
(2016) 09 AP CK 0038

In the Andhra Pradesh High Court

Case No : Criminal Appeal No.1383 of 2010

Chilla Rambabu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 1 ALTCrI 182 : (2017) 1 AndhLDCriminal 564

Hon'ble Judges : Sri Sanjay Kumar and Sri M.Seetharama Murthi, JJ.

Bench : Division Bench

Advocate : Public Prosecutor, for the Respondent; Dr. K. Satyanarayana Rao, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Sri Sanjay Kumar, J. - By judgment dated 26.08.2010 in Sessions Case No.76 of 2009, the learned Special Judge for trial of cases under The SCs & STs (POA) Act cum - Additional District & Sessions Judge, Vizianagaram, convicted A1 under Section 302 IPC for the murder of Pitta Papayamma and her husband, Pitta Appala Reddy. A1 was also held guilty of the charge under Section 449 IPC. For his conviction under Section 302 IPC, he was sentenced to life imprisonment and to pay a fine of Rs.1,000/- or undergo simple imprisonment for one month, in default thereof. For the charge under Section 449 IPC, he was sentenced to rigorous imprisonment for 5 years and to pay a fine of Rs. 1,000/- or suffer simple imprisonment for one month, in default thereof. A1s wife, A2, was acquitted of the charges under Sections 302 and 449 IPC. She was however convicted of the lesser charge under Section 448 IPC and sentenced to simple imprisonment for one month and to pay a fine of Rs. 1,000/- or undergo simple imprisonment for one month, in default thereof. Aggrieved by his conviction and sentence, A1 is in appeal under Section 374(2) CrPC.

2. The case of the prosecution before the Sessions Court:

The Sub-Inspector of Police, Bhogapuram (P.W.17), received a phone message from Gudivada Village at 9:00 PM on 08.11.2008 about the death of Pitta Papayamma. He, along with his staff, rushed to the place of occurrence, Chella Street of Gudivada Village, at 9:45 PM. There, P.W.17 received Ex.P1 report from Pitta Nagireddy (P.W.1). P.W.1 stated therein that he is working as an Office Boy at HDFC Bank at Visakhapatnam and that Pitta Papayamma and Pitta Appala Reddy were his parents. He stated that since his childhood, his parents and A1 used to say that his marriage would be performed with Aruna (L.W.13), the daughter of A1. P.W.1 stated that he came to know that Aruna was habituated to bad things and this fact was also known to his parents. He stated that since six months, A1 used to come to their house and ask his parents to perform his marriage with Aruna but his parents were not agreeable. A1 threatened them that he would see their end. On 08.11.2008 at 7:00 PM, P.W.1 stated that while he was on duty at HDFC Bank at Visakhapatnam, Chilla Ramu (P.W.5), belonging to his village, telephoned him and informed him that at about 6:50 PM, A1 came to their house with a knife and asked whether his marriage would be performed with Aruna and when his mother said that they were not willing, he quarreled with his parents and said that he would perform the marriage of his daughter with P.W.1 even by killing them and stabbed his mother with the knife on the left side of her chest due to which she fell to the ground and when his father intervened, A1 stabbed him in his stomach. P.W.1 stated that he immediately rushed to the village and found his mother dead on the road next to his house with a bleeding injury on her chest and as his father had received a stab injury on his stomach, he was shifted to the hospital by ambulance. P.W.1 asserted that A1 had attacked his parents as he had not married his daughter and killed his mother by stabbing her with a knife and with the intention of killing his father also; he stabbed him with a knife.

3. P.W.17 thereupon registered Crime No.149 of 2008 under Sections 302 and 307 IPC. Ex.P15 is the FIR. He sent a copy of the FIR to the Circle Inspector of Police, Bhogapuram Circle (P.W.18), for investigation. P.W.18 received Ex.P15 FIR on 08.11.2008. He, along with staff members, came to Gudivada Village but as it was late at night, he did not commence investigation at that hour. He posted a constable to guard the dead body at the scene and visited Vijetha Hospital, Visakhapatnam. However, he could not record the statement of Pitta Appala Reddy as he was unconscious. On 09.11.2008, P.W.18 secured the presence of mediators, Chilla Appalaramireddy (L.W.16) and Gidugu Kameswara Rao (P.W.11), and inspected the scene of the offence. He prepared the scene observation report (Ex.P6) and a rough sketch of the scene (Ex.P16). He also got the scene photographed by a private photographer, Patnana Naga Raju (P.W.16). P.W.18 seized the blood stained earth and controlled earth at the scene of the offence under cover of the observation report (Ex.P6). He also examined P.Ws.1 to 4, Jami Pydichitti (L.W.3) and others and recorded their statements. He secured panchas, Appalaramireddy (L.W.16), Gidugu Kameswara Rao (P.W.11), Kondapu Appala Suri (L.W.19) and others, and in their presence held an inquest

