

Riyasat Vs. State of U.P

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Court : Allahabad

Decided On : Mar-14-2011

Judge : Amar Saran; Arvind Kumar Tripathi, JJ.

Acts : Indian penal code (IPC) - Section 302, 34; Arms Act - Section 25, 4; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 161, 313

Appeal No. : CRIMINAL APPEAL U S 374 CR.P.C. No. - 1124 of 2007

Appellant : Riyasat

Respondent : State of U.P

Advocate for Def. : Govt. Advocate; V.K. Sharma, Advs

Advocate for Pet/Ap. : I.K. Chaturvedi, Adv

Judgement :

1. The appellants above named have preferred separate appeal against the judgment and order dated 3.2.2007 passed by the learned Additional Sessions Judge, Court No.8, Meerut in S.T. No. 905 of 2004 under Section 302/34 I.P.C. whereby they have been convicted for life imprisonment and a fine of Rs. 5,000/- each. The appellant Riyasat has further been convicted under Section 25 of the Arms Act for three years rigorous imprisonment and Rs. 1,000/- fine and in default three months further rigorous imprisonment. The appellant Guddu alias Ejaj alias Ajimuddin has been convicted under Section 25/4 Arms Act for six months rigorous imprisonment and Rs. 500/- fine and in default of payment of fine to three

months further imprisonment and both the sentences shall run concurrently.

2. The prosecution case in a nutshell is that Maishuddin lodged a first information report on 3.9.2004 at 11.15 P.M. that at about 8.45 P.M. the complainant along with Arif were present in the house of Mujahid alias Munna situated in Mohalla Tarapuri, the appellant Riyasat who was residing earlier in the neighbour of Mujahid alias Munna came at his house and called out for him. The complainant and one Arif came out and on enquiry about the whereabouts of Mujahid alias Munna he disclosed that Munna was not at home. Hearing this Riyasat along with two other persons returned back. The complainant had seen that his brother-in-law Mujahid alias Munna and one Mursalin were coming towards his house and as soon his brother-in-law Muzajid alias Munna reached in front of the house of Noor Hasan all the three persons caught hold of him and threatened that he would not be spared as he used to make complaints against them to the police. Two persons started causing injuries with knives and Riyasat fired with a pistol at his brother-in-law. This incident was witnessed by the complainant, Arif, Mursalin and many other persons of the locality in the electricity light and had recognised the assailants and when they cried and raised alarms all the three persons ran towards 'Gaddho Wali Gali'. The first informant immediately took the injured to the medical hospital where the doctor declared him dead. On account of the incident there was a panic in the locality, the market was closed down and people had also closed their doors on account of the incident. The report was written by Raisuddin and on the basis of which a case was registered against the appellant Riyasat and two unknown persons under Section 302 I.P.C. as case Crime No. 394 of 2004 by Vijay Pal Singh, who was posted as Constable Clerk of police station Lisari Gate, Meerut (Exhibit Ka.1). After lodging of the first information report the police came into action and Station House Officer Rajendra Singh who took over the investigation reached at the spot and prepared the inquest report. He had collected plain and blood stained earth from the spot and also recovered cartridges, which were kept under sealed cover and prepared the site plan. Thereafter the dead body was sent for post mortem under seal through Constable Charan Singh and Constable Hoop Singh. He had recorded the statements of the complainant Maishuddin, Mursalin and Arif who have supported the prosecution case. On the basis of the statement of the witnesses the complicity of the

appellant Riyasat, Guddu alias Alimuddin came to light and they were searched at their houses but could not be arrested. The appellant Riyasat was arrested on 9.9.2004 and was sent to jail. He stated about the complicity of Guddu also in the commission of the offence and after taking him on remand, at his instance a pistol was recovered on 15.9.2004. The appellant Guddu was arrested on 13.9.2004 and at his instance a blood stained knife was recovered and he stated that with this knife he had assaulted the deceased Mujahid alias Munna. Recovery memos of the weapons were prepared and marked as Exhibit Ka. 16. Clothes of the deceased, blood stained earth and the knife were sent for chemical analysis in a sealed cover of which report was received. One shirt and knife of blood Group 'B' were found and the same were exhibited as Exhibit Ka. 24. A case under Section 25/4 of the Arms Act was registered against accused/appellant Guddu. After receipt of the post mortem report and collecting material evidence against the appellants, the charge sheet was submitted. The charge was framed against the appellants on 19.1.2005 under Section 302 read with Section 34 I.P.C. The appellants pleaded not guilty and claimed trial.

