Rana and inter-alia the said documents were as under :

1. One open cover addressed to Air Hdqrs EA.3, R. K. Puram New Delhi POR/6307 dt. 18-10-73 611 containing one secret letter of Air Head-Quarter/S-82152/Eng.A-3(0) Allot 23 Oct., 78 Directorate of Engineering A, regarding

purchase of AN-12 Air Craft Utilisation, one paper.

2. One open cover of Government envelope addressed to D. D. Eng. A-3(Q) IV. Air Head Quarters, R. K. Puram, New Delhi containing : (a) secret letter of Air Hq/82169/ Eng. A3(Q) Allot 24 Oct., 78 regarding Allotment of MI-8 Helicopters, one paper.

(B) Secret letter Air Hq/S-82154/Eng. A3(Q) Allot 24 Oct., 78 regarding allotment of Ash 82V A/ES, one paper

(C) Secret letter No. Au Hq/S-82154/Eng. A3('Q) Allot 20 Oct.. 78 regarding allotment of MI-8 Helicopters, one paper.

(D) Air Hq. letter No. Hq/S-82169/Eng. A3(Q) Allot 18 Oct., 78 regarding allotment of MI-8 Helicopters, one paper.

3. One sealed cover inscribed 'secret' addressed to Air Hq (TS-9) R. K. Puram. New Delhi stated to containing No. 110 HU/S 210/1/Eng. A3(T) 14/10.

4. One sealed cover inscribed 'secret' addressed to Air Hqs (TS-9) R. K. Puram. New Delhi-22 stated to be containing No. 110 HU/S 210//Eng/A3(T)-9-10-78.

5. Secret sealed cover addressed to Air Hqs. Eng. A3(t) R. K. Puram, New Delhi-22 A/C State 18/10. Secret.

6. One secret sealed cover addressed to Air Hqs. Dts. of Eng. A39TD R. K. Puram, New Delhi A/C State 19-10-78.

(3) Mohd Gustaf Rana and the appellant were taken to police station Kotwali where former rang-up Pakistan Embassy, New Delhi at which Mr. G. Q. Bhatti, second Secretary of the said Embassy arrived at P. S. Kotwali, identified Mohd Gustaf Rana as an officer of the said Embassy at which he was allowed to be taken along by Shri G. Q. Bhatti.

(4) Subsequently, the residential house of the appellant was searched, as a result of which two more secret official documents were recovered. The appellant was interrogated by the police.

(5) On November 8, 1978 appellant was produced in the Court of Shri R. K. Dham, Metropolitan Magistrate (P.W. 25), who took all prosecutions as required by law for ensuring that appellant was making a voluntary confession and recorded the confession of the appellant on April 10, 1978. The confessional statements are Ex. Public Witness 25/H-1 to Ex. Public Witness 25/H-6. In his confessional statement, the appellant disclosed as follows : On January 4, 1978 he happened to meet one person (whose name was subsequently known to be Chaudhary Noor Khan of Pakistan, Intelligence Department) in a D.T.C. bus and both shared one seat in the said bus. During conversation Chaudhary Noor Khan told his name as Om Parkash. The said Om Parkash enquired from the appellant about the residence and place of the latter and the latter told that he was working in Air Head Quarters and was residing with his family in a Government Quarters near Gurdwara in Sarojini Nagar. On January 13, 1978 said Om Parkash again met the appellant in Sarojini Nagar Market, and former asked the latter about the residence of the latter which the latter pointed out. On January 27, 1978 Om Parkash visited the house of the appellant and the former appreciated the locality and also expressed his desire to have a house on rent in the said locality. He told the appellant that former had resigned the job of Assistant in Government of India and had started business and that is why he is in search of a new house. On February 13, 1978 and February 20, 1978 Om Parkash again visited the house of the appellant on the pretext that the former was searching the house. Appellant expressed his inability to help Om Parkash in that matter. On the occasion of Holi festival Om Parkash presented the appellant with some sweets and latter enquired from the former as to where the house of the former was at which the former told that the latter should come to India Gate on April 2, 1978 then the former would take the latter to his house, Om Parkash and appellant met on April 2, 1978 at appointed place and the former took the latter to two room flat at Tilak Marg, where appellant was served with 'Roohafza' and the conversation between the two went on for about 45 minutes, Om Parkash enquired from the appellant about the pay and savings of the latter at which the appellant replied that he could not save anything from his emolumente. Om Parkash advised the appellant to save something for former's son Raju and the former assured that he would help latter in finding some private job to supplement his income. Appellant expressed his preference for doing the job of

tutor because he could teach mathematics up to metric standard.