over the dead body of Pitta Papayamma. Ex.P7 is the inquest report. He then sent the dead body of Pitta Papayamma to the Government Hospital, Vizianagaram, for autopsy. On the same day, he received reliable information about the accused and having secured the presence of mediators, Gidugu Kameswara Rao (P.W.11) and another, he proceeded to Avanthi College, abutting NH5 Road, Gudivada Junction, and found A1, who tried to flee. He however apprehended him and upon interrogation, he gave his disclosure statement (Ex.P8). As his clothes were found stained with blood, the same were seized under a Mediators Report (Ex.P9). M.Os.1 and 2 are the blood-stained pant and shirt of A1. A1 then led the police team to Gudivada Village and to the house of the Sarpanch, where he produced the knife (M.O.3) concealed by him underneath the cement plates of an unused drainage. The same was seized under a seizure mahazar (Ex.P10). A1 was then brought to the police station and sent for judicial remand on the next day.

4. P.W.18 visited King George Hospital, Visakhapatnam, on 10.11.2008 and recorded the statement of Pitta Appala Reddy. He also seized a blood-stained lungi (M.O.4) from him. He examined Pitta Raghuramreddy (P.W.6) and recorded his statement. He then went to Gudivada Village and examined P.Ws.7 to 9 and Chilla Kanaka Pydithalli (L.W.12) and recorded their statements. Upon examination of these witnesses, P.W.18 learnt that A2 was also involved in the commission of the offence along with A1. On 17.11.2008, P.W.18 received the post-mortem examination report (Ex.P5) of Pitta Papayamma. He then sent a questionnaire to the medical officer enquiring as to whether the injuries found on the person of Pitta Papayamma could have been caused by M.O.3 knife. The medical officer opined that it was possible. Ex.P17 is the questionnaire and opinion given by the medical officer. On 20.11.2008, P.W.18 prepared and sent a letter of advice and the material objects to the Forensic Science Laboratory, Hyderabad, for examination. Ex.P18 is the letter of advice. On 19.12.2008, P.W.18 visited Gudivada Village and examined P.W.4 and recorded her statement. On 05.02.2009, upon receiving credible information, P.W.18 and PC No.647, a woman constable, along with other staff members, went to Visakhapatnam and arrested A2 at 10:00 AM at Hanumanthavaka. She was sent for judicial remand. On 06.02.2009, P.W.1 came to P.W.18 at about 8:00 AM and reported that his father, Pitta Appala Reddy, died on 03.02.2009 at 21.20 hours. P.W.18 immediately proceeded to King George Hospital, Visakhapatnam, and held an inquest over the dead body of Pitta Appala Reddy at the mortuary in the presence of panchas. Ex.P11 is the inquest report. The dead body was then sent for post-mortem examination after photographs were taken. Ex.P19 is the set of eight photographs with negatives. P.W.18 then went to Vijetha Hospital, Visakhapatnam, where he examined Dr. V.S.N.Murthy (P.W.13) and recorded his statement. On 06.02.2009, P.W.18 visited Padmavathi Nursing Home at Tagarapuvalasa and examined Dr. Ch.Swamy Naidu (P.W.14) and recorded his statement. From there, P.W.18 proceeded to Gudivada Village where he examined Dekkatha Ramakrishna (L.W.15) and Chilla Ramana (L.W.14) and

recorded their statements. On 07.02.2009, P.W.18 received the post-mortem report of Pitta Appala Reddy (Ex.P13). He then completed the investigation and filed a preliminary charge sheet. After receipt of the report (Ex.P20) from the Forensic Science Laboratory, a final charge sheet was filed by P.W.18s successor-in-office, P.Phalguna Rao.

5. Upon committal, the Sessions Court framed five charges. Verbatim, the charges read as under:

Firstly:- That you A1 and A2 on or about the 08th day of November, 2008, at about 18-50 hours, in front of the house of Pitta Papayamma and Pitta Appala Reddy (deceased), Chilla Veedhi, Gudivada Village, Bhogapuram Mandal, Vizianagaram District, committed house trespass by entering into the house of Pitta Papayamma and Pitta Appala Reddy (deceased) situated at Chilla Veedhi, Gudivada Village, Bhogapuram Mandal, used as a human dwelling in order to the committing of an offence punishable with death of Pitta Papayamma and Pitta Appala Reddy, because the deceased did not agree to perform the marriage of their 3rd son viz., Pitta Nagireddy (L.W.1), who is working as Office boy at HDFC Bank, Visakhapatnam with your daughter viz., Chilla Aruna (L.W.13) as promised by them, and that you A-1 and A-2 thereby committed an offence punishable under Section 449 of the Indian Penal Code and within my cognizance;

