Rehmat vs The State Haryana on 3 September, 1996

Equivalent citations: AIR 1997 SUPREME COURT 1526, 1996 (10) SCC 346, 1997 AIR SCW 275, 1996 CRILR(SC&MP) 581, (1996) 3 CRIMES 238, 1996 CRIAPPR(SC) 300, (1997) 1 CRIMES 149, (1996) 7 JT 663 (SC), 1996 SCC(CRI) 1272, 1996 (7) JT 663, (1996) 3 ALLCRILR 231, (1996) 2 EASTCRIC 672, (1996) 3 RECCRIR 588, (1996) 4 CURCRIR 75, (1996) SC CR R 810, 1996 CRILR(SC MAH GUJ) 581, (1997) 2 CRICJ 144

Author: S.P.Kurdukar

Bench: M.K.Mukherjee, S.P.Kurdukar

PETITIONER:
REHMAT

Vs.

RESPONDENT:
THE STATE HARYANA

DATE OF JUDGMENT: 03/09/1996

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

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.P.KURDUKAR, J.

Two separate trials arising out of an incident which took place during the intervening night between 6/7th April, 1986 ended in convictions and sentences against the appellant-accused under Sections 307 and 393 of the Indian Penal Code and under Section 25 of the Arms Act read with Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985. The impugned judgments and orders dated 15th April, 1987 and 9th February, 1989 respectively are passed by Designated Court,

Faridabad at Gurgaon in case Nos. 80 and 81. Although, the Designated Court has given two separate judgments, however, these appeals are being disposed of by this common judgments

2. The prosecution case, in brief is as under:

> At about 3.30/4.00 a.m. on 7th April, 1986, Padam Singh-the complainant (PW 4) was in his room. An electric light was on. He noticed a person running by the side of his room whom he recognized as Rehmat, the brother-in-law of Ashraf resident af village Bichhor. The complainant suspected some mischief having been done by Rehmat and, therefore, he chased him for about three killas. Rehmat realizing that he would be caught by the complainant, turned back and opened fire from his country made pistol which caused an injury on complainant's right leg. The complainant grappled with the appellant. In the meantime, Vijay Singh, Hari Singh and Fateh Ram (Sarpanch) reached at the spot and apprehended the appellant alongwith a country made pistol of 12 bore with a belt having six cartridges. The complainant further alleged that a few hours before the incident he had seen Jumma and Suraj alongwith the appellant in the locality where his house is situated. It is alleged that while overpowering the appellant, he had received injuries. The complainant was then removed to Primary Health Centre, Punchanamas, where he was medically examined. A ruqqa was sent to the Police Station for appropriate action. Nafe Singh, S.I.reached at the hospital and recorded his statement (Ex.PD). A formal FIR (Ex.PG/4) came to be registered. Nafe Singh, S.I. then went to the place of occurrence at Bichhor where the appellant was produced by Fateh Ram (Sarpanch) and Hari Singh with the pistol and a belt containing six live cartridges. The appellant was then shown arrested. The weapon and the cartridges were seized under the Panchnamas and were separately sealed. He was sent to RHC, Punchanama for medical examination. On completion of the investigation, a challan was filed in the Court and the appellant was put up for trial in two separate cases as mentioned above before the Designated Court.

3. The appellant denied the charges and pleaded that he was falsely implicated in this crime. He stated that Ashraf son of Ramzani is related to him and the father of the complainant and Ashraf were having a dispute over the canal water as their lands adjoin to each other. The relations between complainant's father (Padam Singh) and Ashraf were strained and since he is related to Ashraf, he has been falsely implicated in this case. He further stated that he was assaulted by the complainant party and had sustained injuries. He also pleaded the right of self defence as he was assaulted by the complainant with a danda which was lying near the tubewell of Ashraf. The election rivalry was also a cause for involving him in this crime. He denied that he was having any weapon or cartridges and stated that the recovery shown is false and concocted. The whole prosecution case is false, he is innocent and be acquitted.

4. In order to prove its case, the prosecution examined Dr. D.P.Gupta (PW 1), Het Ram, draftsman (PW 2), Abdul Sattar, patwari (PW 3), Padam Singh (PW 4), Narain Singh ASI (PW 5), Fateh Ram (PW 6), Randhir Singh (PW 7), Nafe Singh, Inspector (PW 8) and tendered in evidence the report of

F.S.L. (Ex.PN/1 to Ex. PN/3). The appellant also examined D.P.Jain (DW 1>, Record Keeper of the Sessions Court, Gurgaon.

5. We may first deal with Criminal Appeal No. 178/89 which arise out of conviction and sentence of the appellant under Sections 307 and 393 IPC. The Learned trial judge after Appraisal of the oral and documentary evidence on record led by the parties held the appellant guilty for the aforesaid offences and accordingly vide his impugned order sentenced him on each count to suffer five years RI. Both sentences were directed to run concurrently.

