

**Bhagwan Dass Vs. the State**

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**Court :** Delhi

**Decided On :** May-07-1980

**Reported in :** 1980CriLJ1033; 18(1980)DLT145

**Judge :** Prithvi Raj and; Charanjit Talwar, JJ.

**Acts :** [Indian Penal code, 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 27

**Appeal No. :** Criminal Appeal No. 102 of 1977

**Appellant :** Bhagwan Dass

**Respondent :** The State

**Judgement :**

**Charanjit Talwar, J.**

(1) By his judgment passed on January 31, 1977. Shri B.B. Gupta, Additional Sessions Judge Delhi, has convicted Bhagwan Dass, Om Parkash and Beerum, appellants, in Criminal Appeal Nos. 102 125 and 246 of 1977, respectively, for an offence under Section 302, read with Section 34 of the Indian Penal Code, for having murdered Om Parkash on August 4, 1976, and sentenced each one of them to undergo imprisonment for life.

(2) As the facts and the questions of law involved are the same, the above three appeals are being disposed of by this common judgment.

(3) About a month and a half prior to the incident, the deceased, Om Parkash son of Nimbu Ram, had been convicted for an offence under Section 307, Indian Penal Code, for having injured two of the appellants, namely, Bhagwan Dass and Om Parkash, who are brothers, by the Court of Session. During the pendency of his appeal challenging his conviction and sentence in that case, he was bailed out by this Court. According to the prosecution, the motive for murdering Om Parkash by the two brothers and their kin Beerum, appellant herein, was to take revenge for the earlier incident.

(4) The prosecution case is that at about midnight between August 4/5, 1976, while Om Parkash was sleeping outside his house No. 7084, situate at Gali No. 10, Mata Rameshwari, Nehru Nagar, Delhi, he was murdered by the appellants in furtherance of their common intention. The occurrence was witnessed by Nimbu Ram (Public Witness 7), Shrimati Soni (Public Witness 6) and Ghansham (PW5), father, mother and younger brother of the deceased respectively. Police Control Room was informed on telephone by Lila Ram (Public Witness 2) that his brother Om Parkash was lying injured at his house. In response to that message, Sub-Inspector Amar Nath (Public Witness 8) arrived at the spot in a police van and removed the injured to the Willingdon Hospital. Lila Ram (Public Witness 2), Nimbu Ram (Public Witness 7) and Ghansham (Public Witness 5) accompanied the injured in the police van. The telephonic message had also been relayed to Police Station Karol Bagh by the Control Room. Consequently, Sub-Inspector Anand Sarup (Public Witness 22) was deputed to investigate the case. On arrival at the place of occurrence, he was informed that the injured had been removed to Willingdon Hospital. On reaching the hospital he collected the medico-legal report regarding the injured who had been declared unfit to give a statement. Thereafter at 2 a.m. he recorded the statement (Exhibit Public Witness PW7/A) of Nimbu Ram and sent the same for registration of a case under section 307, Indian Penal Code. As the injured expired after a while, the offence was converted into that of Section 302, Indian Penal Code. On August 4, 1976, the three appellants were apprehended. Bhagwan Dass made a disclosure statement Exhibit Public Witness PW2/G and on his pointing out the weapon of offence viz. iron rod (saria) Exhibit P3 was recovered.

(5) The dead body was sent for post-mortem examination which was conducted by Public Witness PW3 Dr. Bharat Singh on August 5, 1976, at about 10.30 a.m. He found the following injuries :

'1. One stitched wound over the right fronto-parietal area, placed obliquely. Size of the wound was 1-3/4' long. On cutting the sutures, wound was scalp deep. Margins were irregular and abraded. There was swelling around the wound. Clotted blood was present in the soft tissues around the wound. 2. Haematoma on the right frontal area extending to right side face and both upper and lower eye-lids on right side. Colour was bluish. Clotted blood was present in the soft tissues all over the haematoma. 3. Cut open marks were present over right arm and elbow (surgical).'

(6) On opening of the skull he found a depressed fracture of right parietal and temporal bone, size 2'x1'. He also found that bony pieces were dipping in the brain substance; brain was lacerated in an area of 3' x 2'. There was a tear of meninges and blood vessels; clotted blood was found on the right fronto parietal area of the scalp. The injuries, Nos. 1 and 2) on the skull and brain were ante-mortem, possibly caused by an iron rod which had been produced duly sealed before him. According to him, these injuries were sufficient to cause death in the ordinary course of nature.