Secondly:- - That you A-2 on or about the same day, time and place, as mentioned in Charge No.1 supra, committed murder by intentionally causing the death of Pitta Papayamma, aged 55 years, W/o Appalareddy of Gudivada (v), Bhogapuram (M), by pulling her out from her house by catching hold of her hands and stabbed on her left chest with a knife and consequently she collapsed and died at the spot instantaneously, and that you A-2 thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance;

Thirdly :- - That on or about the same day, time and place, as mentioned in Charge No.1 supra, you A-2 committed murder by intentionally causing the death of Pitta Papayamma, aged 55 years, W/o Appalareddy of Gudivada (v), Bhogapuram (M), by pulled out her from the house by catching hold of her hands and stabbed on her left chest with a knife and consequently she collapsed and died at the spot instantaneously, that A.2 of you committed murder of the said Pitta Papayamma in furtherance of common intention of A.1 and A.2 of you and that A-1 of you were present at the commission of offence by A.2 and that A.1 of you thereby committed an offence punishable under Section 302 r/w 34 of the Indian Penal Code and within my cognizance;

Fourthly:- - That you A-1, on or about the same day, time and place, as mentioned in Charge No.1 supra, committed murder by intentionally causing the death of Pitta Pitta Appalareddy, aged 60 years, S/o late Mahalakshmi, Gudivada (v), Bhogapuram (M), by stabbing on his abdomen with a knife and consequently he sustained severe bleeding injury on his abdomen and subsequently he died in

K.G.H., Visakhapatnam on 03.02.2009 at 9-20 p.m., while he was undergoing treatment in the Hospital, and that you A-1 thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance;

Fifthly:- - That on or about the same day, time and place, as mentioned in Charge No.1 supra, you A-1 committed murder by intentionally causing the death of Pitta Pitta Appalareddy, aged 60 years, S/o late Mahalakshmi, Gudivada (v), Bhogapuram (M), by stabbing on his abdomen with a knife and consequently he sustained severe bleeding injury on his abdomen and subsequently he died in K.G.H., Visakhapatnam on 03.02.2009 at 9-20 p.m., while he was undergoing treatment in the Hospital; that A.1 of you were committed the offence in furtherance of common intention of you both the accused and at that time, you A-2 were present there and that A-2 of you thereby committed an offence punishable under Section 302 r/w 34 of the Indian Penal Code and within my cognizance;

6. Both the accused pleaded not guilty and claimed to be tried.

7. To substantiate its case before the Sessions Court, the prosecution examined 18 witnesses and marked 20 exhibits. Case properties were marked as M.Os.1 to 4. No evidence, oral or documentary, was adduced by the defence.

8. By the judgment under appeal, in so far as the appellant/A1 is concerned, the Sessions Court opined that the prosecution had proved the charge under Section 302 IPC that A1 had intentionally caused the death of Pitta Papayamma and Pitta Appala Reddy by stabbing them. He was also found guilty under Section 449 IPC and was sentenced accordingly. Hence, this appeal.

9. Salient points emerging from the oral and documentary evidence:

Pitta Nagireddy (P.W.1), the son of the deceased couple, spoke of the differences between A1 & A2 and the deceased about the proposal of marriage between the daughter of the accused and him not being accepted by his parents. He stated that on one occasion, A1 came to his parents and told them that he would perform the marriage of his daughter with him even by killing them. As to the events of the fateful day, he stated that between 6:00 and 7:00 PM on 08.11.2008, when he was on duty, Chilla Ramu (P.W.5) informed him over phone that A1 had stabbed his parents and asked him to come immediately. He thereupon rushed to the village and found his mother dead with injuries on the road. He stated that his brothers had taken his father to Padmavathi Hospital at Tagarapuvalasa for treatment and he went there to see him. But, by that time, his father was shifted to King George Hospital, Visakhapatnam, in an ambulance and he returned to the village. When the police came to his village, he said that he gave a report to them and that Ex.P1 is the said report. He further stated that three months after the incident his father died in King George Hospital while taking treatment for the injuries sustained by him on his abdomen.

10. Chetla Srinivas (P.W.2), the brother of Pitta Papayamma, spoke of the failure

of the marriage proposal between P.W.1 and the daughter of the accused and the ill-feelings caused between the parties in relation thereto.