3. The prosecution in order to substantiate the charges has examined three witnesses of fact. P.W.1 Maishuddin the complainant who is the brother-in-law (Sala) of Mujahid alias Munna (deceased), P.W.2 Mursalin who turned hostile and P.W. 3 Arif the brother-in-law of the deceased. P.W. 1 Maishuddin has stated that he is the brother-in-law of Mujahid alias Munna and he was at his house. Mujahid alias Munna was married to his sister. He has reiterated the incident as mentioned in the first information report. In his cross-examination he has stated that at the time of incident his sister was present in the house when the accused/appellants had come to inquire about the whereabouts of the deceased, they were having weapons in their hands. When the appellants had started causing injuries to his brother-in-law he ran towards him while his sister was standing at the door. He knew Riyasat from before. The police had reached within 5/7 minutes and they had taken his brother-in-law on the police Jeep for medical treatment to the hospital where he was declared dead and from there they returned to the place of occurrence and had not gone to police station. At 9.15 P.M. he reached the hospital and within 10/15 minutes the doctor declared him dead. Then he returned to his house. He has further stated that there was electric light at the house of

Noor Hasan and he had denied the suggestion that the first information report was registered at the police station and he had not seen the incident and had reached at the spot subsequently. P.W. 3 Arif who is the friend of the complainant had come along with to meet his sister. Arif is a tractor mechanic and resides at 15 paces from his house in Inchauli while the complainant is a bus mechanic and as such they know each other. When they reached the house of Mujahid they did not find him. Mujahid alias Munna is residing in Mohalla Tarapuri, which is at a distance of about 15 kilometres from Inchauli. It has been stated that Mursalin who is the friend of deceased Mujahid alias Munna was known to him since before as he used to come to his house at Inchauli. The house of Noor Hasan is 15/17 paces from the house of Mujahid alias Munna where the deceased was first struck by knife and as the deceased received the knife blows he along with Arif ran towards the house of Noor Hasan. After the shot was fired by Riyasat the accused persons ran awaytowards 'Gaddho Wali Gali'. The blood, which was found at the spot was collected by the police. When the victim was taken in an injured condition on a Jeep he was alive. At that time another brother of his Raisuddin had also reached there, who was working at Mumiyapur.

4. The prosecution has examined another witness P.W.2 Mursalin who had admitted that he knew the deceased Mujahid alias Munna and the accused/appellant Riyasat and Guddu alias Ejaj. They were residents of Mohalla Tarapur and his neighbours but he has totally denied having witnessed the incident as well as the complicity of the accused/appellant hence he was declared hostile. In his cross-examination he had denied that any statement was recorded by the Investigating Officer under Section 161 Cr.P.C. He had also showed his ignorance that the appellants are of criminal nature and several criminal cases were pending against them.

5. The P.W. 3 Arif who is the brother-in-law of the deceased was examined. He had reiterated and corroborated the prosecution case as mentioned in the first information report as stated by P.W.1. He has made a further improvement that Riyasat fired with a 315 bore katta while Guddu and another were assaulting the deceased with knife. He has stated that both the accused persons are thieves and they suspected that Mujahid alias Munna the deceased was an informer of the

