

A RAJA GOUNDER & ANR.
v.
STATE OF TAMIL NADU
(Criminal Appeal No. 632 of 2005)

B SEPTEMBER 28, 2010

[HARJIT SINGH BEDI AND R.M. LODHA, JJ.]

PENAL CODE, 1860:

C *s.302 – Fratricide – Property dispute among brothers –*
Conviction by courts below – Pleas of delay in FIR, non-
examination of independent witness, person cited as PWs
deposing as DW, discrepancy in oral testimony and medical
D *evidence – HELD: All these issues have been examined by*
courts below – Incident occurred in the night, delay in lodging
FIR by young widow has been satisfactorily explained – Since
dispute existed within the family, independent witness would
not ordinarily be available – There is nothing unusual that the
E *mother of the deceased and the accused, who had been cited*
as PW, appeared in court as a DW – There is no discrepancy
vis-à-vis the oral and the medical evidence – It would not have
been possible to the eye-witness to identify every blow given
by the assailants – The Court is not inclined to interfere with
the judgments of the courts below – Delay in lodging FIR –
F *Evidence – Person cited as PW, deposing as DW – Variance*
in ocular version and medical evidence.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 632 of 2005.

G From the Judgment & Order dated 09.07.2004 of the High
Court of Judicature at Madras in Crl. A. No. 573 of 2001.

K. Sarada Devi for the Appellants.

S. Thananjayan for the Respondent.

H 838

The following order of the Court was delivered

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O R D E R

We have heard learned counsel for the parties in extenso.

We find that two Courts have found against the appellants more particularly that PW.1 the first informant, the wife of the deceased, is also the sister-in-law of the appellants as the deceased and the appellants were brothers. It has also come in evidence that the relations between the parties were strained on account of a land dispute and this was the motive for the murder.

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It has been contended by Mrs. K. Sarada Devi, the learned counsel for the appellants, that there were several suspicious circumstances in the prosecution evidence in as much that the FIR had been lodged after 13 hours and there was no explanation forthcoming to explain the delay and this delay has been utilized by the prosecution to evolve a false story and that PW.2 the sister of the deceased and the appellants who had been cited as witness had not been produced as a witness. In addition, it has been argued that in the FIR, PW.1 had referred to two injuries caused to the deceased but eight injuries had been detected during the post-mortem.

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We find that all these issues have been examined by the Courts below and it has been found that the delay in the lodging the FIR had been explained as the incident had happened at 10.00 p.m. at a little distance from the house of the deceased, and PW.1, a young woman, would have been in a great distress and had first sent information to her parents in their village some distance away and had thereafter left for the police station to lodge the report. We find that the conduct of PW.1 was perfectly compatible with the behaviour of a young widow who had seen a brutal attack on her husband. It is true that no independent witness has been examined but in the background that a dispute existed within the family, independent witnesses would

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A not ordinarily be available. We thus have absolutely no reason to doubt the evidence of PW.1 as she would be the last person to involve the appellants in a false case leaving out the real assailants. We are not surprised that the mother of the deceased and the appellants who had been cited as a PW but
B had instead appeared in Court as a defence witness, as this is a common tendency in fratricides, and particularly where parents are involved as witnesses in as much that after tempers cool and there is time for reflection they find that while one child has been murdered and the other faces the prospect of serving
C a long sentence on their evidence which will, without a doubt, be believed, invariably makes their resile from their police statements. We also find no discrepancy vis.-a-vis. the ocular and medical evidence. We notice that the incident happened in the dead night and it would not have been possible for the
D PW.1 to see all the blows striking the deceased and to identify every blow given by the appellants in the darkness, would have smacked of tutoring of the witness. Two courts have found against the appellants on a minute appreciation of the evidence on this aspect as well. We are thus not inclined to interfere in this appeal.

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Dismissed.

R.P.

Appeal dismissed.