11. Pitta Lakshmi (P.W.3), the daughter-in-law of the deceased, stated that she was married to the eldest son of the deceased. She also confirmed the failure of the marriage proposal between P.W.1 and the daughter of the accused and the disputes arising therefrom. She further stated that 15 to 20 days prior to the date of the incident, both the accused came to their house and had an altercation with the deceased and as they did not agree to perform the marriage of their son with the daughter of the accused, the accused threatened that they would perform the marriage by killing them.

12. Chilla Aruna (P.W.4), a resident of Gudivada Village, stated that her house was situated opposite the house of the deceased and that she knew both the accused as their house was situated two houses away from hers. She also spoke of the disputes between the deceased and the accused in relation to the marriage proposal between the daughter of the accused and P.W.1. As to the events of the fateful day, she stated that about two years prior to her examination in Court, at about 6:00 PM on one day, there was an altercation between the accused and the deceased at the house of the deceased. P.W.4 said that she took her children for tuition and when she returned home within half an hour, she found Papayamma lying dead on the road with an injury on the left side of her chest. Appala Reddy was also there with an injury to his abdomen in front of his house. P.W.4 said that one RMP doctor came there and upon examining Papayamma, he declared that she was dead. Appala Reddy, who was alive with injuries, was removed to a hospital in a 108 vehicle. In her cross-examination, P.W.4 said that she was not present at the scene when the incident took place as she had taken her children for tuition in another street. She denied the suggestion that there was no marriage proposal between P.W.1 and the daughter of the accused and that there was no altercation in relation thereto.

13. Chilla Ramu (P.W.5), a resident of Gudivada Village, stated that she knew both the deceased and the accused. She stated that the house of the accused was situated opposite to the house of the deceased while her house was two houses away from the house of the deceased in a lane. She spoke of the disputes between the deceased and the accused with regard to the marriage proposal between the daughter of the accused and P.W.1. As to the events of the fateful day, she said that at about 6:00 PM on one day, about one and a half years prior to her examination, while she was going to the market, she spoke to Pitta Papayamma at her house and when she was at her house, her daughter came and told her that there was an altercation between the deceased and the accused. She further stated that she also heard the cries raised by them but as she had to go to offer prayers to Bhavani, she did not go to the place of the incident. But after she returned back from Bhavani, she came to know that Pitta Papayamma was dead and Pitta Appala Reddy had sustained injuries to his abdomen and was shifted to the hospital. She further stated that the police did

not examine her. At this stage, P.W.5 was declared hostile and was cross-examined by the prosecution. Nothing useful was however elicited during her cross-examination.

14. Pitta Raghuramreddy (P.W.6), the second son of the deceased couple, confirmed the disputes between the accused and the deceased in relation to the marriage proposal of the daughter of the accused with P.W.1 and the ill-feelings arising therefrom. He further stated that he accompanied his father in the ambulance to the hospital and his father told him that A2 had pushed him and his mother while A1 stabbed both of them and inflicted injuries on their person. P.W.6 said that they took their father to Padmavathi Hospital at Tagarapuvalasa and from there to Vijetha Hospital at Visakhapatnam and thereafter, to King George Hospital, Visakhapatnam. He stated that his father died while taking treatment at King George Hospital. In his cross-examination, P.W.6 stated that by the time he came to the scene, his father was conscious but not in a position to stand. He denied the suggestion that his father had not told him as to how Pitta Papayamma and he had sustained injuries at the hands of the accused.

15. V. Jagadeeswara Rao (P.W.7), a medical practitioner at Gudivada, stated that on 08.11.2008 between 6:00 and 7:00 PM, while he was in his dispensary, one Ramana came and informed him that A1 had stabbed both the deceased and asked him to come to the place of the incident. P.W.7 said that he immediately went to the scene of the offence and found Pitta Papayamma and Pitta Appala Reddy lying on the ground with injuries. He said that he examined them and found that Pitta Papayamma had injuries on her chest and fingers of both hands and that she had no pulse. Upon examination of Pitta Appala Reddy, he found that he had a stab injury in his abdomen and was conscious and able to talk. As blood was oozing from the stab injury, P.W.7 said that he placed some cotton to prevent the bleeding and telephoned for an ambulance. In his cross-examination, P.W.7 confirmed that he had not seen A1 stabbing the accused and that he did not know the truth or otherwise of the statement made by Ramana.