police, hence the appellants had told him that they would not spare him and on account of this suspicion the accused persons had attacked him. He has also stated that the incident is of 8.45 P.M. and soon thereafter Mujahid alias Munna was taken to hospital where the doctor declared him dead. At the time of incident various persons of the locality reached there and at the time of incident he was present along with the complainant and had recognised them in electric light. The incident had taken place in front of the house of Noor Hasan and the distance of the victim's house from the house of the appellant Riyasat is only 3/4 yards, he had witnessed the incident from the house of Mujahid alias Munna who is his brother-in-law. He had also gone along with P.W.1 to meet him. In his crossexamination he has elicited the fact that the brother-in-law Mujahid alias Munna was a rickshaw mechanic shop in the same locality and there were 5/7 pucca houses on both sides of the lane and in the bulb light from the balcony of Noor Hasan he had seen the incident taking place. In his examination-in-chief he has further stated that he had also gone along with the deceased to the hospital on a motorcycle and the complainant was accompanying him. He had gone to purchase certain items of tractor. He came to know the name of Guddu alias Alimuddin when he returned back from hospital, which was told to him by the complainant Maisuddin on the same night at 10.30 P.M. It has further been stated that for about 3/4 minutes two persons had assaulted him with a knife and Riyasat was stating "Maaro" and thereafter Riyasat had fired from a distance of one and a half feet and Mujahid alias Munna became unconscious and fell down. His sister Shabana and his daughter Sana aged about 8/9 years arrived at the spot, thereafter the accused persons ran away towards Gaddho Wali Gali lane. It has further been stated that he and the complainant could not try to catch them as they had threatened that they would also meet the same fate. The police had reached at the spot within 2/3 minutes. They came on a Jeep and had taken Mujahid alias Munna. On the next day he had not gone to the house of Mujahid alias Munna and on the date of occurrence he had taken the children of Mujahid alias Munna to the house of Maisuddin complainant. He had denied the cases of theft of suit cases against the accused persons, which he had heard about only from the 'Mohallawala's'. He had denied the suggestion that he was made a witness by the police as no one was ready to depose against the accused/appellants. He has

stated that he had told the name of Guddu when the first information report was written but gave no reason as to why his name was not mentioned in the first information report. He has denied the suggestion that the appellants were not present at the time of the incident and on account of enmity he was deposing against them and he has completely denied that there was any enmity with Guddu or Riyasat.

6. P.W. 4 Vijay Pal Singh, had prepared the check first information report and entered the same in the general diary, which was exhibited as Exhibit Ka. 3 and on the basis of the recovery of fire arms a case Under Section 25 Arms Act was registered against the accused Riyasat the memo was exhibited as Ka. 4. Dr. S.D. Gautam was examined as P.W. 5 who has performed the post mortem on the deceased on 4.9.2004 at 1 P.M. and who proved the following injuries on the body of the deceased;

(i) IW-5x2 cm. back side 3 cm. below from right scapula angle x bone deep.

(ii) IW-4 x 1 cm. back side x bow deep 4 cm. away from Ist injury.

(iii) IW-3 x 7 back side mid the bone deep 7 cm. away from IInd injury.(iv) IW-4 x 1 cm. x 10 cm. deep back side of left 1 cm. away from IIIrd injury.

(v) IW - 4 x 1 x 6 cm. left side of chest 1 cm. away from left color back.

(vi) IW-6 x 4 cm. x bone deep on the chest right side 1 cm away from mid line of chest. 7 cm. away from right nipples.

(vii) Gun shot entry wound 4 x 3 cm. x bone deep margin are inverted blackening is noted.

(viii) Gun shot exit wound 6 x 5 cm. x bone deep right side of chest. 7 cm. away from right nipple margin are everted across between 3 and 4 right rib. On internal examination the 3rd and 4th ribs were found fractured, pleura was lacerated, left lung punctured and right chamber of the heart was full of blood. P.W. 5 had stated that injury nos. 1 to 6 are of knife injuries while injury nos. 7 and 8 are by Tamancha and the injuries were in the ordinary course of nature sufficient to

cause death. In his cross examination he has completely ruled out the possibility that the injuries could be caused by one or more weapons and has stated that the injuries were possible from sharp edged weapons.

