Supreme Court of India
Elkur Jameesu vs State Of Andhra Pradesh on 27 November, 1997
Author: M Mukherjee
Bench: M.K. Mukherjee, S.P. Kurdukar, K.T. Thomas

PETITIONER:
ELKUR JAMEESU

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 27/11/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

THE 27TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mr. Justice M.K. Mukherjee Hon'ble Mr. Justice S.P. Kurdukar Hon'ble Mr. Justice K.T. Thomas B. Kanta Rao, Adv. the appellant G. Prabhakar, Adv. for the Respondent J U D G M E N T The following Judgment of the Court was delivered:

M.K. MUKHERJEE, J.

The appellant was indicted before the Additional Sessions Judge, Mahaboob Nagar for the murder of his uncle Elukur Yasalah. Though the trial Judge exonerated him of the above charge, the High Court, in appeal preferred by the respondent-State, convicted and sentenced him to suffer imprisonment for life for the murder. Hence this appeal under Section 379 Cr.P.C. at his instance. 2(a) According to the prosecution case on July 18, 1990 the appellant, who is a resident of village Konkal, came to the house of the deceased in village Thummilla - which is at a distance of 20 kms. from Konkal- an asked for some money by way of loan. when the deceased expressed his inability to accommodate him, t he appellant implored the former to sign some papers to obtain loan on the security of the joint family property. This entreaty was also turned down by the deceased. After staying for that night at the deceased place the appellant left for his village on the following

morning. 2(b) In that night (July 19, 1990) the deceased went to sleep in the outer verandah of his hut, with his son Elkur Rathanam (P.W.1) and wife Sarojamma (P.W.2) sleeping inside. At or about 11 P.M., P.Ws. 1 and 2 heard the cries of the deceased and when they rushed out they saw the appellant running away with some weapon in his hand. The deceased told them that the appellant had stabbed him. they found that his intestines had come out and he had injuries on his hands also. A few minutes later he succumbed to his injuries. 2(c) On the following morning at or about 8.30 A.M. P.W.1 went to Rajoli Police Station, which is at a distance of 17 kms. from the village, and lodged an information about the incident. Shaik Mohammad Hussain (P.W.9), a Sub Inspector of Police, registered a case on that information and took up investigation. He went to village Konkal at or about 9.30 A.M. and held inquest upon the body of the deceased. He then sent it for post mortem examination by Dr. K. Pullanna (P.W.

7) Civil Assistant Surgeon of the local Government hospital who found the following injuries on his person:-

> "1. An incised wound extending from epigastric region to right lumber region oblique in direction, measuring 6" x 4" x 6", edges red and regular. large intestine, small intestine, omentum came out side through this wound faecal matters also came outside through this wound.
>
> 2. An incised wound on the dorsal aspect of right wrist joint 3" x 1 1/2" x 1" edges red and regular, all tenders are exposed.
>
> 3. An incised wound on left orsal aspect of left wrist joint size 2" x 1" x 1/2" edges red and regular."

He opined that the death was due to shock and haemorrhage caused by the injuries.

2(d). In course of the investigation the appellant was arrested on July 29, 1991 and at his instance his blood stained shirt (M.O.7) and a sickle (M.O.6), also blood stained, were recovered. The seized articles were sent to the Forensic Science Laboratory for chemical examination. On receipt of report of such examination and completion of investigation the police submitted charge-sheet against the appellant.

3. The appellant pleaded not guilty to the charge levelled against him and his defence was that he was falsely implicated.

4. Since the factum of the death of the deceased owing to the injuries sustained by him was not disputed by the defence the main question that fell for determination before the Courts below was whether the evidence of P.WS. 1 and 2, on acceptance of which rested the success of the prosecution, was reliable. In acquitting the appellant the trial Court held that they were not eye-witnesses to the incident and their evidence that were not eye-witnesses to the incident and their evidence that the deceased told them that the appellant had stabbed him was only hearsay. The trial Court further held that their claim that they identified the person who was fleeing away from their house was the

appellant could not be accepted as it was not possible for them to identify the assailant in the darkness of the night. Some inconsequential and minor contradictions in the evidence of P.Ws. 1 and 2 were also pressed into service by the trial Court.

5. In appeal the High Court reappraised the evidence and held that the evidence of P.Ws. 1 and 2 clearly and fully supported the prosecution case.

6. Having given our anxious consideration to the evidence of P.Ws. 1 and 2 and the attending circumstances of the case we find no merit in this appeal. The observation of the trial Court that the statement made by the deceased before P.Ws. 1 and 2 that the appellant had stabbed him could not be relied upon as it was 'hearsay' is opposed to fundamental principle of criminal jurisprudence for the statement so made is not only admissible as evidence under Section 32(1) of the Evidence Act but can also be made the sole basis for conviction, if it can be safely relied upon. The other observation of the trial Court that it was not possible for P.Ws. 1 and 2 to identify the appellant as the person who was running away form their house, cannot also be sustained for their uncontroverted evidence shows that a lamp was burning on the Verandah then and therefore it was not difficult for them to identify the appellant, more so when he was their close relation.

7. Having regard to the fact that the incident took place at an unearthly hour of the night in the house of the deceased, it cannot be gainsaid that P.Ws. 1 and 2 were the most natural and probable witnesses. This apart, we find that inspite of searching and lengthy cross examination the defence could not succeed in eliciting any answer favourable to it. Judged in that context, we do not find any reason whatsoever to disbelieve their testimony that they saw the appellant running away form their house and that the deceased told them that it was the appellant who stabbed him. When these two places of evidence are considered along with the medical evidence and the F.I.R., which contains the substratum of the prosecution case and was lodged with utmost dispatch, the only legitimate inference that can be drawn is that the prosecution has been able to conclusively prove that the appellant committed the murder of his uncle.

8. In the result the appeal fails and is hereby dismissed.