(6) Om Parkash again met the appellant on April 13 and April 20, 1978 and the former expressed his inability to find the job of a tutor and suggested that the latter should handover some secret documents of Indian Air Force against substantial financial help, on the pretext that former required the said documents for his Iranian friend who was writing thesis on Indian Air Force. At the same time Om Parkash administered a warning to the appellant that in case the latter disclosed about his conduct to the former, former would kill the son of the latter. Appellant agreed to supply the secret documents.

(7) On May 13, 1978 appellant brought two documents which were in fact not secret and passed on these to Om Parkash at about 8 P.M., at Sarojini Nagar. Those documents were returned to appellant at 10 P.M., on the same day and he was paid Rs. 45 in respect of those.

(8) Thereafter, both of them continued meeting each other and Om Parkash insisted on getting classified mail only and also explained to the appellant that precautions which should be taken of their being watched, Om Parkash told that after he felt suspicious that someone was watching, he would wipe his face with a white handkerchief in his right hand. It was then agreed that both will meet at 8 P.M., at bus stop between Raj Nagar and Vinayak Mandir. Appellant brought a document 'letter of credit addressed to Dehradun C.D.A.' and reached the appointed place where said Om Parkash met him. That document was returned to appellant at 10 A.M. on the same day and was paid Rs. 50.

(9) Next meeting was fixed for June 29, 1978 at 8 P.M. near Harding Library. Appellant brought a circular from amongst the outgoing mail of his office and handedover the same to Om Parkash at the appointed place on June 29, 1978. As was the routine, the said document was returned to the appellant at 10 P.M. and he was paid Rs. 50.

(10) On July 13, 1978 at Harding Library, which was the appointed place, appellant handed over two secret covers containing allotment of Helicopters and AN-12 Aeroplanes allotment to various units and passed them on to Om Parkash

for which former was paid Rs. 250. Om Parkash further handed over a leather bag to the appellant' for bringing documents in the same.

(11) On July 15, 1978 at about 8 P.M. appellant reached at Holy Family Hospital in accordance with the previous arrangement with Om Parkash, but the latter did not turn up. On July 17, 1978 Om Parkash rangup appellant that the former could not keep up his appointment and the latter should meet the former at Andrews Ganj bus stop on July 20, 1978.

(12) On July 10, 1978 Om Parkash was accompanied by one person whose name was subsequently found to be Mohd Gustaf Rana of Pakistani Intelligence Office. That person was introduced by Om Parkash to appellant as Mr, Sharma. Om Parkash told the appellant that former was going for treatment to a foreign country and that Mr. Sharma at Andrews Ganj Bus Stop. The said documents were was August 3, 1978. Appellant brought a secret document of Helicopter and AN-12 Aircrafts on the aforesaid date and handed over to Mr. Sharma at Andrews Ganj But Stop. The said documents were returned on the next morning at the bus stop near Vinayak Mandir, Sarojini Nagar and the appellant was paid Rs. 55.

(13) Next meetings were held on August 13, 1978 and August 20, 1978, but no document was passed on by the appellant to Mr. Sharma On September 5, 1978 appellant brought a secret document regarding allotment orders of Aero Engines from the outgoing mail of his office and passed the same to Mr. Sharma a.t the appointed time and place. Those were returned to him on September 6. 1978 at 5.30 P.M. at the same place and the appellant was paid Rs. 45. Mr. Sharma advised the appellant to use leather brief case for carrying the documents.