7. Rajendra Singh, Station House Officer who was posted at police station Lisari Gate was examined as P.W.6, he has conducted the investigation and submitted the charge sheet as stated above. He has proved the site plan and various recovery memos, photo nash, challan nash etc., which were prepared by him during investigation. He has stated in his cross examination that in the first information report the name of Riyasat and two unknown persons were mentioned and during the investigation the name of appellant Guddu came into light and the whereabouts of the third accused could not be known. The complicity of the two persons, namely, Riyasat and Guddu was found who made the recoveries of katta and knife respectively. He has denied the suggestion that the recovery proceedings have been made at the police station and nothing was recovered from the accused persons. He has also stated that no independent witness came forward to depose against the accused/appellants on account of their terror in the locality and has also denied that the accused persons have been falsely charge sheeted.

8. S.I Om Veer Singh was examined as P.W. 7 who was the Investigating Officer of the Arms Act case registered against the appellant Guddu alias Azimuddin and after investigation he submitted the charge sheet. He had also stated that no tampering was done while the case property was under the sealed cover and has denied the suggestion that he has completed the investigation at police station and falsely submitted the charge sheet against him on account of pressure of P.W. 6 Rajendra Singh who was his senior officer.

9. S.I. Laxman Singh was examined as P.W. 8 who was posted at police station Lisari Gate and had registered the case under the Arms Act against accused Riyasat. He had submitted the charge sheet, which was exhibited as Exhibit Ka. 27. Nothing adverse has been elicited in his cross-examination.

10. The statements of the accused/appellant Riyasat was recorded under Section 313 Cr.P.C. where he denied the incident and claimed that the recovery of the

weapon was fake. P.Ws. 1 and 3 who are the relatives of the victim had falsely deposed against him and the police has implicated him on account of enmity. He has stated that he has no enmity with the deceased. Similar was the statement given by the accused Guddu in his examination under Section 313 Cr.P.C. and he has denied the recovery of any knife at his instance and the witnesses have deposed against him on account of influence of the police.

11. No documentary evidence has been placed in support of their case by the accused.

12. We have heard the learned senior Advocate Sri P.N. Mishra on behalf of the accused/appellants and the learned A.G.A. on behalf of the State and have gone through the entire record of the case.

13. It is argued by the learned counsel for the appellants that the first information report of the present case was lodged after great delay at 11.45 P.M. when the incident took place at 8.45 P.M. on 3.9.2004, whereas the distance of the place of occurrence from the police station was merely one and a half kilometres. Maishuddin who is said to be the complainant and eye witness of the incident had not written the first information report himself, instead it was written by his brother Raisuddin. The incident has taken place in a Mohalla but no independent witness has been examined. Even the wife of the deceased Shabana who is said to be an eye witness of the occurrence and was present at the time of incident was not examined. In the first information report the name of accused/appellant Riyasat has been mentioned while two other persons were shown as unknown who were involved in giving the knife blows. No identification parade of accused/appellant Guddu was done. The place from which the eye witnesses have seen the incident was 15/20 paces away and as such it was not possible that the assailants could have been recognised by them. It has come in evidence that the witnesses had gone on a motorcycle to the medical college and the deceased was taken on a police Jeep whereas in the first information report it has been mentioned that they had lifted the victim and had taken him to the medical college where he was declared dead. There are glaring inconsistencies in the statement of the witnesses with the prosecution case. The appellants are said to have been suitcase lifters but

neither any case was pending nor had they ever been convicted by any court of law. P.W.2 who is said to be an eye witness of the locality has turned hostile and he has not supported the prosecution case.