6. Mr. R.P.Singh, the Learned Counsel appearing in support of this appeal urged that the entire prosecution case is unbelievable as the prosecution has failed to explain the injuries on the person of the appellant who was apprehendad on the spot and handed over to the Investigating Officer at about 9.00 a.m. on 7th April, 1986. The evidence of Dr. D.P.Gupta who examined the appellant on 7th April, 1986 at 4.10 p.m. noted as many as 13 injuries out of which seven were lacerated wounds of different sizes. He then urged that all these injuries were caused due to assault by the complainant with a danda. The defence plea of assault on the appellant by the complainant appears to be more probable and, therefore, he had a right of self defence. It is further urged that the recovery of pistol and cartridges is again a cock and bull story which deserves to be rejected.

7. Mr. Prem Malhotra, learned counsel for the respondent supported the impugned order.

8. We have carefully gone through the ocular evidence and other materials on record.

9. Padam Singh (PW 4) has stated that he saw the appellant running from the side of his room at about 3.30 a.m. on 7th April, 1986 and, therefore, he chased him for 3 killas and when he was about to overpower him, the appellant turned back and opened a fire from his pistol which caused an injury on the back side of his right leg. Thereafter, he caught the appellant and grappled with him. In the meantime, Vijay Singh, Hari Singh and Fateh Ram reached at the spot. He then went to the Primary Health Center,Punchanama on bicycle with Vijay Singh, for being medically examined. A ruqqa was sent to the Police Station which is situated just opposite to the said PHC. Padam Singh (PW 4) in his evidence has asserted that the appellant had opened a fire through his pistol and was apprehended on the spot with the weapon and six live cartridges. This story of Padam Singh (PW 4) is also caught to be corroborated by Fateh Ram (PW 6) who claims that at the relevant time, he was going to a Temple. Both these witnesses have failed to explain 13 injuries on the appellant, out of which 7 were Lacerated wounds. Dr. Gupta (PW 1) has stated that he found these injuries on the person of the appellant when he examined him on 7th April, 1986 at 4.10 p.m. It is not the case cf the prosecution that the appellant had sustained these injuries prior to 7th April, 1986. According to the prosecution case, appellant was apprehended on the spot and he was detained until handed over to the Investigating Officer, Nafe Singh (PW 8). It was incumbent upon the prosecution to place before the Court truthful version of the incident and explain how the appellant sustained these injuries. No explanation whatsoever is coming from the prosecution. It is in these circumstances the defence of the appellant that he was assaulted by Padam Singh (PW 4) with a danda appears to us more probable and consistent with the injuries sustained by him. If prosecution has suppressed the true facts from the Court, then it is difficult to sustain the conviction on such doubtful evidence on

record.

10. There is also another aspect which goes in favour of the appellant. Admittedly Padam Singh (PW 4) alongwith Vijay Singh had first gone to the Primary Health Centre for medical help but he dia not disclose the name of the assailant to the Doctor. Ordinarily, in a medico legal case, the doctor is supposed to write down the history of the injured but admittedly in this case, medical papers of Padam Singh (PW 4) do not indicate the name of the assailant. The names were disclosed only at the time when the complaint was recorded by 51 Narain Singh at about 9.00 p.m. which was treated as a formal FIR. The learned counsel for the appellant, therefore, rightly urged that the appellant was later on implicated in the present crime at the instance of the complainant and his friends. It may also be stated that the prosecution case even otherwise appears to us improbable because Padam Singh (PW 4) claims to have got up early in the morning and saw the appellant running from the side of room at about 3.30 a.m. In these circumstances, is not possible to sustain the conviction of the appellant under Section 307/393 of the Indian Penal Code.

11. Arising out of conviction and sentence under Section 25 of the Arms Act read with Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, we are of the opinion that the evidence adduced by the prosecution to prove the guilt of the accused again suffers from The same infirmity as we have discussed hereinabove. As stated earlier, the incident is one and the same. After carefully going through the evidence of Fateh Ram (PW 1), Inspector Nafe Singh (PW 2) and the seizure Panchanamas in respect of pistol (Ex.P1) and belt (Ex.P3) containing six live cartridges (Ex.P4 to Ex.P9), we find that the said evidence is nut credible and does not inspire confidence. Thus, the impugned order of conviction of the appellant under Section 25 of the Arms Act read with Section 6 of the terrorist and Disruptive Activities (Prevention) Act, 1985, is unsustainable and is accordingly set aside.

12. In the result, the Criminal Appeals Nos. 178-179 of 1989 are allowed. The impugned judgments and orders are quashed and set aside. The bailbonds of the appellant to stand cancelled.