

Raman Vs. State of Kerala

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Court : Kerala

Decided On : Aug-31-2015

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Raman

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V MONDAY, THE 31ST DAY OF AUGUST 2015 9TH BHADRA, 1937 CRL.A.No. 2263 of 2010 ()
----- AGAINST THE

JUDGMENT

IN S.C.NO.76/2008 of III ADDITIONAL SESSIONS COURT (AD HOC -1), THODUPUZHA DATED 22.03.2010 (C.P.NO. 2/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT, IDUKKI) (CRIME NO.4/06 OF KANJIKUZHYPOLICE STATION) APPELLANT(S)/ACCUSED: ----- RAMAN, S/O.KADUTHA, KORALIYIL HOUSE, UMMANCHANDI COLONY BHAGUM, MAZHUVADI KARA, KANJIKUZHYPOLICE VILLAGE BY ADVS.SRI.THOMAS J.ANAKKALLUNKAL SRI.UNNI SEBASTIAN KAPPEN RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM BY PUBLIC PROSECUTOR SRI.K.K.RAJEEV. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Bb K.T.SANKARAN & RAJAVIJAYARAGHAVAN V, JJ.

----- Crl.A.No.2263 of 2010
----- Dated this the 31st day of August, 2015

JUDGMENT

RAJA VIJAYARAGHAVAN V, J.

The appellant is the sole accused in S.C.No.76/2008 on the files of the III Additional Sessions Judge (Ad hoc - I), Thodupuzha. He stands convicted under section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.15,000/- and in default to payment of fine to undergo rigorous imprisonment for one year under section 302 of the IPC.

2. The skeletal facts necessary for unraveling the prosecution case are as follows: The appellant and the deceased are residents of the Kanjikuzhy village in Kottayam District. A crime was Crl.A.No.2263 of 2010 :

2. : registered against the appellant under the Abkari Act and the appellant, believing that the deceased was the snitch, nursing a bitter grudge towards him. Situation being so, on 16.01.2006, at about 5.45 p.m., the deceased along with his wife were returning home after work as usual through a pathway which incidentally passes through the western side of the house of the accused. Spotting the deceased, the accused uttered some obscene words and asked the deceased as to whether he would inform the police. Without further ado, the appellant drew a knife and stabbed four times on the chest and abdomen of the deceased. This was witnessed by Omana (PW20), the wife of the deceased, who was standing in close proximity. Shocked at the sudden onslaught, she cried out, which caught the attention of the neighbors who were preparing to attending a local tribal festival (Kooth) at the Ummanchandy Colony. By that time, the appellant took to his heels carrying MO9 knife with him. The locals summoned PW2, a Jeep Driver, who took

the Crl.A.No.2263 of 2010 :

3. : injured,his wife, and some others who had come to the scene of occurrence to Kanjikuzhy. The injured was then shifted to the vehicle of PW4, who transported the injured and others to the District Hospital Painavu. PW11, the Assistant Surgeon examined the injured and noticing that the injuries were serious, referred the injured to the Medical College Hospital, Kottayam. The deceased was attended to by the Doctors attached to the Medical College Hospital and in spite of their efforts, he breathed his last at 5.50 a.m. on 22.1.2006. In the meantime, based on the information given by PW1, a ward member of the Kanjikuzhy Panchayath before the Assistant Sub Inspector of Police, Kanjikuzhy, Ext.P1(a) FIR was registered for offence under S.324 of the IPC on 17.1.2006. Later sensing the seriousness of the injuries sustained, S.307 of the IPC was added. PW21, the Circle Inspector of Police took over investigation on 20.1.2006. On getting information about the death of the deceased Ext.P5 inquest was prepared over Crl.A.No.2263 of 2010 :

4. : the dead body of the deceased. Ext.P14 report was submitted incorporating S.302 of the IPC. According to the prosecution, the appellant was absconding and on 08.02.2006, at 6.30 p.m., he was arrested. Based on the disclosure statement given by the accused, MO9 knife, allegedly used for stabbing the deceased was recovered from a country hearth on the western side of the residential home of the accused. On the next day the shirt and the dhoti worn by the accused at the time of commission of the offence was handed over to PW21 by the wife of the appellant. Thereafter, investigation was taken over by PW22 the Circle Inspector, who sent the weapon of offence as well as the clothes seized to the lab for chemical analysis. It was the said officer who laid the charge before the jurisdictional Magistrate.

