

DISTRICT : DHUBRI

IN THE COURT OF THE SESSIONS JUDGE, DHUBRI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Sessions Case No. 54 of 2017

U/S 14-A (b) of the Foreigners Act, 1946
Corresponding to G.R. Case No. 5304/2016

State of Assam

.....Complainant

Versus

Saddam Hussain

..... Accused

(Committed by the learned Addl. Chief Judicial Magistrate, Dhubri, Shri Nur Jamal Hoque)

Charge framed on : 09-06-2017

Evidence recorded on : 23-06-2017, 07-07-2017, 31-07-2017, 14-08-2017
and 25-08-2017

Statement recorded on : 08-09-2017

Arguments heard on : 18-09-2017

Judgment delivered on : 25-09-2017

Advocates who appeared in this case are:

Shri Maniruz Zaman, P.P. for the Prosecution

Shri R.K. Verma, Legal Aid Counsel for the accused

J U D G M E N T

1. This case was registered on 29-12-2016, at Dhubri Police Station, under Section 12 of the Passport Act and Section 14-A of the Foreigners Act, 1946, based on a First Information Report (in short "the FIR") filed by the then Company Commander of the "B" Coy, 67 Bn. BSF, namely Rajeev Kumar, against the accused Saddam Hussain.

2. The case of the prosecution, as stated in the FIR, is that on 28-12-2016, at around 12:45 P.M., during search and patrolling operation, the Foot Patrolling party of the "B" Coy, 67 Bn. BSF, comprising of ASI Naresh Prashad Yadav, Deepak Kumar and Mahavir Singh, apprehended a Bangladeshi National from Pattamari market and produced him before the informant. The name of the Bangladeshi National was Saddam Hussain, aged about 19 years. His father's name was Hazrat Ali and mother's name was Subhra Khatun. His wife's name was Jasmin Khatun. He is a resident of village- Pakhiura, P.O. Narayanpur, PS. Kochha Kata. When the informant interrogated the accused, he told he informant that he had crossed the Indo-Bangla border two days before and had been staying in the house of one Aminul Hussain, son of Shahajan, at village Bhogdore. He came to the village Pattamari on that day only. The informant then handed over the accused at the Dhubri Police Station and lodged the FIR of the case.

3. Based on the FIR, the Officer In-charge of the Dhubri Police Station registered the case No.1341/2016, for commission of offences punishable under Section 12 of the Passport Act and Section 14-A of the Foreigners Act, 1946, against the accused Saddam Hussain and investigated the case.

4. During the course of investigation, several statements were recorded and after completion of investigation, a charge sheet was filed for commission of offences punishable under Section 12 of the Passport Act and Section 14-A of the Foreigners Act, 1946 against the accused Saddam Hussain, in the Court of the learned Chief Judicial Magistrate, Dhubri. The learned Chief Judicial Magistrate, Dhubri transferred the case to the court of the learned Addl. Chief Judicial Magistrate, Dhubri, for disposal. As the offence under Section 14-A of the Foreigners Act, 194, punishable with imprisonment of not less than two years and may extend up to eight years and fine, and hence is triable by the Court of

Sessions as per the First Schedule, Classification of Offences Against Other Laws of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."), after complying with the provisions of section 207 Cr.P.C., the learned Addl. Chief Judicial Magistrate, Dhubri committed the case to this Court for trial. Hence, this case.

5. During trial, a charge under Section 14-A (b) of the Foreigners Act, 1946, only, was framed against the accused Saddam Hussain. When the contents of the charge were read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

6. The prosecution, in order to prove its case, examined nine witnesses. The accused did not examine any witness.

7. In his examination under section 313 Cr.P.C., the accused has stated that he is a Bangladeshi national has mistakenly crossed the Indo-Bangla border and entered into India.

8. The point for determination in this case is:-

Whether the accused Saddam Hussain is a Bangladeshi national and on 28-12-2016, at around 12:45 p.m., entered into the Pattamari market, under Dhubri Police Station, in Assam, India, which is a restricted area as per thw Schedule-I of the Foreigners (Restricted Area) Order, 1963, without valid document and thereby committed an offence punishable under Section 14-A (b) of the Foreigners Act, 1946?

If so, what punishment does he deserve?