(7) The earliest version of the incident was given by Public Witness PW2 Lila Ram on telephone to the Police Control Room. In that report he did not give the names of the assailants or any other details of the incident. Exhibit Public Witness Public Witness I 3/A is a copy of the telephonic message recorded at the Police Control Room. This report was relayed by the Control Room to Police Station Karol Bagh and was registered as report No. 3-A in the daily diary of August 4, 1976, a copy of it was exhibited as Public Witness PW22/A. Both the reports show that Lila Ram had communicated at about 12.50 hrs. on August 4, 1976, from telephone No. 560068 that his brother had been given a beating by some one and lying in an injured condition at house No. 1785, Gali No. 10, Sat Nagar, the place of occurrence. In his statement before the Court, however, he is emphatic that on August 4, 1970, at about 12.45 a.m. in the night when he was urinating outside his

house, on hearing cries coming from the side of the Tank Road, he went towards that side and on reaching near the house of the deceased he found the three appellants running. He stated that he tried to catch hold of the appellant Om Parkash who, however, pushed him and managed to escape. The other appellant Bhagwan Dass, who was armed with an iron rod (saria) ran towards the old quarters in opposite direction. He reached the house of Om Parkash where he found him lying in an injured condition. Thereupon, he contacted the police on phone. On arrival of the police van he along with the father and brother of the injured Om Parkash, removed him in it to the Willingdon Hospital where he was admitted. On arrival of the police at the hospital, statement of Nimbu Ram as also of Ghansham, father and brother respectively of the injured, were recorded.

(8) The Explanation given by him for not disclosing the names of the assailants to the police in the telephonic message, was that 'he was perplexed.' When specifically asked whether the police had enquired from him the names of the culprits, he admitted the fact but repeated the reason that as he was perplexed he did not name any one. It is admitted by this witness that he knew the appellants from before. In his testimony he stated that he tried to apprehend Om Parkash appellant who pushed him and he fell down. That is how the said appellant managed to escape. He had also seen Bhagwan Dass running towards the old quarters in the opposite direction with a saria in his hands. He further admitted that while going to the hospital, neither he nor the others, who had accompanied him in the van, had any talk with the police; he did not even reveal the names of the assailants to Public Witness .8 sub inspector Amar Nath who was in charge of the said police van. Non-mentioning of the names of the assailants and in the absence of any cogent and convincing reasons for this omission, leads one to an irresistible conclusion that PW2 Lila Ram did not see the appellants running immediately after the occurrence, as alleged by him. He seems to be a put up witness, and on being informed by some one that Om Parkash had been injured, he conveyed the telephonic message to the Control Room. That message is consistent with the fact that Om Parkash had been beaten by some one unknown and was lying in an injured condition at his house.

(9) The three eye-witnesses namely, Public Witness PW7 Nimbu Ram, Public Witness PW6 Smt. Soni and Public Witness PW5 Ghansham, father, mother and younger brother of the deceased respectively, have unhesitatingly asserted that Lila Ram (Public Witness 2) had arrived at their house immediately on hearing the cries of Om Parkash. All these three witnesses were sleeping on cots outside the house. The deceased Om Parkash was also sleeping nearby. Public Witness PW7 Nimbu Ram stated that on hearing the shrieks of his son he got up at about 12.45 a.m. and saw that Om Parkash appellant had caught hold of the arms of his son, while Beerum appellant had caught hold of his legs, and the third appellant Bhagwan Dass was giving blows with a saria on the head of his son. Thereafter, the appellants fled away. At that very moment, according to this witness, Lila Ram arrived and tried to apprehend Om Parkash who, however, managed to escape. Public Witness PW6 Smt. Soni, while corroborating her husband regarding the actual assault made by the appellants on her son, has also specifically stated that Public Witness .2 Lila Ram had tried to secure the appellant Om Parkash but failed. It was thereafter that he went to inform the police. Public Witness PW5 Ghansham, younger brother of the deceased, has also pinpointed the presence of Public Witness PW2 Lila Ram at the place of occurrence immediately after the assault. The presence of Lila Ram at the spot and the part attributed, to him, namely, that he tried to secure the appellant Om Parkash, is so integrated in the prosecution version that in the event of that part of the case being found false, the version of assault by the appellants, as deposed to by the three eye-witnesses, also becomes doubtful.