3. The learned Judicial First Class Magistrate, Idukki initiated committal proceedings as C.P.No.2/2008 and Crl.A.No.2263 of 2010 :

5. : committed the case to the Court of Sessions, Thodupuzha. The learned Sessions Judge after hearing the prosecution and the accused framed a charge under S.302 of the IPC. When the charge was read over and explained to the

accused, he abjured the guilt.

4. The prosecution examined as many as 22 witnesses on their side to prove its case. Exts.P1 to P18 were marked as well. MO's 1 to 9 were produced and identified. No evidence was adduced by the defence.

5. After the close of the prosecution evidence, the incriminating circumstances arising out of the prosecution evidence were put to the accused under S.313 of Cr.P.C. The accused denied the various circumstances put to him and stated that he was unaware as to why he was implicated as the accused. CrI.A.No.2263 of 2010 :

6. :

6. The learned Sessions Judge on an evaluation of the oral and documentary evidence adduced by the prosecution concluded that the prosecution had succeeded in proving that the accused had committed the offence under S.302 of the IPC and he was convicted accordingly.

7. It is against the above judgment, conviction and sentence, that the appellant is before this Court.

8. We have heard Shri.V.C.Sarath, the learned counsel appearing for the appellant and Shri.K.K.Rajeev the learned Public Prosecutor.

9. Shri Sarath, the learned counsel appearing for the appellant has raised the following arguments before us to canvass for an acquittal. (a) PW20, the wife of the deceased, is an unreliable witness whose evidence is beset with improbabilities and CrI.A.No.2263 of 2010 :

7. : inconsistencies. A careful appraisal of her evidence would reveal that she was not present when the incident had taken place. (b) Being related and interested, PW20 cannot be considered to be a wholly reliable witness and her evidence should be subjected to severe scrutiny. The court should look for corroboration elsewhere and if no such materials are available, the benefit of doubt should be extended to the accused. (c) There are countless laches and discrepancies in the

investigation carried out which would point to the fact that the real facts are not before court. (d) No reliance could have been placed on the alleged recovery of MO9 murder weapon in the facts of the instant case. (e) There is undue delay in registering the crime and as the genesis of the occurrence is suspect, the benefit naturally would go to the accused. Crl.A.No.2263 of 2010 :

8. : (f) There is undue delay in recording the statement of PW20, the sole eye witness which also creates doubt in the case set up by the prosecution. (g) The deceased was undergoing treatment in the Medical College Hospital from 16.1.2006 till 22.1.2006 and there was ample opportunity for recording the statement of the deceased. Failure will prove fatal to the prosecution case. The learned counsel also placed reliance on Ramji Surjya Padvi and Anr. Vs. State of Maharashtra [(1983) 3 SCC629, Anil Phukan Vs. State of Assam [(1993) 3 SCC282 and Bhimappa Chandappa Hosamani and Ors. Vs State of Karnataka [(2006) 11 SCC323 to buttress his arguments.

10. Per contra, the learned Public Prosecutor has submitted that the evidence of PW20 has a ring of truth and there is absolutely no reason to disbelieve her version Crl.A.No.2263 of 2010 :

9. : before court. According to the learned Public Prosecutor, PWs 2, 3 & 4 who are the witnesses examined by the prosecution to prove the fact that the injured was taken to the hospital have also deposed about the presence of PW20 at the scene of occurrence and also with the injured. Mere fact that PW20 is the wife of the deceased is no reason to discard the evidence if it is otherwise found to be reliable. It was contended that PW20 was a natural witness and her presence at the scene of occurrence could not be doubted. Minor discrepancies in the evidence of eye witnesses are bound to occur and this ensures truthfulness. It was further contended that the accused was arrested on 8.2.2006 and while in custody he had given information based on which the MO9, weapon of offence was recovered from the precincts of his residential home. It was further urged that the doctor who had treated the injured had opined that the injury sustained by the deceased could be possible by using MO9 knife which would lend credence to the version of Crl.A.No.2263 of 2010 :

10. : PW20. It was further contended that minor flaws in the investigation pointed out by the appellant did not affect the core of the prosecution version and the evidence of the eye witness along with the recovery of the weapon of offence and the scientific evidence would go a long way in bringing home the guilt of the appellant.