(14) Appellant shifted his residence from Sarojini Nagar to 7-D New Willingdon, Race Course, New Delhi on September 15, 1978 and met Mr. Sharma on September 19, 1978 at Andrews Ganj but did not band over any document. The next meeting was fixed for October 3, 1978 on which date the appellant handed over three documents regarding allotment of Helicopters and AN-12 Aircrafts from his house and passed them on to Mr. Sharma at 8 P.M. at Andrews Ganj. Those documents were returned to him on the next date and the appellant was paid Rs. 45. Thereafter, the appellant brought one document from in-coming mail and two

documents from out-going mail of his office on October 9, 1978 and handed over the same to Mr. Sharma on October 10, 1978 at Harding Library. At that time Mr. Sharma was accompanied by another person who was introduced as the Boss. of the former. That boss was subsequently found to be Mohd Rafi, second Secretary, Pakistani Embassy at New Delhi. That boss of Mr. Sharma offered the appellant a cigarette. Appellant declined. The documents were returned in the evening of October 11, 1978 and the appellant was paid Rs. 80. The appellant brought further two documents regarding allotment of engines AN-12 and handed over the same to Mr. Sharma on October 17, 1978 which were returned to him on October 18, 1978 and the appellant was paid Rs. 50.

(15) On October 24, 1978 the appellant handed over the secret documents to Mr. Sharma at about 7 P.M. near Harding Library and as already mentioned he was apprehended red-handed by the police.

(16) The appellant also identified three photographs from amongst the photographs of Pakistani Embassy Officials, which had been procured during the investigation from the Ministry of External Affairs. Those photographs showed that Om Parkash was actually Chaudhary Noor Khan, that Mr. Sharma was actually Mohd Gustaf Rana and that the person who was introduced as boss by Gustaf Rana was in fact Mohd Rafi, second Secretary Pakistani Embassy at New Delhi.

(17) After completion of investigation and obtaining sanction to prosecute the appellant a complaint was filed by the Deputy Commissioner (Police), North District against the present appellant for trial and punishment of the later under Sections 3, 5 and 9 of the provisions of the Act read with Section 120-B of the Indian Penal Code. The learned Additional Sessions Judge, however, charged the appellant in respect of commission of offences punishable under Sections 3 and 5 of the Act and Section 120-B of the Indian Penal Code because according to the learned Judge provisions of Section 9 of the Act were not applicable on account of the fact that actually the offences had been committed and there was no question of any abetment by appellant to commit offences which were punishable under Section 9 of the Act.

(18) Prosecution examined Parkash Chand Public Witness 7, Dalip Singh P.W. 3 and Inspector Raghubir Singh Public Witness 27 in respect of apprehending of the appellant and Mohd Gustaf Rana on October 24, 1978 and recovery of some documents Ex. P1 to P11 detailed already. In a statement under Section 313 Cr.PC, the appellant admitted that he knew the person shown in the photograph Ex Public Witness 3/A as Mr. Sharma stated that he never knew him as Gustaf Rana or that he was an employee of Pakistani Embassy. He denied that he handed over the documents Ex. P1 to P11 to Mr. Sharma and stated that those documents were taken by police from out of his pocket near Harding Library. He denied that Dalip Singh or Om Parkash were present when he was apprehended.

(19) For the purpose of proving that his confession was voluntary Shri P. K. Dham Public Witness 25 was examined as a witness. In his statement under Section 313 Criminal Procedure Code . appellant admitted that he made a confessional statement before Shri P. K. Dham.

(20) For the purpose of proving the documents which were recovered were secret one some evidence which is being discussed hereinafter was recorded and the appellant was found to be guilty of commission of offences punishable under Section 3 of the Act read with Section 120-B of the Indian Penal Code and also under Section 5 of the Act read with Section 120-B of the said Code by means of a judgment dated 30th August, 1979. After hearing the appellant on September 1, 1979 he was sentenced as already mentioned.

