

**Brahmjit Singh and Another Vs. State**

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**Court :** Delhi

**Decided On :** Sep-09-1991

**Reported in :** 1992CriLJ408

**Judge :** Arun B. Saharya, J.

**Appeal No. :** Crl. Rev. No. 103 of 1979

**Appellant :** Brahmjit Singh and Another

**Respondent :** State

**Advocate for Def. :** Jagdish Dhawan, Adv.

**Advocate for Pet/Ap. :** D.R. Sethi, Adv

**Judgement :**

ORDER

1. By this revision petition under Section 397 read with Section 401 of the Cr.P.C. 1973, two petitioners, namely, Brahmjit Singh and Benjamin, had challenged the judgment dated 16th of May, 1979 of the Addl. Sessions Judge, Delhi (hereinafter referred to as the impugned judgment) upholding their conviction and sentence under Sections 392 and 365 read with Section 34, IPC.

2. At the outset, it may be noted that the incident occurred on 27th of Oct. 1978 (over 12 years age). Four persons, namely, Khazan and Bishamber and the two

above-named petitioners were put up for trial. The trial Court came to the conclusion that there was no prima facie case made out against Khazan and Bishamber and discharged them. Brahmjit died during pendency of this petition. Thus, we are now concerned with only one surviving accused, namely, Benjamin, petitioner No. 2 herein.

3. According to the prosecution, on 8th of June, 1975, in the early hours, the above-named four persons came in a car bearing registration No. DHB-7229 to a petrol pump known as Nangal Petrol Pump, Nangal Diary, within the jurisdiction of P. S. Mehrauli, situated at the outskirts of Delhi. Benjamin was at the wheel of the car. At that time, P.W. 7 Surinder Sharma, the salesman and his helper Shankar were on duty at the petrol pump. The person sitting next to the driver in the front seat asked for 25 ltrs. of petrol and the same was filled in the fuel tank of the car by P.W. 7 Surinder Sharma with the help of Shankar. Surinder then asked for payment. Brahmjit, who was sitting on the rear seat, said that he had a 100 rupee note and asked for the balance. (Of course, in those good old days, a 100 rupee note could buy a lot and even after paying for 25 ltrs. petrol, one could still be left with a good amount to spare).

4. Further, as per the prosecution story, when Surinder started drawing the change from the bag in his hand, Brahmjit tried to snatch the bag from him. Surinder resisted it. The other person also sitting in the rear seat dragged Surinder into the Car. Just then, Benjamin drove away the car towards Delhi. At a distance of nearly 1 km., the car drifted to a side and fell into a ditch. The occupants of the car kept on grappling with Surinder. One half-body truck driven by Randhir Singh, P.W. 3 happened to pass-by. Randhir noticed Surinder embroiled with the others and came to his rescue. Shortly a police party on receiving information from one Kailash about a quarrel at the petrol pump, rushed from the police post which was a furlong away and reached the spot. On sight of the police party, Khazan and Bishamber vanish. Brahmjit was arrested while Surinder held him down in a bid to retrieve his bag. Benjamin also jumped out of the car and ran off towards Delhi but the police party overpowered him and took him into custody.

5. At the trial, apart from P.W. 3 and P.W. 7, the prosecution examined five other witnesses including P.W. 1 who was brought to the location to take photographs, P.W. 6 Govardhan, the proprietor of the patrol pump and other formal witnesses who proved registration of the case and the other steps that were taken in the investigation. S.I. Zile Singh, the Investigating Officer was examined P.W. 8.

6. The trial court convicted Brahmjit and Benjamin, and sentenced each of them to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 1,000/- or in default of payment to undergo rigorous imprisonment for further six months under Section 392, IPC, and further sentenced them to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1,000/- and in default of payment, to undergo rigorous imprisonment for six months under Section 365, I.P.C.

7. In the Appellate Court, conviction of the two was challenged on ground, inter alia, (1) that the most material witnesses, namely, Shankar the helper of Surinder, and Kailash the person who informed the police post about the quarrel were not produced; (2) that the only independent witness Randhir P.W. 3 had not supported the case of the prosecution; and (3) that the defense version that the quarrel at the petrol pump was on short supply of fuel was quite probable and ought to be accepted.