11. We have evaluated the rival contentions and have comprehensively perused, the materials on record.

12. There cannot be much of a dispute with regard to the homicidal death of Joseph. It is borne out from the records that immediately after the incident the injured was taken to the District Hospital where he was examined by PW11 who issued Ext. P7 wound certificate. PW11 has given evidence that he found the injured to be seriously ill and he was referred to the Medical College Hospital, Kottayam, after providing first aid. PW12 is the lecturer in the Medical Crl.A.No.2263 of 2010 :

11. : College Hospital, Kottayam who had treated Joseph at the hospital and he has narrated the details of the treatment imparted to the injured while he was at the medical college hospital. PW13 is the Forensic Surgeon who conducted the post-mortem and issued Ext.P8 post-mortem certificate revealing the following ante mortem injuries: INJURIES (Ante-Mortem) "1. An incised sutured wound seen on front of left side of chest and front of abdomen 'Y' shaped, having a total length of 37 cm. (Thoracolaportomy) - Surgical entered the abdominal cavity and chest cavity by an incision on left done of diaphragm 7.5 cm. The splenic flexure of colon showed a sutured wound for a length of 6 cm entered lumen and an incised sutured wound on the descending colon 6 cm below the other colonic injury. Corresponding to injury No.(4) The peritonium is congested.

2. Incised sutured wound on left side of chest, 4cm, transverse, along the anterior axillary line, 9cm below armpit, entered the chest cavity through the third intercostal space. The outer and have a blunt appearance. The upper and lower lobe of left lung showed pneunonic consolidation. The right lung weighed 550gm, the left lung 650gm.

3. Incised sutured wound on left side of chest 2 cm, vertical, 5cm below left nipple at 5'o' clock position. The upper and blunt in appearance, entered the chest cavity through 6th intercostal space and made a nick on CrI.A.No.2263 of 2010 :

12. : the lower, lobe of left lung 4cm for a depth of 0.5cm and a nick on the under surface of lower lobe of left lung 2cm for a depth of 1cm.

4. Infected sutured wound on left side of chest 2.5cm, vertical, 17.5cm below armpit along mid axillary line entered the abdominal cavity after piercing the diaphragm.

5. Scab falling abrasions on back of left elbow 3x3xm." 13. PW13 has testified that death was due to infective complication of injury sustained to chest and abdomen. He also deposed that a weapon like MO9 could produce the injuries as noted on the body of deceased Joseph and the injury received by the deceased was sufficient in the ordinary course of nature to cause death. In cross examination PW13 had specifically stated that even if timely treatment was given, life of the deceased could not be saved. The evidence tendered by the prosecution through the doctors would convincingly prove that the stab injuries received by the deceased are sufficient in the ordinary course of nature to cause death. CrI.A.No.2263 of 2010 :

13. :

14. The argument of the learned counsel appearing for the appellant mainly centers around the reliability of the evidence tendered by PW20, the wife of the deceased. It was contented that the wife was interested in the success of the prosecution case and being related her evidence should not have been accepted without corroboration. The learned counsel also relied on a plethora of decisions of this Court as well as the Apex Court to convince us that it is unsafe to rely on the evidence of PW20.

