
(2013) 09 DEL CK 0150
In the Delhi High Court
Case No : Criminal Appeal No. 524 of 2010

Rakesh

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Evidence Act, 1872 — Section 134, 32
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2013) 09 DEL CK 0150

Hon'ble Judges : V.P. Vaish, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : Rakhi Dubey, for the Appellant; Sanjay Lao, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

Ved Prakash Vaish, J.—Rakesh, the accused appellant vide judgment dated 17th August 2009 was convicted of charge u/s 302 of the Indian Penal Code ("IPC for short) for committing murder of Vinod, s/o. Balmiki Prasad at Jhuggi No. A-11/12, Maya Puri, Phase-I, New Delhi. On trial, learned District Judge cum Additional Sessions Judge (Incharge), Dwarka Courts, New Delhi found the appellant guilty of the offence charged. Vide order on sentence dated 20th August, 2009, the appellant was sentenced to undergo imprisonment for life and to pay fine of Rs. 3,000/- and in default of payment of fine, to further undergo SI for three years. According to the case of prosecution, on the intervening night of 2nd/3rd May, 2003, a telephonic message was passed at around 1.50 a.m. by Duty Constable Kanwar Singh at DDU Hospital stating that the deceased Vinod, R/o Jhuggi No. A-11/12, Maya Puri, Phase-I, New Delhi was admitted to the DDU Hospital which was reduced into writing as DD No. 4A. On this, SI Sohan Pal Singh along with Constable Sukhbir Singh reached at DDU Hospital where they collected MLC of the injured and came to know that the injured was referred to RML Hospital. Thereafter they reached RML Hospital and found that the injured Vinod was opined as not fit for statement. SI Sohan Pal Singh and Constable

Sukhbir reached at the spot where SI Sohan Pal Singh seized towel and burnt shoe vide seizure memo Ex. PW1/1, plastic bottle vide seizure memo Ex. PW1/3 and match box vide seizure memo Ex. PW1/4. Thereafter, they reached again at RML Hospital at about 9.00 a.m. where the statement of injured/deceased Vinod was recorded after he was declared fit for statement by Dr. Sanjeev Kumar (PW-21). In this statement injured/deceased Vinod stated that the appellant had come to his home and after some altercation had poured kerosene like substance and lit match stick and set him on fire with an intention to kill him. On the basis of statement and MLC of Vinod, case u/s 307 IPC was registered. During the course of investigation, SI Sohan Pal Singh inspected the spot, site plan was prepared, statements of witnesses were recorded and the appellant was arrested. On 8th May, 2003, injured Vinod expired while he was under treatment at RML Hospital and an information in this regard was received which was recorded vide DD No. 34B. Thereafter the post mortem was got conducted. Further investigation was conducted and since injured Vinod expired, case was converted into Section 302 IPC. After completion of investigation, charge-sheet was filed. The trial was conducted, statements of witnesses were recorded leading finally to the passing of the impugned judgment and order on sentence.

2. Learned counsel for the appellant contended that the judgment of learned trial Court is based on conjectures and surmises and is not supported from the facts and circumstances of the case. Learned trial Court has failed to appreciate that Inderjeet (PW-1) has not supported the prosecution case on material facts. Initially, the said witness had stated that he saw that the appellant escaped with the bottle of kerosene, however, in his cross-examination, he stated that he could not say it with certainty that if the bottle which the appellant was carrying contained kerosene or some other liquid. Further, Dr. Renu Sehgal (PW-3) who attended the deceased first at Casualty deposed before the Court that the deceased was brought at the hospital by Santosh with the alleged history of burnt by stove flame and the same fact was also mentioned in the MLC. The prosecution story is also not supported by the statement of Balmiki Prasad (PW-10), father of the deceased who denied that his son ever made a previous complaint against the appellant. Also Sahib Lal (PW-13), in his cross-examination denied that he made a statement to the police that he along with Inderjeet, Mangresh Prasad and Santosh saw the appellant had poured kerosene over Vinod (deceased) and lit him up. Statement of the deceased was not recorded in the presence of the Magistrate. Also Dr. Sanjeev Kumar (PW-21) has admitted the fact that he did not record any statement of the deceased nor was the said statement recorded in his presence.

