

**(2012) 05 BOM CK 0028**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No.701 of 2006**

Rajesh Bhaurao Sadanshiv

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision :** 02-05-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161  
Evidence Act, 1872 — Section 27  
Penal Code, 1860 (IPC) — Section 302, 304

**Citation :** (2012) BomCR(Cri) 610

**Hon'ble Judges :** Sadhana S. Jadhav, J;A.H. Joshi, J

**Bench :** Division Bench

**Advocate :** Anil Mardikar, for the Appellant; M.K. Pathan, Additional Public Prosecutor for the respondent-State., for the Respondent

**Final Decision :** Dismissed

## Judgement

Smt. Sadhana S. Jadhav, J.—The appellant here in stands convicted for offence punishable u/s 302 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and fine of Rs. 500/- in default further rigorous imprisonment for 3 months by the 2nd Ad-hoc Additional Sessions Judge, Akola in Sessions Trial No.153 of 2005 by a judgment and order dated 1.11.2006. Being aggrieved by the said judgment, the appellant there in has preferred the present criminal appeal. The case of the prosecution in nutshell is that:-

On 29.8.2005 Mahadeo Suryabhan Dhokne lodged a report at Old City Police Station, Akola alleging therein that on 29.8.2005 at about 1.30 p.m. one Balu Sapkal resident of the same village, informed him that his nephew namely Siddharth was lying dead under the banyan tree in front of the house of Shivalal Dhokare.

Mahadeo Dhokne, therefore, rushed to the spot and noticed that his nephew Siddharth was lying in a pool of blood. He had inquired about the incident and had learnt that there was some altercation between Siddharth and Rajesh

Sadanshiv while playing cards and then Rajesh had assaulted Siddharth by means of some sharp weapon on his head and right leg and that Siddharth Janjal had succumbed to the said injury on the spot.

On the basis of the said report, Crime No.276/2005 was registered against the accused for offence punishable u/s 302 of I.P.C. The investigation was set in motion. The accused was arrested at about 3.45 p.m. After completion of investigation, charge sheet was filed on 11.10.2005. The case was committed to the Court of Sessions and registered as Sessions Trial No.153 of 2005. The prosecution examined 9 witnesses to bring home the guilt to the accused.

2. Prosecution witness no.5 Vijay Dhokne, PW6 Harshwardhan Gavai and PW7 Samadhan Dhokne are the eyewitnesses to the said incident and have been examined by the prosecution to establish the culpability of the accused Rajesh.

3. The case revolves mainly round PW5, PW6 and PW7. The evidence of PW5 Vijay Dhokne would show that on 29.8.2005 at about 12 to 1 noon, he was playing cards along with Harshwardhan Gavai, Samadhan Dhokne, Sunil Zamre, Milind Sadashiv, Kishor Sadanshiv, and Siddharth Janjal under the banyan tree standing in front of the house of Shivalal Dhokne. Accused Rajesh armed with an axe came on the spot and stood behind Siddharth. On being questioned by Ravindra, the accused had disclosed that he had come there to cut the branches of banyan tree. All of a sudden, the accused Rajesh mounted assault over the head of Siddharth. Siddharth fell on the ground. The others were frightened and, therefore, fled away from the spot. At the time of assault, the accused was asking Siddharth as to why he had abused him on the earlier day. According to PW5, Siddharth had an instantaneous death. Even after Siddharth died, the accused gave blows on his leg.

It is elicited in the cross-examination that on the day of the incident as well as on the next day, the Police had come in the village and were inquiring about the incident. However, the witness had not narrated the incident to the Police. The witness i.e. PW5 has voluntarily and categorically stated that they were frightened and, therefore, did not meet the Police.

4. The learned counsel appearing for the appellant has argued before us that the failure on the part of PW5 to disclose the incident to the Police immediately is fatal to the prosecution. It is material to note that this witness has voluntarily stated that he was so frightened that he did not approach the Police. The accused and the deceased are the residents of the same village. The witness i.e. PW5 was acquainted with both the persons and, therefore, had not disclosed to the Police. We find that the statement of PW5 was recorded on 30.8.2005 i.e. on the very next day of the incident and hence delay in recording the statement of a witness would not be fatal to the prosecution.