16. The said Pitta Ramana was examined as P.W.8 and stated that he knew the accused and the deceased. As to the events on 08.11.2008, he said that between 6:00 and 7:00 PM, while he was coming from Konada and had reached the house of the accused, there was an altercation going on between the accused and the deceased. P.W.8 said that the house of the accused was in front of the house of the deceased and both parties were altercating. P.W.8 said that he advised them not to quarrel and when he was going away from that place, he heard cries and immediately came back and found Pitta Papayamma and Pitta Appala Reddy lying with injuries on the ground. P.W.8 said that he enquired with Pitta Appala Reddy, who told him that A1 had stabbed him and his wife, Papayamma. P.W.8 also said that he found A1 going away from that place and questioned him as to why he stabbed both the deceased, on which A1 told him that had he been blessed with a daughter, he would have realized the problems. Saying so, A1 went away. P.W.8 then went to P.W.7 and brought him. P.W.7 examined both Papayamma and

Appala Reddy and some time later, an ambulance came and Appala Reddy was shifted to the hospital for treatment. At this stage, the witness was declared hostile and was cross-examined by the prosecution. It is however relevant to note that what was stated by P.W.8 in his chief was sufficiently incriminating. In his cross-examination by the defence, P.W.8 denied the suggestion that he had not stated to the police that when he enquired with Appala Reddy, he told him that A1 stabbed him and his wife. He denied the suggestion that he did not question A1 as to why he stabbed the deceased.

17. Sadi Sudha (P.W.9), who signed as S.Sudharshan Reddy, a resident of Gudivada Village, stated that on 08.11.2008 at around 7:00 PM, while he was at his house, he heard some cries and when he came out, he found both Papayamma and Appala Reddy lying with injuries on the road. P.W.7, who came there, asked P.W.9 to bring cotton from his clinic and P.W.9 said that he went to the clinic and brought the cotton. P.W.7 applied the same to the stab injury of Appala Reddy to prevent the bleeding. P.W.9 further stated that Appala Reddy was in a position to talk slowly and in the meanwhile, an ambulance came and he was shifted to the hospital for treatment. After this chief-examination, the witness was declared hostile and cross-examined by the prosecution.

18. Dr. V. Satyanarayana (P.W.10), the doctor who conducted the post-mortem examination of Papayamma's body, stated that the cause of her death was cardio-respiratory failure due to shock due to bleeding due to stab injury. He further confirmed that Papayamma's injuries could be caused by the knife (M.O.3) shown to him.

19. Gidugu Kameswara Rao (P.W.11), the Village Revenue Officer, Gudivada, spoke of his participation in the investigation. As to the apprehension of A1, he said that on 09.11.2008 at about 3:00 PM, he along with the police authorities and Appalaramireddy (L.W.16), went in a jeep to Avanthi Engineering College situated adjacent to NH5 road and noticed a person who, upon seeing them, tried to run away. The police however chased and caught hold of him and interrogated him. The person so caught was A1 and gave his statement (Ex.P8). The clothes worn by A1 were seized by the police and Ex.P9 is the relevant portion of the seizure mahazar. P.W.11 identified M.O.1 and M.O.2 as the pant and the shirt so seized. P.W.11 further stated that A1 led them to Gudivada Village and took them to the house of Dasari Chandrasekhara Reddy (L.W.6), ex-Sarpanch, and picked up a knife from underneath the cement plate of the drainage. He said M.O.3 was the said knife. The Inspector of Police prepared slips and affixed the same on the knife and the said slip was signed by P.W.11.

20. S. Togulareddy (P.W.12), a witness in relation to the inquest proceedings held over the body of Pitta Appala Reddy, confirmed his presence during such proceedings.

21. Dr. V.S.N. Murthy (P.W.13), the doctor at Vijetha Multi Super Speciality Hospital, Visakhapatnam, stated that on 08.11.2008 at 9:45 PM, Appala Reddy

was admitted to the said hospital and he treated him from 08.11.2008 to 11.11.2008 for the injuries sustained by him in the lower abdomen. P.W.13 stated that before he was admitted to the said hospital, he was treated and the injury had already been dressed. P.W.13 further stated that he found two abrasions over the left hand and one sutured laceration on the left forearm of Appala Reddy. He also spoke of two skin deep lacerations, measuring 2 inches in length, present over the lower part of the right forearm and a lacerated wound on the left buttock of Appala Reddy. He certified that Ex.P12 was the attested copy of the case sheet maintained by the hospital pertaining to the treatment given to Appala Reddy. He confirmed that the afore stated injuries could only be caused by a sharp weapon like a knife.

22. Dr. Ch. Swamynaidu (P.W.14), the doctor at Padmavathi Nursing Home, Tagarapuvalasa, stated that on 08.11.2008 at about 8:00 PM, Appala Reddy was brought to their hospital with injuries, i.e., a stab injury on the right side of the abdomen with certain minor injuries on his person and he provided him first aid and advised that he be taken to Visakhapatnam for better treatment.