DECISION AND REASONS THEREOF

9. I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsels for both the sides, give my decision on the above point as follows:-

10. PW-1 Mahabir Singh has deposed that he is a BSF personnel and is posted at the Border Observation Post of the 67 Bn. BSF, Pattamari, P.S. Dhubri. On 28-12-2016, he received information that a Bangladeshi national was roaming

around at the Pattamari market. Then as per the instruction of the Company Commander Rajeev Kumar, accompanied by ASI Naresh Prashad Yadav, a constable and others, he then went to the Pattamari market and found the Bangladeshi national (the accused), near a computer shop. They then apprehended the accused. The accused tried to escape but, they over powered him and took him to their office. When they asked the accused where his residence is, the accused told them that his house is in Bangladesh and mistakenly, he had crossed the border and entered into India. The accused also told them that he does not have any passport or other documents for entering into India. They then produced the accused before the Company Commander Rajeev Kumar. The Company Commander Rajeev Kumar handed over the accused to the Dhubri Police and filed the FIR of the case.

11. PW-2 Naresh Prashad Yadav has deposed that he is a BSF personnel and is posted at the Border Observation Post of the 67 Bn. BSF, situated at Karala, Coochbehar. On 28-12-2016, he was posted at the Border Observation Post of the 67 Bn. BSF, situated at Pattamari, P.S. Dhubri. On that day, at around 01:00 p.m., while they were returning after discharging their duties at the Indo-Bangla Border Observation Post, at Pattamari market, seeing them, the accused attempted to ran away. They then apprehended the accused and took him to their office at Pattamari. When they asked the accused where his residence is, the accused told them that his house is in Bangladesh and mistakenly, he had crossed the border and entered into India. The accused also told them that he does not have any passport or other documents for entering into India. They then produced the accused before the Company Commander Rajeev Kumar. The Company Commander Rajeev Kumar handed over the accused to the Dhubri Police and filed the FIR of the case.

12. PW-3 Rajeev Kumar has deposed that he is a BSF personnel and is posted at the Border Observation Post of the 67 Bn. BSF, situated at Takkamari, P.S. Dhubri. On 28-12-2016, he was posted at the Border Observation Post of the 67 Bn. BSF, situated at Pattamari, P.S. Dhubri as Officiating Company Commander. On that day, a patrolling party of their battalion apprehended a suspected Bangladeshi national and produced the suspected Bangladeshi national before him. The

accused present in the dock today is the said suspected Bangladeshi national. When he asked the accused about his identity, he told them that he is a Bangladeshi national and mistakenly, he had crossed the border and entered into India. The accused also told them that he does not have any passport or other documents for entering into India. He then handed over the accused to the Dhubri Police and filed the ext-1 FIR of the case. Ext-1 (1) is his signature therein.

13. PW-4 Moinul Hoque has deposed that he has a shop at Pattamari market. About six/seven months ago, one day, at around 12:30 p.m., some BSF personnel apprehended the accused present in the dock from near his shop and took him away. He heard that the accused is a Bangladeshi national.

14. PW-5 Mahar Uddin has deposed that he has a shop at Pattamari market. About six/seven months ago, one day, at around 12:30 p.m., some BSF personnel apprehended the accused present in the dock from near his shop and took him away. He does not know why the BSF personnel apprehended the accused.

15. PW-6 Sadek Ali has deposed that he is the Secretary of the Village Defence Party of the village Sasterghat, Part-III. On the day of the alleged incident, hearing that the BSF personnel had apprehended a Bangladeshi national, he went to the place of occurrence and saw that the accused present in the dock was apprehended by the BSF personnel. The BSF personnel took away the accused.

16. PW-7 Barkat Ali has deposed that he does not know the accused. He has a grocery shop at Pattamari Bazar. On the day of the occurrence, in the afternoon, he saw the BSF personnel taking away a person from the Pattamari Bazar. The BSF personnel took away the person suspecting him to be a Bangladeshi national.

17. PW-8 Deepak Kumar has deposed that he knows the accused. On 28-12-2016, he was posted at the B.S.F. Border Out-post at Pattamari, P.S. Dhubri as a Sub-Inspector. On that day, they received secret information that a Bangladesh national has entered into India and was roaming around at the Patamari market. Then accompanied by ASI Naresh Yadav, ASI Mahabir Singh and four BSF Jawan, he went to the Pattamari market. At Pattamari market, they apprehended the accused and took him to their post. The accused disclosed that he is a Bangladeshi national. The accused could not produce any document to prove that he had

entered into India with valid documents. Their Company Commander, namely Inspector Rajeev Kumar, handed over the accused to the police and lodged the FIR of the case.