(21) It is apparent from the above that the appellant admits the prosecution Version substantially. therefore, the facts that the appellant had been meeting Noor Khan and Gustaf Rana of Pakistan Embassy at different places and also met Mohd Rafi on October 10, 1978 are not disputed, although in a statement under Section 313 Criminal Procedure Code . appellant had denied that he had handed over the documents Ex. P1 to P11 to Gustaf Rana on October 24, 1978 before both were apprehended and had rather stated that it was from his possession that these documents had been taken by the police. Hence, the evidence mentioned above proving the version of the prosecution, which was believed by the learned Additional Sessions Judge was not assailed.

(22) The only thing which was assailed by the learned counsel for the appellant was that the documents which were recovered from the appellant were not secret ones, firstly because they were of routine nature and secondly because the subject of possession of different type of weapons and aeroplanes by the Indian Air Force and Indian Army had appeared in different newspapers which showed that such matters were never secret. The learned counsel first of all relied upon 'Indian Express' of August 7, 1979 in which there is a news under the heading, 'India planning to buy Swedish submarines for fleet Expansion'. The learned counsel then relied upon a news in 'Indian Express' of August 6, 1979 under the heading, 'Pindi bid to buy new French Mirage'. Reliance further is on an issue of 'Indian Express' of July 27, 1979 in which a news appeared under the heading, 'First Jaguars arrived in India'. The learned counsel also relied upon news item in 'Indian Express' of July 23, 1979 under the head 'First Two Jaguars reach on July 26.' Shri S. C. Banerjee D.W. 1 brought an issue of December 17, 1978 of 'Statesmen' with him in which one news item reads as follows :

'SQUADRON No. 12 Celebrates 33rd Anniversary : AGRA. December 16. The number 'Twelve' Squadron, the pioneering transport squadron of the Indian Air Force which proudly claims the credit for setting the present pace of transport operations in the IAF celebrated its 33rd anniversary at its present base today, reports PTI.

AIR Marshal Shivdev Singh (retired), the first Commodore Commandant of the Squadron, which has had a glorious past with many 'firsts' to its credit took the salute at a smart ceremonial parade provided by its pilots, navigators, radio operators, flight engineering, and airmen.

Later, 'packet' transport plane gave a demonstration of heavy load paradropping by dropping a jeep and pickup by parachutes minutes after the safe landing of the jeep which was driven away from the field.

COMMODORE Commander Shivdev Singh said the squadron had served as a life line of the Indian Air Force since the inception in 1948.'

Learned counsel urged that all these news items indicated about the arrival, use, possession of the arms and fighting aircrafts by India and that, therefore, documents as to the allotment of Delhi Helicopters and AN-12 Aircrafts to different units was not secret so as to attract the provisions of Sections 3 and 5 of the Act.

(23) The learned counsel also mentioned about certain publications 'Air War' by S. N. Rampal dealing with the makes of various aeroplanes and their war capacity, 'a budgetary perspective of strategy and politics' which dealt with Army defense Programme and Air Force defense Programme. It is contended that these books also disclosed as to how different type of War Aircrafts and weapons were being used by the forces.

(24) The argument has clearly no force. The news items and the books mentioned above are of general nature. The documents which were recovered by the police from the possession of Gustaf Rana were in respect of use, allotment to different units and deployment of different types of aircrafts. These related to movements of the aircrafts and use by them by the Air Force. They were obviously secret.

(25) Further there is evidence to show beyond reasonable doubt 'as to the secret nature of the said documents. Flying Officer A. K. Sharda P.W. 18 deposed that the documents Ex. Public Witness 18/A and Ex. Public Witness 18/B were classified as secret documents, that they were dispatched through the Central registry of his unit and that they were not supposed to be in the hands of unauthorised persons as the information contained in those two letters were secret and if leaked out to a foreign State the same could undermine the security of the State. He explained that those documents contained information regarding the effectiveness of squadron in which he was working. On cross-examination he testified that the said letters contained information regarding the flight of the aircraft and their flight hours, that the action which was taken on the previous day and the one which was to be taken on the following day and that he could tell from those two letters as to what particular Helicopter was deployed at what particular station.