In the cross-examination, it is elicited that in his previous statement recorded u/s 161 of Cr.P.C., PW5 had narrated to the Police:-

- a) that at the time of incident the accused was standing behind deceased Siddharth,
- b) that Siddharth had fallen on the ground,
- c) that at the relevant time accused had asked Siddharth as to why he abused him on the earlier day,
- d) that after the death of Siddharth, accused had assaulted him on his leg,
- e) that while leaving the place, PW5 had heard the dialogue between the accused and the deceased and
- f) that after the incident, the carpet and the playing cards were left at the spot. However, the said narration does not find place in his previous statement .

5. PW9 Vitthal Pawar is the investigating officer. He was confronted with the statement of PW5 Vijay Dhokne and the said omissions are proved. Hence these are material omissions and, therefore, implicit reliance cannot be placed on the evidence of PW5.

6. PW6 Harshvardhan Gavai has also been examined by the prosecution as an eye witness to the said incident. According to PW6, on 29.8.2005 at about 1 to 1.40 in the noon while he was playing cards with Samadhan Dhokne, Vijay Dhokne, Milind Sadanshiv, Kishor Sadanshiv, Sunil Zambre, Ravindra Helode, Santosh Bhatkule and deceased Siddharth under the banyan tree, the accused came on the spot being armed with an axe. He stood there for sometime and then suddenly gave the blow of axe on the head of Siddharth. Being frightened, all of them escaped from the spot. They went home and remained indoors. Thereafter they learn that Siddharth had succumbed to the injury.

In the cross-examination, there are no material omissions or contradictions. In fact, in the cross-examination PW6 has categorically stated that at the relevant time PW5 Vijay had also escaped from the spot along with PW6 and others. On hearing the cry of Siddharth, they were shocked. They are so shocked and may not have had the presence of mind as to how they should react to the said situation and had, therefore, fled from the spot. In this premises the witness not attempting to save the victim cannot be held against him.

It is elicited in the cross-examination that after the incident PW6 had not been to the spot. On that day in the evening, although the Police had come to the village, he had not met them and disclosed the incident. The statement of PW6 was also recorded on the very next day. The delay in recording the statement of PW6 cannot be held to be fatal to the prosecution. He has stood the test of cross-examination and has in clear terms established the fact that Siddharth had sustained the fatal blow at the hands of the accused.

7. The post mortem notes are at Exh.21. PW3 Dr. Ashwin kumar Sapate has proved the contents of the postmortem notes. In his opinion, cause of death was shock and haemorrhage due to head injury associated with chop injury to right

leg. PW3 has further deposed that the external and internal injuries noticed by him while performing post mortem are sufficient in the normal course to cause death.

In the cross-examination, an attempt was made by the defence to suggest that two weapons may have been used while causing injuries to the victim. PW3Dr.Sapate has deposed thus:-

it is true as per my opinion two weapons may be used for causing the injuries. However, in my opinion, it may be a single weapon also. I am supposed to deliver an opinion about weapon and not about its number.

This suggestion would indicate three things

- a) Firstly that the injuries are possible by a single weapon also,
- b) Secondly that the possibility of the use of the axe seized at the instance of the accused cannot be ruled out and
- c) Thirdly that the defence has not seriously challenged the involvement of the accused.

8. The weapon of assault was seized from the accused u/s 27 of the Indian Evidence Act. The memorandum leading to the seizure is at Exh.24. The seizure panchanama is at Exh.25. It was conducted on 1.9.2005. The accused had led to the recovery of an axe having an iron handle painted with blue colour admeasuring 70cms in length and the blade admeasuring 91/2 cms in length. The seizure panchanama shows that the weapon of assault was sealed on the spot.