18. PW-9 Gaznobi Ahmed, the investigating officer has deposed that on 29-12-2016, he was posted at the Dhubri Police Station as Attached Officer. On that day, the Officer In-Charge of the Dhubri Police Station registered this case and entrusted him to investigate the case. Accordingly, he investigated the case. During the course of investigation, he recorded the statement of the informant. He also sent the accused for medical examination and kept him under detention at the Police Station. Thereafter, he visited the place of occurrence and recorded the statements of the witnesses. He also prepared a site plan. Ext- 2 is the said site plan and ext.- 2 (1) is his signature therein. After completion of investigation, he submitted charge sheet against the accused Saddam Hussain, son of Shri Hajarat Ali, resident of village Pakhiura, P.S. Kachukata, Dist. Kurigram, Bangladesh, for illegally entering into India. Ext- 3 is the said charge sheet and ext.- 3 (1) is his signature therein.

19. In the cross-examination, he has stated that the accused was apprehended from Pattamari market, P.S. Dhubri. The distance from Pattamari market to Bangladesh Border is less than one kilometer. The Indo-Bangla border is not completely fenced.

20. From the testimonies of the prosecution witnesses, it is crystal clear that the accused was apprehended from the Pattamari market suspecting him to be a Bangladeshi national by the BSF personnel and the accused confessed that he is a Bangladeshi national. The accused did not adduce any evidence to prove that he is not a Bangladeshi national and is an Indian national. Therefore, it must be held that the accused is a Bangladeshi national, as according to Section 9 of the Foreigners Act, 1946, the onus of showing that a person is not a foreigner is upon the person concerned. Section 9 of the Foreigners Act, 1946, reads as follows:

"9. Burden of proof. If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class- or description the onus of proving that such person is not a foreigner or is

not a foreigner of such 14 particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

21. According to the Sections 101 to 104 of the Evidence Act, 1872 also, the onus of showing that a person is not a foreigner is upon the person concerned.”

22. Further, in his statement recorded under Section 313 Cr.P.C., the accused has categorically stated that he is a Bangladeshi national and his residence at village- Pakhiura, P.O. Narayanpur, PS. Kochha Kata. Therefore, it is held that the accused is a Bangladeshi national.

23. In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has succeeded in bringing home the charge under Section 14 (A) (b) of the Foreigners Act, 1946 against the accused Saddam Hussain beyond all reasonable doubt. Therefore, I hold the accused Saddam Hussain guilty of committing the offence punishable under Section 14-A (b) of the Foreigners Act, 1946 and convict him under the said Section of law. The point is decided accordingly.

24. In the facts and circumstances of the case, I do not think it proper to give the accused the benefit of the ameliorative relief as envisaged under Section 4 of the Probation of Offenders Act, 1958.

25. Heard the convict on the question of sentence. He has pleaded leniency in awarding the punishment. In his examination under section 313 Cr.P.C., though the convict has stated that he has mistakenly crossed the Indo-Bangla border and entered into India, as he has told the informant that he had crossed the Indo-Bangla border two days before and had been staying in the house of one Aminul Hussain, son of Shahajan, at village Bhogdore and thereafter, he was caught from the Pattamari market, he came to India with intent to stay in India. Had he mistakenly crossed the Indo-Bangla border, he would have definitely gone back to Bangladesh on the same day. Therefore, in the facts and circumstances of the case, I deem it proper to impose deterrent punishment upon the convict to dissuade other such Bangladeshi national from interring into India. The maximum punishment prescribed by the law is his just deserts.

ORDER

26. Considering the entire facts and circumstances of the case, I sentence the convict Saddam Hussain to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 20,000/- (Rupees twenty thousand) only, in default to undergo simple imprisonment for six months, for committing the offence under Section 14-A (b) of the Foreigners Act, 1946 which, in my opinion, will meet the ends of justice in this case. The period of detention already undergone by the convict during investigation and trial shall be set-off from the sentence of imprisonment. Issue jail warrant, accordingly.

27. After the convict Saddam Hussain serves out the sentence, he shall be deported to Bangladesh.

28. Furnish copy of the judgment to the convict free of cost, immediately.

29. Signed, sealed and delivered in the open Court on this the 25th day of September, 2017, at Dhubri.

(A.Chakravarty)

Sessions Judge, Dhubri

Dictated & corrected by me.

(A. Chakravarty)

Sessions Judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

P.W-1 Mahabir Singh
P.W-2 Naresh Prashad Yadav
P.W-3 Rejeev Kumar
P.W-4 Moinul Hoque
P.W-5 Mahar Uddin
P.W-6 Sadek Ali
P.W-7 Barkat Ali
P.W-8 Deepak Kumar
P.W-9 S.I. Gaznobi Ahmed

2. PROSECUTION EXHIBITS:

Exhibit-1 FIR
Exhibit-2 Site Plan
Exhibit-3 Charge Sheet

(A.Chakravarty)
Sessions Judge, Dhubri