3. It was lastly contended on behalf of the appellant that the Investigating Officer did not take the finger prints from the bottle that was seized by him.

4. Per contra, learned APP for the State has contended that Mangresh Prasad (PW-2) has clearly stated in his testimony that he had seen that the appellant poured kerosene over the deceased and lit him up. This statement is

corroborated in material parts by the statements of Inderjeet (PW-1), Santosh Yadav (PW-7) and Sahib Lal (PW-13). He further contended that the deceased Vinod had clearly stated in his statement made before SI Sohan Pal Singh (Retd.) (PW-19) that the appellant had poured kerosene over him and lit match stick and put him on fire. Santosh Yadav (PW-7) has also stated in his testimony that when he reached near the jhuggi of deceased Vinod, he saw him crying for "Bachao Bachao" and was also stating that he had been burnt by Rakesh.

5. Learned APP also contended that at the instance of the appellant, the bottle of the kerosene was recovered. Inderjeet (PW-1) has stated in his testimony that when the appellant was arrested from Naraina bus stand he confessed in his presence that he had set ablaze Vinod and also told them the place where he had thrown kerosene oil bottle and also took them to that place and also got recovered the same.

6. We have given our anxious thought to the rival submissions made by learned counsel for the appellant and learned APP for the State and have carefully perused the material on record.

7. We shall deal with the various points in this case one by one. I

I Testimony of eye-witness

8. Mangresh Prasad (PW-2) has in his testimony before the trial Court stated that on 3rd May, 2003 at about 1.30 a.m. (in the night) he was present in his jhuggi which was adjacent to jhuggi of Vinod and on hearing cries and noise, he went to the jhuggi of Vinod where he saw appellant fighting with him. He saw that the appellant poured the kerosene over the deceased Vinod which he was carrying in a plastic bottle and lit the fire with the match stick. Thereafter, the appellant ran away from the spot carrying the bottle with him but left the match behind him. He along with Inderjeet and Santosh extinguished the fire on Vinod and took him to DDU Hospital. In his cross-examination, he stated that when he reached the jhuggi of Vinod, he saw Rakesh abusing Vinod and also slapping him. He tried to save him. Before he could catch hold of Vinod and Rakesh (appellant), the appellant poured kerosene on Vinod and set him on fire. Thereafter, he ran away, as they got busy in extinguishing fire on the deceased.

9. Santosh Yadav (PW-7) has stated in his testimony that in the intervening night of 2nd/3rd May 2003, he was sleeping in his jhuggi and at about 1.00/1.25 a.m. (night), he heard noise of crying. He woke up and came outside of his jhuggi and saw that one Vinod living in his neighbourhood was burning and was crying for "Bachao Bachao". He was also stating that he had been burnt by Rakesh (appellant) and the fire was extinguished by the people of mohalla and thereafter he took the injured to Deen Dayal Upadhyay Hospital. In his cross-examination, he stated that when he reached there, he saw that 4 to 5 persons were there and thereafter a large number of people had gathered. He had only gone to hospital and again said that 2-3 persons also accompanied him.

10. Inderjeet (PW-1) stated in his testimony that on 3rd May, 2003, he was present at beetel shop and returned from there to his jhuggi. Vinod lived in his adjacent jhuggi as a tenant. At about 1.30 or 2.00 a.m. (in the night), he heard the cries/alarm of Vinod and came out of his jhuggi and found that he was burning and saw that the appellant was coming out of the jhuggi of Vinod thereafter he ran away. He, however, did not see the appellant pouring kerosene on Vinod and setting him ablaze. In his cross-examination by learned APP for the State, he admitted that when he saw the appellant running away he had a plastic bottle of kerosene. Kamlesh and Santosh who were also living in the neighbourhood took Vinod to the hospital. Vinod was living alone in his jhuggi and he was alone in his jhuggi on that day. He denied the suggestion of having seen the appellant slapping Vinod and pouring kerosene on him and setting him ablaze. He further stated that the police reached there, inspected the place of occurrence, prepared site plan and recovery was made. The appellant was arrested from Naraina bus stand, who confessed in his presence after his arrest that he had set ablaze Vinod and also told them the place where he had thrown the kerosene oil bottle and also took them to that place and got recovered the same from near the nalla near Ashoka Company, Maya Puri, which was seized vide memo Ex. PW1/3, which bears his signature. In his cross-examination on behalf of the appellant, he stated that he saw the appellant Rakesh running but he was not coming out of the room of Vinod. He had seen appellant outside the jhuggi of Vinod while he was running away and lastly stated that he could not say it with certainty that if the bottle which the appellant was carrying contained kerosene or some other liquid.