(10) Lila Ram had met these witnesses prior to his conveying the information to the Control Room about Om Parkash having been beaten. In case they had recognised the assailants whom they claim to have known, the appellants' names would have been disclosed by the eye-witnesses to Lila Ram, who in turn would have related the same to the police.

(11) The contention of the defense that by the time the information was given by Public Witness PW2 Lila Ram to the Police Control Room, the names of the assailants were not even known to the three eye-witnesses, has much force. It is submitted by Mr. K.K. Sharma, learned counsel for the appellants, that because of

the admitted prior enmity between the two appellants) Bhagwan Dass and Om Parkash, and the family of the deceased, to which family Lila Ram also belongs, the names of the appellants have been falsely introduced. In support of the contention that as names of the appellants were not disclosed in the earlier version, no credence be placed on the testimony of the eyewitnesses, Mr. Sharma relies on a decision of this Court in *Kanhaya Singh and other v. The State* (1974) 1 Grl. L.T. 465, wherein it has been held that nondisclosing of the names of the assailants by the informant whom he knew from before, made his testimony in Court wherein he named them, unworthy of credence. On that infirmity alone, the Division Bench of which one of us was a member (Prithvi Raj, J.), rejected the prosecution case.

(12) The prosecution in support of its case, is heavily relying on the disclosure statement Exhibit Public Witness PW2/G made by Bhagwan Dass which led to the recovery of the iron rod Exhibit P3, weapon of offence. According to Public Witness PW2 Lila Ram, who is an attesting witness, this statement Exhibit Public Witness PW2/G was made by the appellant Bhagwan Dass after he had been apprehended. The Investigating Officer, Public Witness PW22 Sub-Inspector Anand Sarup, however, stated that the disclosure statement was made by Om Parkash appellant. For some inexplicable reasons, statement Exhibit Public Witness PW2/G was not put to the Investigating Officer. He merely stated : 'Om Parkash gave a disclosure statement that he could get recovered the iron rod. His disclosure statement was recorded. Thereafter, after pointing out the place, Om Parkash got recovered the iron rod Exhibit P3 which was taken into possession vide memo.' Memo regarding the pointing out and seizure of the iron rod Exhibit Public Witness PW2/D was also not put to the Investigating Officer, apparently because that memo was not got signed from the the appellant Bhagwan Dass. The other public witness, who has attested the disclosure statement Exhibit Public Witness PW2/G, Public Witness PW4 Hans Raj is also admittedly a very close relation of the deceased. While this document was not put to him, the memo regarding seizure of the iron rod Exhibit Public Witness PW2/D was got proved through that witness. The circumstance regarding the appellant Bhagwan Dass having made' a pointing out statement Exhibit Public Witness PW2/D was, however, not put to that appellant in his statement under Section 313 of the Code

of Criminal Procedure. In view of the statement of the Investigating Officer that the appellant Om Parkash made the disclosure statement together with the other infirmities brought out on the record, it is doubtful whether Bhagwan Dass appellant made any disclosure statement.

(13) The saria Exhibit P3 was recovered allegedly at the instance of one of the appellants whose identity cannot be vouchsafed as the Investigating Officer named Om Parkash appellant, whereas Public Witness PW2 Lila Ram stated that the saria was recovered at the pointing out of Bhagwan Dass. On analysis it was found that the saria Exhibit P3 did not contain any bloodstains. The alleged weapon of offence was seen by us in Court; it did not disclose any identification mark. It cannot, therefore, be positively said that saria Exhibit P3 was the weapon of offence.

(14) Applying the rule laid down in Kanhaya Singh's case (supra), and also finding that the evidence relating to the disclosure statement Exhibit PW2/C and the recovery of the weapon of offence, is not free from doubt, we hold that the prosecution has not been able to prove the guilt of the appellants.

(15) The result is that the three appeals are allowed. The conviction imposed under Section 302, read with Section 34 of the Indian Penal Code and the sentence of life imprisonment awarded to the appellants, are set aside. The appellants are, accordingly, acquitted.