23. Dr. Y. Paidiraju (P.W.15), then an Assistant Professor at Andhra Medical College, Visakhapatnam, conducted the post-mortem over the body of Pitta Appala Reddy. He spoke of the ante-mortem grievous injuries found on the deceased and opined that he had died of septic and toxic shock due to multiple infected wounds. Ex.P13 was confirmed to be the post-mortem report issued by him.

24. Patnana Nagaraju (P.W.16), photographer, spoke of the pictures taken by him on 09.11.2008 at 7:00 AM at the scene of the offence. S. Tirumala Rao (P.W.17) and Ch.Paparao (P.W.18), the investigating officers, spoke of the various steps taken by them. P.W.18 confirmed that on 10.11.2008, he visited King George Hospital, Visakhapatnam, and examined Appala Reddy and recorded his statement. However, this statement was not marked in evidence.

25. In the light of the afore stated evidence, it is apparent that Papayammas death was homicidal as she died instantaneously after the knife attack. As to the death of Appala Reddy, the issue is not so simple. He sustained grievous stab injuries on 08.11.2008 and was admitted to Vijetha Multi Super-Specialty Hospital, Visakhapatnam, on the very same day at 9:45 PM. He was discharged from the said hospital on 11.11.2008 at 6:20 PM. These facts are borne out by Ex.P12 case sheet. It is however pertinent to note that his discharge from this hospital was not on its own volition. A High Risk Consent was obtained in Ex.P12 from one Bhaskar, who was stated therein to be a nephew of Appala Reddy, and he wrote that though the doctors had advised that the health condition of Appala Reddy was dangerous, they were taking him from the said hospital owing to their financial constraints and that the hospital had no responsibility thereafter.

26. There is no indication as to when Appala Reddy was admitted thereafter at King George Hospital, Visakhapatnam. No document in this regard was placed

before the Court. It is however not in dispute that Appala Reddy died nearly three months later, on 03.02.2009, at King George Hospital, Visakhapatnam. The cause of his death was septic and toxic shock due to multiple infected wounds. In effect, his death cannot be directly attributed to the stab injuries sustained by him on 08.11.2008 as it was the intervening infection that led to the septic and toxic shock, which were responsible for his death. No medical evidence is adduced to the effect that despite proper treatment, Appala Reddy would not have survived the said stab injuries. In consequence, this Court holds that the death of Papayamma was indubitably homicidal in nature but the death of Appala Reddy was not so.

27. This brings us to a further complication.

28. It is clear from the charges framed by the Sessions Court that A2 was substantively charged under Section 302 IPC for the murder of Papayamma while A1 was substantively charged under Section 302 IPC for the murder of Appala Reddy. It is by way of additional charges under Section 302 IPC r/w Section 34 IPC that A1 was charged for the death of Papayamma and A2 was charged for the death of Appala Reddy. The charges framed clearly demonstrate that the overt act, in so far as the murder of Papayamma is concerned, was attributed to A2 and not to A1. However, A2 was acquitted of the substantive charge under Section 302 IPC for the murder of Papayamma and was also absolved of the charge under Section 302 IPC r/w Section 34 IPC for the murder of Appala Reddy. A1, on the other hand, was held guilty of the substantive charge of murdering both Papayamma and Appala Reddy.

29. In this regard, it is imperative to note that Ex.P1 report given by P.W.1 did not even mention the name of A2 and it was A1 alone who was stated to have stabbed both his parents. Despite the same, the charge sheet filed by the police before the Sessions Court adopted a sexist approach and gave a different version altogether which led to the framing of charges by the Sessions Court as stated supra. However, the issue before us presently is whether this lapse on the part of the prosecution in coming up with a defective charge sheet leading to framing of defective charges is fatal to the conviction of A1 for the murder of Papayamma. Once A2 stood absolved of the substantive charge under Section 302 IPC for the death of Papayamma, the question arises as to whether A1 could have been held guilty of the said charge substantively, when no such charge was framed against him and he was only charged for the said offence under Section 302 IPC r/w Section 34 IPC.

30. It may be pointed out that no ground has been raised in this regard or argued before us in this appeal. However, mindful of our duty to prevent miscarriage of justice, if any, we deem it proper to look into this aspect of the matter also.

31. Case law is of guidance on this aspect.

32. In Willie (William) Slaney v. The State Of Madhya Pradesh 1956 Cri LJ 291 :

AIR 1956 SC 116, the charge against the accused was under Section 302 IPC r/w Section 34 IPC but the conviction was under Section 302 IPC alone. Dealing with this situation, the Supreme Court observed that procedural laws are designed to subserve the ends of justice and not to frustrate them and if a trial is conducted substantially in the manner prescribed by the Code of Criminal Procedure but some irregularity occurs in the course of such conduct, such irregularity is curable. The Supreme Court ultimately held that it is the substance of the provisions that count and not their outward form and to hold otherwise is only to provide avenues of escape for the guilty and afford no protection to the innocent. The ultimate test, per the Supreme Court, was whether any prejudice was caused to the accused owing to the defect in the charge. The observations in this regard are apposite of extraction:

45. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage.