11. Sahib Lal (PW-13) has stated in his testimony that in the intervening night of 2nd/3rd May, 2003 at about 1.15 a.m. night, he was present outside his jhuggi as he came out to urinate. He lived in the neighbourhood of the deceased at a distance of about 10 feet. The appellant was present in the jhuggi of deceased Vinod when Vinod was burning and at that time, the appellant had a bottle in his hand containing thinner which he again said was kerosene oil. He further stated that he had not seen the person who poured kerosene oil on the deceased and burnt him. Appellant told him that the deceased was having some illicit relations with his wife. He stated that he saw the appellant while he came out of jhuggi of the deceased. Vinod also came out from his jhuggi in burnt condition. At that time mohalla persons namely, Inderjeet, Mangresh Prasad (PW-2) and Santosh Yadav (PW-7) collected at the spot and they had also seen the Vinod in burnt condition. The appellant Rakesh ran away from the spot. There they tried to extinguish the fire. In his cross-examination by learned APP for the State, he denied the suggestion that he had said before the police in his statement that when he along with Inderjeet, Mangresh and Santosh reached the jhuggi of the deceased, they all saw the appellant pouring kerosene on Vinod and lit fire with a match stick. He also denied the suggestion that the appellant poured kerosene on Vinod in his presence and lit fire.

12. Mangresh Prasad (PW-2) is an eye-witness and has stated the fact that he

saw that the appellant poured kerosene over the deceased and lit him up with a match stick in his presence and thereafter ran away from that place. Santosh Yadav (PW-7) and Sahib Lal (PW-13) have corroborated to the extent that the appellant was present there and had run thereafter. Inderjeet (PW-1) also initially stated that he saw the appellant emerging from the deceased's house with a kerosene can in his hand and escaping from the spot. In his cross-examination, he denied that he saw him coming out of Vinod's house rather stated that he saw him running away from the outside of Vinod's house.

13. It is a settled law that the conviction can be based on the sole testimony of the eye-witness if it finds corroboration in material parts. This has been held by Supreme Court in *Kunju @ Balachandran Vs. State of Tamil Nadu*, :

11. "8. In *Vadivelu Thevar Vs. The State of Madras*, this Court had gone into this controversy and divided the nature of witnesses in three categories, namely, wholly reliable, wholly unreliable and lastly, neither wholly reliable nor wholly unreliable. In the case of the first two categories this Court said that they pose little difficulty but in the case of the third category of witnesses, corroboration would be required. The relevant portion is quoted as under: (AIR p. 619, paras 11-12)

"11....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way --it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses."

9. *Vadivelu Thevar Vs. The State of Madras*, was referred to with approval in *Jagdish Prasad and others Vs. State of Madhya Pradesh*, This Court 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 Indian Evidence Act, 1872 (in short "the Evidence Act"). But, if there are

doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

14. In the present case, the testimony of Mangresh (PW-2) is corroborated in its material parts from the testimony of Santosh Yadav (PW-7), Sahib Lal (PW-13) and Inderjeet (PW-1) to an extent of the presence of the appellant on the place of incident and his running away from there thereafter. Also no material contradiction has emerged from the cross-examination of Mangresh Prasad (PW-2), the eyewitness to rule out the version stated by him. Moreover, not even a single suggestion was put to this witness in his cross-examination with regard to him not being an eye-witness to the incident of pouring kerosene oil on the deceased by the appellant and setting him on fire. Therefore, PW-2 being an eye-witness is undisputed. Further, the factum of death by burn injuries is corroborated from the post mortem report wherein cause of death has been opined due to septicaemia following thermal burns.