14. P.Ws. 1 and 3 are the residents of Ichauli, which is at a distance of 15 kilometres away and they happened to be present at the house of the deceased and it was just a coincidence that the appellants came and enquired about the deceased in their presence and soon thereafter the deceased met them and the appellants threatened him that they would teach him a lesson for making complaints to the police. It does not appear to be probable that they were present at the house of the deceased at the time of occurrence and had seen the occurrence. Negative report of the ballistic expert also casts doubt about the complicity of the appellant Riyasat who is said to have caused an injury by firing upon the deceased. There was no motive to commit murder of the deceased with the accused/appellants. The recovery of weapon at the instance of Riyasat was made which is not the same weapon used in the crime and the Investigating Officer has planted the fire arm to show the complicity of the appellant Riyasat, therefore, it is contended that the findings arrived at by the trial court are against the evidence on record and has convicted innocent persons. The incident which is stated to have taken place on 3.9.2004 but P.W. 3 Arif who is said to be an eye witness of the occurrence has disclosed the name of appellant Guddu on 6.9.2004. If P.W. 3 had disclosed the name of Guddu to Raisuddin who is the brother of the informant yet his name was not mentioned in the first information report and subsequently he was arrested and at his pointing out the recovery of the knife was made from an open field cannot be relied upon as it only indicates a reason for false implication of the appellant. There is inconsistency in the statements of P.W.1 and P.W.3 in respect of manner of assault by knife as P. W. 1 has stated that the appellant Guddu was assaulting with a knife from behind while the unknown person was causing injury with knife from the front while Riyasat was standing whereas P.W. 3 has stated that Guddu alias Ejaj and the unknown persons were assaulting the deceased and the accused/appellant Riyasat had fired at him and after receiving the fire arm injury the deceased had fallen down.

15. P.W.3 has also stated that he knew Guddu alias Ejaj from before and if he was present along with the complainant at the time of the incident yet his name was not disclosed and the same was also not mentioned in the first information report, which shows that the P.W.1 and 2 were not the eye witnesses of the occurrence. In the first information report it was mentioned that after the incident the complainant had taken him to the medical hospital where he was declared dead while the Investigating Officer has contended that soon after the incident they were informed and they reached at the place and on Jeep the victim was sent to hospital by Constable 1586 Rakesh Kumar, therefore, it becomes doubtful as to who had taken the victim to the hospital.

16. There is no independent witness of the recovery of the weapon of assault. The site plan was also not original and the photocopy of the site plan was adduced in evidence, which was not legally proved before the trial court, which shows the lapses on the part of the Investigating Officer.

17. On the other hand learned A.G.A. has supported the judgment of the trial court and submitted that after detailed analysis the court below has found the accused/appellants guilty and there is no infirmity in the conclusions arrived at by the trial court, hence the judgement of the trial court is not liable to be interfered with.

18. We have carefully gone through the evidence on record and considered the arguments of the learned counsel for the parties. In our opinion there are certain glaring circumstances, which are fatal for the prosecution. The prosecution witnesses, namely, Maisuddin and Arif who have deposed that they are residents of village Ichauli and they had come to the house of the deceased Mujahid at Mohalla Tarapuri, police station Lisari Gate, which was at a distance of about 12/15 kilometres away. At about 8.45 P.M. on 3.9.2004 the appellant Riyasat and two unknown persons reached at the house of the deceased enquiring about him and when they could not find him they went back and while they were at the house they saw that appellants Riyasat and Guddu and another person had caught hold of the deceased and the unknown persons were assaulting him with a knife and Riyasat had thereafter fired at him. It is unbelievable that the deceased's wife was

present in the house and had also reached at the spot and saw the occurrence and she could be the prime witness but she was not examined by the prosecution. The prosecution case is that the victim was taken immediately by the complainant and P. W. 3 to the hospital whereas in their statements they have stated that the police reached soon after the incident and had taken the deceased in injured condition to medical college on the police Jeep and they had gone on a motorcycle. It appears that firstly the police was informed by the complainant's sister who had reached at the spot and lifted the deceased to hospital to save his life. Later on P.W. 1 and 3 was informed by the wife of the deceased and they subsequently reached there. The mere delay in lodging the first information report may not prove fatal in all cases but in the instant case it casts a serious doubt about the truthfulness of the prosecution case.

19. This is the reason that no independent witness has been mentioned in the first information report. The learned A.G.A. has pointed out that blood stained knife and the shirt (baniyan) were sent for serologist report and same blood group was found on the knife and shirt, therefore, the knife cannot be said to be planted by the Investigating Officer.