15. The Apex Court has repeatedly held that an eye - witness version cannot be discarded by the Court merely on the ground that such eye - witness happened to be a relation or friend of the deceased. The concept of interested witness

essentially must carry with it the element of unfairness and undue intention to falsely implicate the accused. It is only when these elements are present, and Crl.A.No.2263 of 2010 :

14. : statement of the witness is unworthy of credence that the Court would examine the possibility of discarding such statements. But where the presence of the eye - witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence and the occurrence itself, it will not be permissible for the Court to discard the statements of such related or friendly witness. (See Dayal Singh and Ors. V State of Uttaranchal [(2012) 8 SCC263 16. In Dharnidhar v. State of Uttar Pradesh and Others [(2010) 7 SCC759 the Apex Court has taken the following view:

"2. There is no hard - and - fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the court. It will always depend upon the facts and circumstances of a given case. In Jayabalan v. UT of Pondicherry (2010) 1 SCC199 this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it Crl.A.No.2263 of 2010 :

15. : comes from a person closely related to the victim. The Court held as under: (SCC p. 213, para 23)

"3. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim." 17. As regards acting on the testimony of a sole eye witness, the Apex Court had this to say in Prithipal Singh and Others V State of Punjab and Another [(2012) 1 SCC10, "This Court has consistently held

that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time - honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, Crl.A.No.2263 of 2010 :

16. : credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence." 18. Similar view has been taken in *Kusti Mallaiah V State of Andhra Pradesh* [(2013) 12 SCC680 wherein the apex court had held as follows:

"3. It has been held in a catena of decisions of this Court that there is no legal hurdle in convicting a person on the sole testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted. In *Vadivelu Thevar V State of Madras* AIR 1957 SC614 it has been held that if the testimony of a single witness is found by the court to be entirely reliable, there is no legal impediment in recording the conviction of the accused on such proof. In the said pronouncement it has been further ruled that the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) Wholly reliable, (ii) Wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. A similar view has been

expressed in Lallu Manjhi v. State of Jharkhand (2003) 2 SCC401 Prithipal Singh v. State of Punjab (2012) 1 SCC10 and Crl.A.No.2263 of 2010 :

17. : Jhaphsa Kabari v. State of Bihar (2001) 10 SCC94" We shall analyze the evidence of PW20 and assess her reliability by the touchstone of the above stated settled precedents. In her evidence before court, PW20 has stated that the deceased was her husband. On 16.1.2006, while PW20 and her husband were returning back home and when they reached near the house of the accused, the accused shouted some obscene words and came out of his house. He asked whether he would implicate him in an Abkari Case and took out the knife and stabbed the deceased on his chest and abdomen. The witness stated that four stabs were inflicted. The incident had occurred at 5:45 PM. The accused thereafter ran from the place. Several people assembled and with their assistance the injured was transported to the hospital in a jeep. After providing first aid the doctor referred the injured to the Medical College Hospital. While deposing before court the witness Crl.A.No.2263 of 2010 :

18. : had profusely wept and the said fact was recorded by the learned Sessions Judge. The injured was admitted in the ICU of the Medical College Hospital and he underwent treatment there for six days. On Sunday at about 5:30 AM, the deceased expired. When shown, the witness identified the weapon which was used by the appellant for committing the gruesome act. She would further state that when people assembled she had tied the injured portion with a cloth. The shirt worn by the injured and the footwear were left at the scene of occurrence itself. She also identified the shirt worn by the injured at the relevant point of time when he had sustained the injury. In cross examination she stated that she was earlier married to some other person and had children in the said marriage. She also stated that the injured was also married earlier and had children in the said marriage. She denied that her husband was involved in crimes. She also denied that her husband is a chronic alcoholic. She also stated that after the funeral of her Crl.A.No.2263 of 2010 :

19. : husband she had gone to the police station. It was brought out that she had gone to the police station after 6 - 7 days of the funeral ceremony. The witness

also swore that the knife as well as some clothes were shown to her when she had gone to the police station. She also stated that for the past month the accused was not in good terms with the deceased because of the fact that the accused was engaged in illicit arrack business. She denied that when the incident had taken place she was at her home. She finally stated that her husband was not able to talk after sustaining the injuries.