II Dying Declaration

15. SI Sohan Pal Singh (retired) (PW-19) has stated in his testimony that on 3rd May, 2003, he was posted at PS Maya Puri and on that day, he received DD No. 4A from DDU Hospital through Duty Constable Kanwar Singh which is Ex. PW8/A for investigation. He along with Constable Sukhbir Singh reached at DDU Hospital where he came to know that the injured was referred to RML Hospital, then, they reached at RML Hospital. The deceased Vinod was found admitted there and on his request application Ex. PW18/A, the doctor had opined that the injured was not fit for statement at 4.00 a.m. Then he along with Constable Sukhbir Singh went at the spot i.e. Jhuggi No. A-11/12, Maya Puri, Phase-I, New Delhi, where he found the crime team which collected the evidence from the spot. Thereafter, he met SHO in police station and again went to RML Hospital and again made a request to the doctor regarding whether patient/injured was fit for statement or not. At about 9.00 a.m. the injured was declared fit for statement by Dr. Sanjeev Kumar (PW-21). He recorded the statement of injured Vinod which is Ex. PW19/A, on which rukka was prepared, same is Ex. PW19/B and the same was sent for registration of the case.

16. The same stand was reiterated by Constable Sukhbir Singh (PW-11) in his statement that on receiving DD No. 4A, they went to DDU Hospital and then to RML Hospital where the injured/deceased was initially declared unfit for statement and who was finally declared fit when they had returned to the RML Hospital back after having visited the place of incident and the statement of Vinod was finally got recorded.

17. At this point of time, it would be relevant to produce the said statement of

injured Vinod (now deceased) which is exhibited as Ex. PW19/A:-

Stated that I am a resident of Jhuggi A-11/12, Maya Puri, Phase-1, New Delhi. I am living in the said jhuggi along with one Ashok Kumar Yadav S/o. Ramanand Yadav, who also belong to my Village, and is working in a factory at Maya Puri. In front of my Jhuggi, on the first floor Rakesh S/o. Ram Sawar R/o Village Seetal Pur, Sadhu Tola, P.S. Paniyara, District Maharaj Ganj U.P. is residing with his wife. Said Rakesh was in suspicion that I was having illicit relations with his wife. On the said intervening night, at about 12.30 a.m., while I was changing my clothes after coming back from the railway station where I had gone to see my friend off, Rakesh came into my jhuggi and started abusing me stating that he will teach me a lesson for indulging in love affairs with his wife. Thereafter, accused Rakesh poured something like kerosene oil on me from a plastic bottle. When I tried to catch hold of Rakesh, he succeeded in lighting a match stick setting me on fire. Due to fire, my face, chest, back and both the arms got burnt. Accused Rakesh has intentionally done so to kill me. In the meanwhile someone poured water on me and extinguished the fire. Action be taken against Rakesh as per law.

18. Further, Balmiki Prasad (PW-10), father of the deceased has in his testimony stated that on receiving a message from one Santosh to reach Delhi as his son was admitted in the hospital, when he reached after two days and went to Santosh, he took him to RML Hospital where his son was found admitted in burnt condition. His son told him the name of the accused as Rakesh who poured thinner on him and lit match stick when he met him in the hospital. In his cross-examination he had admitted of having told the police in his statement that accused Rakesh had suspicion on his son Vinod regarding him talking to his wife and on this Rakesh poured kerosene oil type substance on his son and lit the fire. The fact that his son made a dying declaration to him has not been disputed by the appellant in his cross-examination.

19. In Smt. Laxmi Vs. Om Prakash and Others, , the Supreme Court has held:-

1. ...The law is settled: dying declaration is admissible in evidence. The admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying

declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming safe basis for conviction. In the case at hand, the dying declarations are five. However, it is not the number of dying declarations which will weigh with the court. A singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction. On the other hand, if every individual dying declaration consisting in a plurality is found to be infirm, the court would not be persuaded to act thereon merely because the dying declarations are more than one and apparently consistent.