If it was not, and particularly where the accused is defended by counsel (Atta Mohammad v. King Emperor) it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused (Abdul Rahman v. King Emperor).

But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases however alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were.

33. A Similar View Taken in Mobarik Ali Ahmed v. State Of Bombay, AIR 1957 SC 857 , Where the Charge was under section 420 IPC read with Section 34 IPC but the Conviction was Substantively Under Section 420 Ipc. In Rawalpenta Venkalu v. State Of Hyderabad, AIR 1956 SC 171. The charge was Under Section 302 IPC without mention Of Section 34 IPC, but it was stated that the Offence was committed with the Assistance Of other accused with A common intention. However, the Conviction Under Section 302 IPC Simpliciter was held legal against both accused despite the absence of a charge Under Section 34 IPC.

34. In *B.N. Srikantiah v. The State Of Mysore*, AIR 1958 SC 672, the Supreme Court was dealing with a case where no charge under Section 34 IPC had been specified. The Supreme Court observed that imperfection in the charge is curable provided no prejudice is shown to have resulted because of it. If the accused had notice as to what they were being tried for and that their liability was collective and vicarious and not individual, the Supreme Court was of the opinion that no prejudice was caused to them by a defective charge.

35. In *State Of W.B. v. Laisal Haque*, (1989) 3 SCC 166. The Supreme Court, Relying on *Willie (William) slaney 1*, observed that in judging a question of prejudice, as of guilt, the court must act with a broad vision and look to the substance and not to technicalities and the main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. the ratio laid down in *willie (william) slaney 1* was reiterated and applied recently in *Vutukuru Lakshmaiah v. State Of A.P.*, (2015) 11 SCC 102 : (2015) 4 SCC (Cri) 299

36. As noted hereinbefore, Ex.P1 report did not even mention the name of A2 and the overt act in respect of the attack on Papayamma also was attributed to A1 only. The evidence adduced was also to the same effect. P.W.8, who was practically an eyewitness but for the fact that he had just walked away at the crucial moment but returned immediately upon hearing the cries of the deceased, stated in his chief examination that Appala Reddy had told him that A1 had stabbed him and his wife. He further stated that when he asked A1 as to why he had done so, he said that had P.W.8 been blessed with a daughter, he would have realized the problems. P.W.6, the son of the deceased, who accompanied his father, Appala Reddy, in the ambulance, confirmed that Appala Reddy informed him that A2 had pushed him and Papayamma and A1 had stabbed both of them and inflicted injuries on their person. Despite this clarity as to the alleged overt acts, the charge sheet was filed indicating otherwise that A1 stabbed Appala Reddy and A2 stabbed Papayamma. However, in the light of the additional charges framed against the accused and as A1 was fully aware of what he was being tried for in view of the evidence adduced, he did not suffer any prejudice during the trial owing to the defect in the charges framed.

37. This Court must also keep in mind that on the strength of mere technicalities, the guilty cannot be permitted to walk free, with impunity, despite their culpability for the heinous offence that they are charged with being proved beyond reasonable doubt. The very ethos and fabric of society would be rendered fragile if Courts resort to such a hidebound and mechanical approach.

38. In *Mohd. Hussain v. State (Govt. Of Nct Of Delhi)*, (2012) 9 SCC 408, the Supreme Court observed that gravity of the offence and the criminality with which the accused is charged are important factors that need to be kept in mind and it is desirable that punishment should follow the offence as closely as

possible. The Supreme Court observed that in an extremely serious criminal case of exceptional nature, it would occasion failure of justice if the prosecution is not taken to the logical conclusion as justice is supreme..

39. It is no doubt true that there were lapses in the investigation. The blood-stained and controlled earth, seized from the scene of the offence, was not produced before the Sessions Court. This would have been a serious lapse but for the fact that there is other overwhelming evidence to establish the offence and the culpability of A1 therefor. Similarly, the failure to mark in evidence the statement of Appala Reddy recorded by P.W.18 under Section 161 CrPC also pales into insignificance in the light of this Courts finding as to the nature of his death and given the evidence of P.W.s 6 and 8 as to the guilt of A1 for the knife attack upon him.

