

**Bablu Haldhar Vs. State**

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**Court :** Delhi

**Decided On :** Apr-21-2010

**Judge :** P.K. Bhasin, J.

**Acts :** Arms Act - Section 27; ;Indian Penal Code (IPC) - Sections 34, 307 and 326

**Appeal No. :** Criminal Appeal No. 565 of 2008

**Appellant :** Bablu Haldhar

**Respondent :** State

**Advocate for Def. :** Pawan Bahl, APP

**Advocate for Pet/Ap. :** Ajay Verma and; Gaurav Bhattacharya, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**P.K. Bhasin, J.**

1. This appeal is directed against the judgment dated 13th December, 2007 and order dated 14th December, 2007 passed by the learned Additional Sessions Judge whereby the appellant was convicted for the commission of offences punishable under Sections 307 and 326 IPC and sentenced to undergo rigorous imprisonment for a period of 5 years and fine of Rs. 3,000/- with default stipulation

for his conviction under Section 307 IPC and rigorous imprisonment for a period of 3 years and fine of Rs. 2,000/- with a default stipulation for his conviction under Section 326 IPC and the substantive sentence of imprisonment were ordered to run concurrently.

2. The relevant facts leading to the incident, in which two persons were seriously injured and which injuries have been found by the learned trial Judge to have been caused by the appellant while acquitting his two co-accused persons who had also been sent up for a trial by the investigating agency for their involvement in the same incident which took place on the night of 3rd August, 2002, have been noticed by the learned trial Judge in para No. 1 of the judgment and the relevant portions only from that paragraph are being reproduced below:

On 3.8.2002 at about 10 p.m. when one Prem returned at his house at N-37/37, C-Block, Jahangir Puri, Delhi from his work and was standing outside his house then he was confronted with by his three neighbourers namely accused Bablu Haldhar, Bona Haldhar and Banga Haldhar. Accused Bablu Haldhar allegedly asked Prem as to why children of Prem had quarreled with his children. Thereafter he asked his two brothers Banga Haldhar and Bona Haldhar to caught hold of Prem and which they accordingly did. Accused Bablu Haldhar in the meantime attacked Prem with a 'chhura' (meant for cutting of meat) which he was carrying. Prem immediately cried 'Bachao-Bachao' and upon hearing which his nephew Kartik also came running over there to save him but he too was attacked by accused Bablu Haldhar, Kartik however tried to save himself and in the process the chhura struck him on his right head. A number of persons from neighbourhood gathered over there and while Bablu Haldhar was caught hold of by them and chhura was also snatched from his hand but the other two co-accused persons ran away from the spot. Matter was immediately reported to police at No. 100. In the meantime both Prem and Kartik were removed to BJRM Hospital and from where they were referred to Trauma Center.

3. On the matter being reported to the police FIR No. 507/2002 was registered at Jahangir Puri Police Station under Section 307/34 IPC. During the course of investigation, the three persons who had allegedly assaulted PW-1 Prem Sarkar

and PW-2 Kartik, namely, the appellant Babloo Haldhar, Bona Haldhar and Banga Haldhar were arrested and on completion of investigation a charge-sheet was submitted in the Court of area Magistrate against all three of them under Sections 307/326/34 IPC and Section 27 of the Arms Act. In due course the case was committed to the Sessions Court where charges under Sections 307/326/34 IPC were framed against all the three accused persons and against Bablu Haldhar, the appellant herein, an additional charge under Section 27 of the Arms Act was also framed. All the three accused had pleaded not guilty and claimed trial. The prosecution sought to establish its case relying upon the evidence of the two injured persons, namely, PW-1 Prem Sarkar and PW-2 Kartik and three other eye witnesses of the incident, namely, PW-3 Ganesh Singh, who is the complainant/informer also, PW-5 Vinesh Kumar Singhal and PW-13 Ms Sagri. Out of these five material prosecution witnesses, PW-5 Vinesh Kumar Singhal had turned hostile. The learned trial Judge, however, accepted the evidence of the remaining four witnesses but only in respect of the appellant/accused Bablu Haldhar and gave benefit of doubt in respect of his co-accused persons, namely, Bona Haldhar and Banga Haldhar.

4. Feeling aggrieved, the convicted accused Bablu Haldhar filed this appeal challenging his conviction for the offences punishable under Sections 307/326 IPC and the sentences awarded to him. However, at the commencement of the hearing of the appeal, learned Counsel for the appellant had stated that he had the instructions from the appellant not to challenge the judgment of the trial Court whereby he was convicted for the aforesaid offences but a mercy plea should be made to this Court for taking lenient view on the point of punishment of imprisonment considering the fact that the appellant is an old person of about 60 years of age and is suffering from various ailments and which circumstances, according to the Counsel for the appellant, had been noticed by the learned trial Judge also in his order on sentence.

5. Even though the learned Counsel for the appellant did not challenge the findings of the trial Court holding the appellant guilty but in order to satisfy myself about the correctness of the conclusions arrived at by the learned trial Court I have myself also examined the evidence of the two injured witnesses and two other eye

witnesses of the incident whose evidence has been found to be wholly reliable by the learned trial Court. After going through their evidence I am also fully convinced that their evidence is unimpeachable and has been rightly accepted by the learned trial Court and the appellant's Counsel has rightly not made any effort to challenge the trial Court's appreciation of the evidence of PWs 1 to 3 and 13. Therefore, this Court has no hesitation in affirming the judgment of conviction rendered by the learned trial Court.

6. Coming now to the prayer made on behalf of the appellant for taking a lenient view on the point of sentence I am of the view that considering the mitigating circumstances highlighted by the Counsel for the appellant and the fact that the appellant has already remained in jail for about 3 years and 9 months, the interests of justice would be met if the sentence of imprisonment in respect of the conviction of the appellant for the offence under Section 307 IPC is reduced to the period already spent by him in jail while maintaining the sentence awarded to him by the trial Court for his conviction under Section 326 IPC. This appeal accordingly stands allowed partly as noticed above. Since the trial Court had ordered substantive sentences on both the counts to run concurrently the appellant shall now be released from jail, if not required to be detained there for some other case.

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