20. A perusal of the statement made by the deceased to PW-19 shows that the deceased had mentioned that the appellant came to his jhuggi and started abusing him by stating that he would teach him a lesson for indulging in love affair with his wife and thereafter he poured something like kerosene oil on his person from a bottle and when he tried to catch hold of him, the appellant succeeded in lighting up a match stick and setting him on fire. As we have observed above that the same fact was stated by Mangresh (PW-2) in his testimony before the trial Court where he stated that he saw that the appellant poured kerosene over the deceased and light him up and also in the testimonies of Inderjeet (PW-1), Santosh Yadav (PW-7) and Sahib Lal (PW-13), who had stated in their testimonies that they saw the appellant running away from the spot of incident. Hence, in its material parts, the dying declaration read along with the testimony of these witnesses and the judgment of Supreme Court in Smt. Laxmi's case (supra) fully corroborates the case of prosecution.

21. The argument on behalf of the appellant that such a statement, which is recorded by the police officer cannot form the basis of conviction and cannot in its absence of being recorded in the presence of Magistrate be considered a "dying declaration" is not tenable as per law laid down by the Supreme Court in Ramawati Devi Vs. State of Bihar, . In the said case, it was held as under:-

7. In our opinion neither of these two decisions relied on by the appellant is of any assistance in the facts and circumstances of this case. These decisions do not lay down, as they cannot possibly lay down, that a dying declaration which is not made before a Magistrate, cannot be used in evidence. A statement, written or oral, made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, becomes admissible u/s 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case.

22. Also, with regard to the testimony of police witness, it has been held by

Supreme Court in Tahir Vs. State (Delhi), :-

6. Mr. D.D. Thakur, the learned senior counsel appearing for the appellant, submitted that PW 4 to PW 7 on whose evidence the conviction has been recorded were all police officials and in the absence of any independent witness to corroborate them, it was not safe to rely upon their testimony to sustain the conviction of the appellant. We cannot agree. In our opinion no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent, evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the credit worthiness of the prosecution case.

23. In the instant case, the testimony of the deceased Vinod recorded by the police officer cannot be washed away or effaced completely because of him being a police officer even when, as we have observed above, that the said dying declaration is materially corroborated also. In view of the law enunciated in Ramawati Devi's case (supra) as we observe, otherwise also, that it is not mandatory to record the dying declaration in the presence of a Magistrate. The same can be recorded by anyone and the degree and the extent to which such a statement is to be given importance and what evidentiary value or weight has to be attached to it depends on the facts and circumstances of each case. Furthermore, the statement about the appellant pouring kerosene and lighting up the deceased was also mentioned by the deceased to his father Balmiki Prasad (PW-10) and also stated by him in the presence of Santosh Yadav (PW-7) when he reached at the jhuggi of the deceased.

24. It was also urged by learned counsel for the appellant that investigating officer did not bother to call SDM for recording the statement of the deceased even though he was fit for giving so. This argument also seems to be untenable as case was initially registered u/s 307 IPC and the patient/injured was found fit for statement. The investigating officer never had any idea that injured person will get so serious as to causing his death and therefore, there was no occasion for him to call SDM. Statement of the deceased was recorded on 3rd May, 2003 whereas he succumbed to the injuries on 8th May, 2003 i.e. his condition got worse on 8th May, 2003 itself and before that there was no clue of his injuries being so grave.

III Disclosure statement and extra-judicial confession

25. SI Sohan Pal Singh (PW-19) has stated in his testimony that after recording the statement of the eye-witnesses at the spot, he prepared the site plan and

thereafter went to trace the appellant along with eye-witness and the appellant was arrested from the bus stop at Naraina Industrial Area. The arrest memo was prepared which is Ex. PW19/D. Personal search of appellant was conducted vide memo Ex. PW1/2. The appellant pointed out the spot where plastic bottle was lying which contained small quantity of kerosene oil. He prepared the memo Ex. PW11/A and disclosure statement of the appellant was recorded which is Ex. PW11/B. The same fact was stated by Constable Sukhbir Singh (PW-11).

26. Inderjeet (PW-1) has also reiterated this stand in his testimony to the extent that when the appellant was arrested from Naraina bus stand, he confessed in his presence that he had set ablaze Vinod. He also told them the place where he had thrown the kerosene oil bottle and also took them to that place and got recovered the same from near the nalla near Ashoka Company, Maya Puri. The same was seized vide memo Ex. PW1/3 which bears his signature.

27. Thus, the statement made by the appellant in presence of SI Sohan Pal Singh (PW-19), Constable Sukhbir Singh (PW-11) and Inderjeet (PW-1) and the consequent recovery of the kerosene oil bottle at his instance further fortifies the case of the prosecution. The statement of PW-1 further shows that the appellant had confessed in his presence that he had set ablaze the deceased and to this extent he was not cross-examined.