19. While appreciating the contentions of the learned counsel, it has to be borne in mind that PW5 was examined by the prosecution to prove the fact that he was a resident of Ummanchandy Colony and that the incident of stabbing had occurred in the colony at 5.45 P.M. Though he had not seen the incident he was cited to prove the transactions Crl.A.No.2263 of 2010 :

20. : post incident. The said witness turned hostile and the case diary contradiction was marked as Ext.P2. The presence of PW20 is borne out from Ext.P2 as well. In the same manner PWs 2, 3 and 4 have all spoken about the presence of PW20 at the place of occurrence and we do not see any challenge from the side of the appellant with regard to this material aspect. We have also anxiously evaluated the evidence of PW20 and we do not think that the evidence of the said witness suffer from any infirmities. The fact that the witness is the wife of the deceased, is no reason to reject the evidence of PW20. The courts have to bear in mind that when a witness holds the position of relationship it is incumbent on the court to exercise appropriate caution while appreciating his/her evidence and to examine its probative value with respect to the entire spectrum of facts appearing from the records. It would result in grave travesty of justice if the courts were to reject the evidence on the ground that the witness is related. The defence has failed to bring out Crl.A.No.2263 of 2010 :

21. : any circumstance of convincing nature to even remotely suggest that PW20 was deposing falsehood to see that the accused was convicted in the crime. We are of the considered view that PW20 is a wholly reliable witness and she would be the last person to shield the actual culprit. She has also explained in her evidence about the inability of her husband to speak after sustaining the injuries which has not been controverted by the appellant in any manner. The assertion of

PW20 in her evidence about her presence at the scene does not appear to us to be inherently improbable or unreliable. The impression created by the witness while in the box is that of a wholly reliable witness. She has fared well in cross examination and the defence has not been able to make any dents in the evidence tendered by her. In other words, her evidence is reliable, cogent and convincing.

20. In so far as the recovery of the weapon of offence is concerned, PW21, the Circle Inspector who conducted Crl.A.No.2263 of 2010 :

22. : investigation has deposed that on 8.2.2006 at 6:30 AM he had arrested the appellant and when he was questioned the appellant had confessed that the weapon of offence was kept hidden in the country hearth in the western courtyard of his house. Accordingly, as led by the appellant they proceeded to the house and MO9 was taken out from the hearth by the appellant and the same was seized as per Ext. P6 mahazar. Ext.P6(a) is the relevant portion of the confessional statement of the accused. The said weapon was shown to the forensic surgeon and he had deposed that the injuries found on the body of the deceased could be caused by the said weapon. To prove the recovery the prosecution had examined PW10 and PW19, the attestors to Ext.P6 seizure mahazar. PW10 did not fully support the prosecution version but he deposed that he had seen the accused handing over a knife to PW21. PW19 is the head of the tribals of the colony and he had deposed in cross examination that he had witnessed the accused taking out Crl.A.No.2263 of 2010 :

23. : the knife from the hearth. The weapon was sent for Chemical Analysis and as evident from Ext.P17 Chemical Analysis report, the weapon contained traces of human blood. Nothing is brought out by the defence to look at these material aspects with suspicion. The fact discovered based on the information given by the appellant embraces not only the object discovered but also the place from which the object is produced and the knowledge of the appellant as to that fact of concealment. In the present case the accused while in police custody has given information which distinctly led to the discovery of a fact. What was discovered on the basis of the information given by the appellant was the weapon of offence which was found in the precincts of his house. So the fact discovered was not

merely the object but also the place where it was kept and also the knowledge of the appellant as to such place. This would definitely satisfy the condition envisaged under section 27 of the Indian Evidence Act and the recovery is admissible in CrI.A.No.2263 of 2010 :

24. : evidence.

21. The next contention urged by the learned Counsel appearing for the appellant revolves around the follies committed by the investigating agency. It was pointed out by the learned counsel that though the incident had occurred at 5.45 P.M on 16.1.2006, the crime is seen registered only on 17.1.2006 at 11.15 AM. The FIR reaches the jurisdictional Magistrate only at 10.30 AM on 18.1.2006. Originally, the crime was registered for the offence under S. 324 IPC. Though S.307 IPC was substituted in place of S.324 of the IPC, the investigation is taken over by PW21 only on 20.1.2006, i.e., 4 days after the incident. This delay is projected by the defence to propound their version that the true version is not before court. The eye witness version of PW20 is recorded by PW18, the Assistant Sub Inspector of Police only on 18.1.2006. Further it was pointed out by the learned counsel that after effecting recovery at the CrI.A.No.2263 of 2010 :

25. : instance of the accused from the precincts of his house on 8.2.2006, it was inconceivable as to why PW21 did not search his house and obtain the clothes worn by the accused at the time of incident, which as per Ext.P10 mahazar was seized only on 9.2.2006, when the same was handed over by the wife of the accused.