8. The first plea was rejected because Shankar and Kailash were not traceable despite summons being issued several times to secure their presence at the trial. Next, the statement of P.W. 3 Randhir was discarded as useless, in that, he was declared hostile for running completely counter to the prosecution case. Lastly, regarding the defense version, based upon extraction and measurement of the petrol in the fuel tank of the car soon after apprehending the accused persons on the spot, the Appellate Court found 'that this version can compete very well against the version of the prosecution.' But, it rejected the plea as no suggestions on the lines of the defense version were put to P.W. 7 Surinder or to the Investigation Officer P.W. 8 whereas different kind of suggestions were advanced in their cross-examination. Besides, the defense version was turned down as an effort was made through P.W. 3 Randhir to set up a case that an altercation had taken place

at the petrol pump on the previous day in the evening, while no Explanation was forthcoming for the accused and the car being found ditched on the fateful day at 4.30 a.m. The Appellate Court found the testimony of P.W. 7 Surinder alone sufficient to convict Brahmjit and Benjamin. So, the appeal was dismissed. The sentence, however, under Section 392 and Section 365, IPC was modified to run concurrently, and the sentence in default of payment of fine was also reduced to rigorous imprisonment for three months.

9. Now, on behalf of the sole surviving accused Benjamin, learned counsel has contended that his conviction and sentence cannot be maintained on the basis of only the testimony of P.W. 7 Surinder, even if the same be taken as correct. He has also argued that there is no evidence at all on record to incriminate Benjamin in respect of the substantive offence under Section 392 or Section 365, IPC; and that in the absence of proof of common intention to commit any crime, he cannot be condemned by the mere invocation of the provision of Section 34, IPC. As would appear from the following discussion, there is great force in his stand.

10. Straightway, let us turn to the statement of P.W. 7 Surinder and see what all did he say. In his examination-in-chief, he narrated the abovementioned prosecution story on the broad lines on which it was laid. It need not be repeated here. In cross-examination, however, he revealed several correlative details of the actions and reactions of the concerned persons involved in the episode, some of which are pertinent for a proper appreciation of the case from the point of view of Benjamin. He affirmed, inter alia, that Brahmjit took out and showed him a 100 rupee note, that the quarrel at the petrol pump went on for 10 or 15 minutes and during that time the accused persons showed no hitch or hesitation about payment; that Brahmjit and the other person in the rear seat were pulling him inside the car, he was clinging on to the open rear door, and his helper Shankar was pulling him back but let him go, when the car started off; that he was dragged along side when the car moved forward; that in the running car and even after the car got bogged down in the ditch the scuffle between him and the occupants of the car went on; that he got the better of Brahmjit and retrieved his hand bag containing a sum of the Rs. 149.35 and handed it over to the police party at the spot; and that on arrival of the police party, Benjamin jumped out of the car and

tried to run away towards Delhi.

11. Thus, it clearly emerges that Benjamin was at the wheel of the car throughout the episode, that the quarrel started after petrol had been filled in the fuel tank of the car and it went on for about 10 to 15 minutes. Only thereafter, when the situation hotted up, Benjamin drove off the car from the petrol pump. Hardly a kilometer away, the car went off the road and got stuck in the ditch; and that on arrival of the police party, he jumped out and tried to escape. No other act is attributed to him.

12. There is no evidence on record to suggest that Benjamin along with others set out that morning in pursuance of a prearranged plan to commit any crime. There is no evidence of pre-concert of any kind. After taking petrol, an altercation started between Surinder and the other occupants of the car. Not a word is alleged to have been spoken by Benjamin nor anything done by him except that when the situation appeared to be taking an ugly turn, he drove the car off. Even after the car got stuck in the ditch, no act whatsoever is attributed to Benjamin except for his trying to make good his escape on arrival of the police. In these circumstances, it would be too much to draw an inference against Benjamin of common intention to rob or to abduct Surinder developing on the spur of the moment. On the contrary, his conduct indicates intent to get away from the scene rather than to participate in the commission of the crime. Any other person in the place of Benjamin, finding himself caught in a fray would act likewise. This is quit natural human conduct. Merely because the man was in company of the other and happened to be driving the vehicle at that time, he cannot be tied down by the fragile and unsafe thread of Section 34, IPC and sent to the gallows, especially when the others have got unpunished. Khazan and Bishamber, according to the prosecution story, had played an active role at the petrol pump, while the car was on the move, and even thereafter, yet, they were discharged as no prima facie case was found to be made out against them.

13. The above discussed facets of the case do not find mention at all in the impugned judgment. In ignoring these vital aspects, the lower courts appear to have adopted an erroneous approach in this case. In such a case, it is not open to

the State to contend, as learned counsel for the State did make a feeble attempt to do, that this Court in the exercise of its revisional jurisdiction ought not reappraise evidence and disturb the concurrent findings of fact reached by the two courts below.

14. In these circumstance, it would be far too much to punish Benjamin for something alleged to have been done by the others without proof of his sharing intention with them for doing any criminal act in this case.

15. Consequently, the revision is accepted, the impugned judgment of the Addl. Sessions Judge dt. 16th of May, 1979 as well as the conviction and sentence of Benjamin under Sections, 392/365/34, IPC are set aside, and Benjamin (petitioner No. 2) is hereby acquitted. Bail bonds furnished by him are hereby cancelled.

16. Petition allowed.

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