20. The post mortem report shows that there are as many as six incised wounds and according to the statements of the witnesses the appellant Guddu was striking at him from behind and some unknown person was giving blow from the front side. In such circumstances the prosecution witnesses would have no opportunity to see the real assailants and merely on probability the prosecution has fastened the guilt upon the appellant Guddu alias Ejaj. The motive part is also very weak and insufficient to point to the appellants as being the perpetrators of the crime. If the appellants were suit case lifters and had been involved in such cases the prosecution witnesses and the Investigating Officer have failed to adduce any cogent evidence. The motive is very feeble which has been deliberately developed by the prosecution witnesses. The first information report was also lodged after great delay when the police station was only at a distance of one and a half kilometres away from the place of occurrence, which also casts doubt about the presence of the eye witnesses and the complicity of the accused/appellants. It appears that when the P.W. 1 was informed he reached at the house of deceased

and only then the first information report was lodged. The recovery of pistol and knife was also not reliable to connect the accused/appellants with the crime. The same is in contravention of Section 27 of the Evidence Act as the recoveries have been effected at the pointing of the appellants upon disclosure made to the police. Sarkar on Evidence has the following to state on Section 27; ".....The protection afforded by the wholesome provisions of Sections 25 and 26 is sought to be whittled down by the police by their ingenuity in manipulating the record of the information given by the accused in the case diary in such a manner as to make it appear that it led to the discovery of some facts although the police might have made such discovery from other sources. When a fact is once discovered from information received from another source, there can be no discovery again even if any information relating thereto is subsequently extracted from the accused. A device sometimes adopted by the police is to stage a scene and take the accused to the place where the things discovered lay buried or hidden and require him to make a search for them at the spot indicated to the accused, or sometimes the articles are first produced before the accused and thereafter statements purporting to have been made by him about the so-called discovery are recorded. Court should be watchful that the protection afforded by Sections 25 and 26 should not be dependent on the ingenuity of the police officer in composing the narrative conveying the information relating to the alleged recovery of a fact."

21. In *Pulukuri Kotayya v. Emperor*, A.I.R., 1947 PC 67 the Privy Council considered the provision of Section 27 of the Evidence Act observed;

"It is fallacious to treat the 'fact discovered' within the selection as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is

very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

22. The ballistic expert report qua the cartridges were not fired from the pistol which was allegedly recovered from the accused/appellant Riyasat creates doubt about the role of the Investigating Officer in making the alleged recovery at the instance of the appellant Riyasat. The learned trial court has recorded a finding that recovery of some other weapon has been done from the appellant Riyasat yet he has convicted him under Section 25 Arms Act, which is palpably illegal and erroneous. The statements of the appellants appears to be more probable that they have been implicated by the police and the witnesses are deposing against them on account of their pressure. The appellant Riyasat had stated that he has no enmity with the deceased, therefore, it is not probable that the appellant Riyasat would go to his house and would make allegations that the deceased used to make any complaint to the police that he was a suit case lifter. The presence of the alleged eye witnesses at the home of appellant Riyasat is doubtful and the delay in lodging the first information report by the P.W. 1 corrodes the credibility of the prosecution version. It was also stated by the P.W. 1 that a large number of persons who belonged to the same locality were there when the alleged incident occurred but none else came forward in support of him. The P.W. 2 who was mentioned as an eye witness of the occurrence had turned hostile as he has not supported the prosecution case. Therefore, oral testimony of P.W. 1 and P.W. 2 stands tainted and must be looked upon with suspicion as they are totally interested witnesses. There are great contradictions and shortcomings in the prosecution case, therefore, the circumstances tried to be established by the prosecution are not sufficient to uphold the conviction of the appellants therefore we are of the opinion that the trial court has committed error in convicting the appellants.

23. Accordingly, the appeal is allowed and the judgment and order convicting the appellants are hereby set aside. The appellants shall be released forthwith in case they are not involved in any other case. Certify the judgment to the lower court immediately.