(26) Flying Officer B. M. Dhamija Public Witness 19 deposed that the letters Ex. Public Witness 19/A and Ex. Public Witness 19/B were signed by him. He added

that these letters pertained to 44 Squadron, Air Force, that they were classified as secret, that no unauthorised person was supposed to be in possession thereof and that if information contained in these two letters was leaked to some enemy country that would effect the security of India and that the information was secret even without decodifying. On cross-examination also he affirmed as to the secret nature of the said letters and added that they contained information regarding the action that had already been taken and the one which was yet to be taken.

(27) Flying Lt. Sucha Singh Public Witness 6 stated in his cross-examination that the letters Ex. P7 to P 11, Ex. Public Witness 18/A, Ex. Public Witness 18/B, Ex. Public Witness 19/A and Ex. Public Witness 19/B were of secret nature because they pertained to secret matters like the location and operation of units, allotment of aircrafts or their serviceability and movements of transport from one unit to another.

(28) SQ. Ldr. S. Raghvan Public Witness 23 deposed that the letters Ex. 27 to P11 and P17 were signed by him, that they were of secret nature and that if any foreign State came to know contents of those letters or the information contained therein that would undermine the security of India.

(29) Group Captain S. C. Malik Public Witness 8 testified that the letter Ex. P13 was signed by him and that the same was a secret document because the same related to movements of senior officers in the defense Ministry as well Air Force etc., leakage of which would prejudicially effect the security of India and of Indian Air Force.

(30) SQ. Ldr. M. G. Okh Public Witness 2 deposited that the letters Ex. P7 in P11 were issued by Air Headquarters Directorate of Engineering and these documents were of secret nature. He added that Corporal Bhagwan Singh (appellant) was authorised to collect official mail from the Central Registry vide letter, copy of which is Ex Public Witness 12/A. He stated that the letters Ex. P8 to P11 were received by appellant for dispatch to addressee concerned and that the said letters being secret were not supposed to be taken out of Air Headquarters without authority because if the contents of those letters came to be known to any enemy country, defense of India would be known to that country which would be

prejudicial to the security of India.

(31) According to Section 4 of the Act communication with foreign agents will be evidence of commission of an offence under Section 3 of the Act. It is further stated in sub-section 4 that a person may be presumed to have been in communication with foreign agent if he has associated with a foreign agent. The word 'foreign agent' is also defined in Section 4 as under :

SEC. 4(2)(b) 'the expression 'foreign agent' includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly for the purpose of committing an act, either within or without (India), prejudicial to the safety or interests of the State, or who has of is reasonably suspected of having, either within or without (India), committed, or attempted to commit, such an act in the interests of a foreign power ;'

In the present case the appellant was in communication with foreign agents who were Noor Khan, Gustaf Rana and Mobd Rafi. thereforee, there is a presumption that he had committed an offence punishable under Section 3 of the Act.

(32) Under the above circumstances appellant had been rightly convicted of the offences punishable under Sections 3 and 5 of the Act read with Section 120-B of the. Indian Penal Code and also an offence punishable under Section 120-B of the Indian Penal Code.

(33) On the point of sentence it was urged by the learned counsel for the appellant that appellant is the only bread earner of his family, that he had a invalid son, aged about 7 years who was to be looked after and got treated from hospital, that he had made a voluntary confession of commission of his sinful acts, that thus there was prick of his conscience which entitled to remain out of jail so as to enable him to start a new life and that, thereforee, leniency may be exercised. It was suggested that sentence be reduced to one already under gone.

(34) But the offence is very serious. For his own personal ends the appellant had been selling secret information in the hands of officials of a country of Pakistan

who had been on war with India. The appellant is obviously an enemy of the country, in the garb of a friend. Such persons should be given deterrent punishment so as to be eye opener to like minded. I am of the opinion that the sentence already imposed is very reasonable.

(35) I, therefore, dismiss the appeal. Copy of this judgment be sent to the appellant through Superintendent (Jail) for his information.

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