9. The learned counsel for the appellant has submitted by way of alternate submission that the offence committed by the accused, if proved, would be one u/s 304 Part II of I.P.C. However, on perusal of the post mortem notes, we find that the victim had suffered as many as:

- (a) Two incised wounds one on the left parietal region bone deep and the other on right leg lateral aspect,
- (b) One chop wound on frontal region C-shaped with concavity facing anteriorly of size 11cm X 11/2cm bone deep directed anteriorly and downwards underlying circular piece of frontal bone of size 4cmx 4cm separated from rest of skull and is attached to overlying scalp, cut margins of scalp are clean cut regular sharp with few small contusions at places.
- (c) Another chop wound is on the right leg near ankle and foot is separated from rest of the limb and attached to it by small medial skin on middle aspect. All cut margins are clean cut regular sharp with few small contusions on skin.

The force with which the blows were given are apparent from the descriptions of the injuries. It cannot be said that the incident was an outcome of grave and sudden provocation or had occurred at the spur of the moment and, therefore,

the submission does not deserve to be considered.

10. PW4 Ramesh Gawande was the panch for the seizure of weapon. The seized weapon was sent for chemical analysis and the results show that no blood was detected on the axe. The blood stained clothes of the accused were seized on 1.9.2005. The clothes of the accused were seized in the course of investigation from the house of the accused. The said clothes were sent to the Forensic Science Laboratory. The blood group of the deceased was A. The blood stains on the clothes of the accused were also stained with blood of A group. It is not the case of the accused that he had also sustained injuries. His blood group could not be determined and hence finding of the blood stains of A group on the clothes of the accused is an incriminating circumstance.

11. PW7 Samadhan Dhokne is also an eyewitness to the incident. He has deposed before the Court that on 29.8.2005 he was playing cards along with Vijay Dhokne, Harshwardhan Gavai, Sunil Zambre, Milind Sadanshiv, Kishor Sadanshiv and Siddharth. At about 12.30 to 1p.m., Rajesh Sadanshiv i.e. the accused came on the spot. He was armed with an axe. Ravindra had questioned him as to why he had brought the axe and the accused had replied that he had brought it to cut the branches of the tree. Suddenly he gave blow by the axe on the head of Siddharth. Having sustained an injury, Siddharth collapsed on the ground. The companions of Siddharth were shocked and they ran away from the spot. PW7 has further stated that while they were running, he turned back and saw Rajesh giving a blow by the said axe on the leg of Siddharth. PW7 has identified the axe in the Court.

In the cross-examination, it is elicited that he had not informed the Police about the incident on the day of the incident. His statement was recorded on the next day. In the cross-examination, PW7 has stated that he had stated to the Police that Rajesh had stood behind Siddharth and that after 2 to 3 minutes, the accused had given the blow and that Siddharth had fallen on the ground. He had also stated that while running away, he had looked behind and had seen Rajesh giving blow by axe on the leg of Siddharth. However, he cannot assign any reason as to why these averment do not find place in his statement u/s 161 of Cr.P.C. The omissions in the evidence of this witness are proved by PW9. The investigating officer i.e. PW9 has deposed before the Court that at the relevant time he had interrogated the persons residing in the vicinity of the spot of incident. However, the said persons are not cited as witnesses.

12. It is not the quantity of witnesses examined by the prosecution to prove its case but it is the quality of the witnesses which needs to be considered. In the present case, there is nothing on record to discredit the evidence of PW6. He has deposed about the presence of PW5 and PW7 on the spot along with the deceased at the time of incident.

13. PW6, who is an eyewitness, was friend of the deceased. He was present on the spot and had not gone forward to help deceased at the time of incident, was

most probable and natural human conduct, which most men faced in such situation would resort to. Not having the courage to stop a person armed with a deadly weapon was not and could not be a circumstance to disbelieve the testimony of PW6 particularly when he has stood the test of cross-examination. This could be a case of solitary witness having proved the incident and the culpability of the accused. The suggestions given in the course of cross-examination mainly revolve round the aspect of non-disclosure of the incident to the Police on the day of the incident. The prosecution, through the sterling testimony of PW6 has established the guilt of the accused beyond reasonable doubt. From the evidence adduced by the prosecution, it appears that the act of the accused was premeditated and was well planned in advance to satisfy his personal vendetta for the incident which had occurred on the earlier day. In these circumstances it can be safely held that the accused is guilty of offence punishable u/s 302 of IPC. The judgment rendered by 2nd Ad-hoc Additional Sessions Judge, Akola calls for no interference.

Hence the appeal is dismissed.