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BALWANTBHAI B. PATEL

v.

STATE OF GUJARAT & ORS.

(Criminal Appeal No. 45 of 2004)

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SEPTEMBER 09, 2009

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

*PENAL CODE, 1860:*

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*s. 302/34 – Three accused stated to have attacked two persons - Death of one of the victims caused – The third accused-appellant stated to have caught hold of the witness who tried to intervene and enabled another accused to cause a simple injury on him – Trial court convicting one of the accused u/s. 302 and the other two including the accused-appellant u/s. 302/34 – High Court affirming the conviction – Plea by accused-appellant that the only role attributed to him was that of catching hold of the witness and that he was falsely roped in – Held: There is no evidence to show that the witness had received any injury as his injury statement is not on record – The finding, therefore, of the High Court about the appellant's presence appears to be on shaky foundations – Allegations of catching hold of an attack victim or of an exhortation are invariably made when the number of injuries on the injured party do not co-relate to the number of accused or in the alternative in an attempt to rope in as many persons as possible from the other side – Besides, appellant has already undergone more than six years of the sentence – Therefore, order of the High Court is not sustainable and is set aside.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 45 of 2004.

From the Judgment & Order dated 16.5.2003 of the High

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Court of Gujarat at Ahmedabad in Criminal Appeal No. 528 of 1995. A

Sudarshan Rajan, Qamar Ali, P. Narasimhan for the Appellant.

Pinky, Hemantika Wahi for the Respondents. B

The following Order of the Court was delivered by

**ORDER**

1. This appeal, by way of special leave, arises out of the following facts. C

2. On 30th November 1993, at about 9 p.m., Ghulam Hussain Ansari, Sagir Ahmed Ansari, since deceased, Gyasuddin Ahmed Ansari and Kitabuddin Ansari were sitting at their house in Falia, District Bharuch, when the three accused Thakorbbhai Somabhai, Jagdishbhai Nanjibhai Patel and Balwantbhai Patel, the present appellant, arrived at that place in a drunken condition. They abused Sagir Ahmed Ansari and others sitting there and when they objected, Thakorbbhai inflicted a knife blow in the abdomen of Sagir Ahmed and another knife blow on the left side of his head. Gyasuddin Ansari and Kitabuddin Ansari intervened so as to rescue Sagir Ahmed whereupon Balwantbhai, the present appellant, caught hold of Gyasuddin and Jagdishbhai inflicted a blow on his head with an axe. The appellant thereafter ran away hurling abuses on the other side. Sagir Ahmed was carried to Dr. Patel's hospital at Ankleshwar and from there to the Civil Hospital at Bharuch. He died soon after he reached the Civil hospital. On the completion of the investigation, Thakorbbhai was charged for an offence punishable under Section 302 read with 114 and Jagdishbhai and Balwantbhai were charged under Section 302 and, in the alternative, 302 read with Section 34 of the IPC and several other Sections as well. The trial Court convicted all the accused on the basis of the evidence of the three primary witnesses, Kitabuddin Ansari, D E F G H

- A Gyasuddin Ansari and the complainant Ghulam Hussain Ansari, also an eye witness. The judgment of the trial Court was confirmed in appeal by the High Court. The present appeal has been filed only by the third accused Balwantbhai B. Patel, as it appears that the other two accused were satisfied with the judgment of the High Court.
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3. The learned counsel for the appellant has raised only one argument during course of the hearing. He has pointed out that the trial Court as well as the High Court had been influenced by the fact that the appellant herein had caught hold of Gyasuddin Ahmed Ansari, PW which had enabled Jagdishbhai, the co-accused, to cause a simple injury on him. He has further pointed out that the injur report of Gyasuddin Ahmed Ansari was not on record which clearly falsified the prosecution story. He has also submitted that, in any case, the story of catching hold of a witness or of a deceased or an allegation of exhortation made by an accused was invariably used to cast the net wide with respect to the incident. He has further pointed out that three injuries were caused by Thakorbhai, the first accused, to Sagir Ahmed and one simple injury by Jagdishbhai, the second accused, to Kitabuddin Ansari, which was in the nature of a swelling and no injury had been attributed to the present appellant which showed that he could not have been roped in by virtue of Section 34 of the IPC and the only role attributed to the appellant herein was that of catching hold of Gyasuddin Ahmed, PW.

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4. We have heard the learned counsel for the parties. We find that there is no evidence to show that Gyasuddin Ansari had received any injury as his injury statement is not on record. The finding, therefore, of the High Court about the appellants presence appears to be on shaky foundations. We are also not unmindful of the fact that allegations of catching hold of an attack victim or of an exhortation are invariably made when the number of injuries on the injured party do not co-relate to the number of accused or in the alternative in an attempt to rope

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ORS.

in as many persons as possible from the other side. We also observe that the appellant has already undergone more than six years of the sentence. A

5. For all these reasons, we find that the order of the High Court is not sustainable. We allow the appeal and acquit the appellant. B

R.P.

Appeal allowed.