40. In *Karnel Singh v. State Of M.P.*, (1995) 5 SCC 518, the Supreme Court was also dealing with a case of defective investigation. Having expressed unhappiness over the nature of the investigation, the Supreme Court observed that the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of a defect as to do so would tantamount to playing into the hands of investigating officers, if the investigation is designedly defective. It was further observed that to acquit solely on the ground of defective investigation would be adding insult to injury.

41. In the light of the afore stated settled legal position, the framing of a charge under Section 302 IPC r/w Section 34 IPC against A1 in relation to the murder of Papayamma would not be fatal to his conviction under Section 302 IPC simpliciter and it would be legally sustainable if established beyond doubt. On a conspectus of the material on record, we are of the opinion that the evidence adduced clearly manifested the culpability of A1 for the attack on both Papayamma and Appala Reddy. P.W.8, though he turned hostile, confirmed in his chief examination that Appala Reddy told him of A1 stabbing both him and Papayamma and A1 admitting to the act by saying that he would have understood had he been blessed with a daughter. This evidence is supported by P.W.6, the son of the deceased, who went with Appala Reddy in the ambulance. This evidence is relevant and admissible under Section 32(1) of the Indian Evidence Act, 1872. It is but natural that Appala Reddy would inform his son who was with him in the ambulance as to who had attacked him. This statement was made by Appala Reddy contemporaneously or shortly after the attack.

42. Further, recovery of the knife (M.O.3) is squarely covered by Section 27 of the Indian Evidence Act, 1872, and the evidence in support of such recovery remained unshaken. The said knife was taken out by A1 from under a cement plate of an unused drain in the residence of Dasari Chandrasekhara Reddy (L.W.6), ex-Sarpanch, in the presence of witnesses. This concealed place from which the knife was taken out by A1 clearly speaks against him. His blood-stained pant and shirt (M.O.1 and M.O.2) were recovered from his person and he had no explanation to offer.

43. Reliance placed by the learned counsel for the appellant on *On Sattatiya v. State Of Maharashtra*, (2008) 3 SCC 210 in this regard is therefore of no avail as the recovery in the said case, unlike the case on hand, was rendered doubtful owing to the piecemeal basis in which the information was collected.

44. Reliance is also placed by the learned counsel for the appellant on *Vijay Shankar v. State Of Haryana*, (2015) 12 SCC 644, wherein there was no eyewitness to the occurrence and the case was based solely upon circumstantial evidence. However, in the present case, the presence of P.W.8 at the scene of the offence at or about the actual time of the occurrence and the fact that Appala Reddy was conscious and told both P.W.6 and P.W.8 about A1 stabbing him and Papayamma indicates that this case is not based on mere circumstantial evidence. This judgment is therefore of no avail.

45. *Ashish Batham v. State Of M.P.*, (2002) 7 SCC 317 is also pressed into service, wherein doubts arose in the context of the possibility of a single person inflicting multiple injuries with a knife within a short span of time without hurting himself or receiving any injury during the altercation. In the present case, no such doubt arises as A1 is stated to have first attacked Papayamma, inflicting one fatal wound, and upon the intervention of Appala Reddy, A1 stabbed him in his abdomen and inflicted other injuries on his person.

46. On the above analysis, we find that the conviction of A1 under Section 302 IPC for the murder of Papayamma is sustainable in law and on facts, given the compelling evidence adduced in proof thereof. No cause is made out to interfere with the said conviction. However, in so far as A1's conviction under Section 302 IPC for the death of Appala Reddy is concerned, we are of the opinion that the same is not sustainable in law as the death of Appala Reddy is not even established as homicidal. The evidence on record however demonstrates that grievous injuries were inflicted upon Appala Reddy by A1 with M.O.3 knife. The medical evidence established this beyond doubt. A1 is accordingly convicted under Section 326 IPC and is sentenced to rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default of which, he shall suffer simple imprisonment for one month.

47. It is significant to note that A1 was also held guilty under Section 449 IPC but no evidence was let in to establish any entry into the house of the deceased by A1 or A2. None of the witnesses spoke of this aspect and it is not brought out with any certainty as to whether the deceased came out of their house on their own or whether the accused actually trespassed into the house of the deceased and dragged them out, thereby committing house trespass with intention punishable under Section 449 IPC. Significantly, P.W.5 stated that she spoke to Papayamma at her house at about 6.00 PM while going to the market on the fateful day. It is therefore possible that Papayamma was outside the house at that time and the altercation between the accused and the deceased developed outdoors. There is thus no evidence worth the name to hold A1 guilty of the charge under Section 449 IPC and he is accordingly acquitted of this charge. Any

fine paid by him in this regard shall be refunded to him.

48. The appeal is accordingly allowed in part to the extent