22. We have anxiously considered the arguments raised by the learned counsel. We are of the view that these aspects would have assumed significance in an appropriate case where there were reasons to doubt the prosecution evidence. But when the prosecution evidence ignoring the lapses in investigation are found credible, the court cannot shut its eyes and extend the benefit of doubt to the accused. If that is done it would tantamount to playing into the hands of the investigating officer. This trend of canvassing for an acquittal on the strength of flawed investigative practices was noticed by the Apex Court and CrI.A.No.2263 of 2010 :

26. : the trial courts were asked to take up the mantle of assessing the prosecution materials de hors the flaws in investigation and to see if the evidence adduced by the prosecution was reliable enough to prove the charge against the accused. Needless to say this was to uphold the majesty of law and to protect the interest of the society.

23. In *Dharmarajan V State of Kerala* [2014 (2) KLJ314, one of us (K.T.Sankaran, J.) speaking for the bench succinctly stated the law thus in para 218 of the judgment : "Whatever may be the defects in the investigation, the ultimate decision making rests on the Court to find out whether the accused has committed the offence. The investigation is only a part of the entire process of criminal justice administration. If one wing of the criminal justice administration goes astray, that does not mean that it should result in the acquittal of the accused. Creating doubt for the purpose of doubt is not a reasonable doubt, the benefit of which can be claimed by the accused. The reasonable doubt should arise on the basis of the facts as such and not on the basis of the contrived or manipulated facts. Should the victim be told by the Court that it cannot convict the accused because one or more of the police officers and policemen involved in the investigation were dishonest and they did not conduct proper investigation? Would CrI.A.No.2263 of 2010 :

27. : the doubts deliberately created by the accused to the prosecution case, by influencing the investigating agency, result in raising a reasonable doubt in the mind of the Court so as to enable the accused to claim that benefit? We are of the view that answer to all these questions would be in the negative." 24. In *Paras Yadav and Others v. State of Bihar*, [(1999) 2 SCC126, the Apex Court enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the Courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

25. In *State of Karnataka v. K. Yarappa Reddy*, [(1999) 8 SCC715] the Apex Court had occasion to consider a question of defective investigation concerning Crl.A.No.2263 of 2010 :

28. : the manipulation of the station house diary by the Investigating Officer. The question was whether it could be put against the prosecution case. It was held as follows:

"9. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well - nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre - eminence in criminal trials over the action taken by the investigation officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case." (emphasis supplied by us)

26. The alleged flaws pointed out by the learned counsel in the investigation are not of such a nature so as to affect the core of the prosecution case. The learned Sessions Judge has properly considered the medical, scientific and Crl.A.No.2263 of 2010 :

29. : supporting oral evidence to come to the conclusive finding that the offence was perpetrated by the appellant himself. The defence of the appellant in his 313 statement is only that he is unaware as to how he was implicated and nothing else.

27. We reiterate that the evidence of PW20, the wife of the deceased is cogent, trustworthy and convincing. Her evidence gets ample corroboration from the medical evidence and also from the fact of recovery of MO9 murder weapon at the instance of the accused. The chemical analysis reports evidencing the presence of blood in the weapon further cements the case of the prosecution. None of the contentions raised by the learned counsel appearing for the appellant deserves merit and the appeal is liable to be dismissed. In the result, appeal is dismissed confirming the CrI.A.No.2263 of 2010 :

30. : conviction and the sentence. The appellant shall be entitled to set off for the period he has been in custody in this case as provided under Section 428 of Code of Criminal Procedure, subject to the orders passed by appropriate authority under Section 432/433 of Code of Criminal Procedure. Sd/- K.T.SANKARAN, JUDGE. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE. Bb [True copy] P.A to Judge

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