IV Other circumstances

28. Placing reliance on the testimony of Dr. Renu Sehgal (PW-3) who has stated in her testimony that on 3rd May, 2003, she examined one Vinod, who was brought to the hospital by Santosh with the alleged history of burnt by stove flame and also the MLC of the deceased dated 3rd May, 2003 Ex. PW3/1 wherein it is so stated that "alleged h/o burnt by stove flame". It is contended by learned counsel for the appellant that injuries on the deceased's body was due to stove flame and not because of the fact that the appellant poured kerosene and lit him up. Reliance is placed on the judgment of this Court in Raj Kumar and Another Vs. State, . This contention does not find favour with us. It is to be observed that the entry on MLC as to the alleged history in the present case is based upon the information about the incident so received from a third person and is not on the basis of the personal knowledge of the doctor so recording it. The said information was not given by the injured/deceased but was given by the person who took him to the hospital. Hence, the decision of this Court in Raj Kumar (supra) is not applicable to the present case as in that case the MLC entry was recorded on the information furnished by the deceased herself. The appellant has not cross-examined Santosh Yadav (PW-7) on this aspect.

29. At this juncture, it is pertinent to mention here that the injuries in the MLC are recorded as superficial to deep burns over face, neck, anteriorly and posteriorly over thorax and part of abdomen, left hand, upper part of arms with shoulders, right foot dorsal aspect. In our view, such esoteric burns are not possible with the stove flame rather it is a result of setting a person ablaze.

30. Further, the time of incident is around 1.00 a.m., and burning of stove at such time seems to create suspicion in the mind of this Court. Even if we believe that the injury was due to stove burns as deceased was working on stove at that point of time, no stove was recovered from the spot at any time during investigation.

31. Also, in the light of the testimonies of all the other witnesses and the dying declaration of the deceased and extra-judicial confession of the appellant as we have observed above, the suggestion of the deceased having got injured from a stove flame instead of being burnt by the appellant is wholly untenable and cannot be accepted.

32. Another submission of the learned counsel for the appellant is that when the deceased was admitted at 1.45 a.m. on the date of incident in the DDU Hospital, it was mentioned on the MLC that he was "conscious oriented", however, the IO did not bother to take steps for recording his statement before 4.00 a.m., and the statement was finally recorded at 9.00 a.m. This contention does not find favour with us. From the record it can be seen that Duty Constable Kanwar Singh (PW-6) had stated in his testimony that on the 2nd/3rd night of May, 2003 at about 1.40 a.m., a person was admitted with burn injuries in the hospital. He informed to P.S. Maya Puri regarding the said injured person and there DD No. 4A was recorded at his instance. On this SI Sohan Pal Singh (Retd.) reached at DDU Hospital along with Constable Sukhbir Singh where they came to know that the injured was referred to RML Hospital. When they reached at RML Hospital, the injured Vinod was found admitted there and on request application Ex. PW18/A, Dr. Surender Kumar had opined that the injured was not fit for statement at 4.00 a.m. He along with Constable Sukhbir Singh went to the spot where they collected evidence and post that when they reached RML Hospital and made the request to examine the injured/deceased, he was declared fit for statement at 9.00 a.m. by Dr. Sanjeev Kumar (PW-12). This delay, in our opinion is neither a deliberate attempt nor an infirmity so as to wash away the statement so recorded.

33. Besides this it is submitted on behalf of appellant that IO did not take the finger prints from the bottle that was seized by him. We observed, in this regard, that in the present case, the factum of murder stands proved otherwise also and this infirmity on the part of the IO is not a material one and at the most can be treated as a faulty investigation. It is a well settled law that the accused cannot take benefit out of the faulty investigation. The Hon'ble Supreme Court in State of West Bengal Vs. Mir Mohammad Omar and Others etc., , held:

41. ...Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavory criticism against investigating officers. If offenders

are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.

In the result, we do not find any merit in this appeal. The appeal is, therefore, dismissed. We uphold the judgment dated 17th August, 2009 and order on sentence dated 20th August, 2009.