

**DISTRICT : DHUBRI**

**IN THE COURT OF THE SESSIONS JUDGE, DHUBRI**

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

**Sessions Case No. 53 of 2017**

U/S 14-A (b) of the Foreigners Act, 1946, corresponding to

G.R. Case No.4594/2015

State of Assam

.....Complainant

Versus

Sakibul Hasan @ Harunar Rashid

..... Accused

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

Charge framed on : 24-05-2017

Evidence recorded on : 07-06-2017, 21-06-2017, 29-07-2017 & 11-08-2017

Statement recorded on : 25-08-2017

Arguments heard on : 08-09-2017

Judgment delivered on : 20-09-2017

**Advocates who appeared in this case are:**

Shri Maniruz Zaman, P.P. for the Prosecution

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

## **J U D G M E N T**

**1.** This case was registered on 06-10-2015, at Gauripur Police Station, under Section 14 (A) (b) (c) of the Foreigners Act, 1946, r/w Section 6 (A) of Passport (Entry into India) Rules 1950, based on a First Information Report (in short "the

FIR”) filed by one Mohir Uddin Ahmed against accused Sakibul Hasan @ Harunar Rashid.

**2.** The case of the prosecution, as stated in the FIR, is that on 05-10-2015, at around 11:00 p.m., at village Alomganj, Part-I, under Gauripur Police Station, the informant, who was the secretary of the Village Defence Party (VDP) of Alomganj village, received an information that a suspected Bangladeshi national has taken shelter in the house of Eskar Ali of their village. Accompanied by the other VDP personnel, he then went to the house of Eskar Ali and found the suspected Bangladeshi national there. When the informant interrogated the suspected Bangladeshi national, he told him that he has come from Bangladesh. The suspected Bangladeshi national could not produce any document for entering into India. The suspected Bangladeshi national had love affair with the daughter of Eskar Ali and therefore, he has come to India. The informant then informed the Officer In-charge of the Gauripur Police Station about the matter and the Officer In-charge of the Gauripur Police Station told him to take the suspected Bangladeshi national to the Gauripur police station. Accordingly, the informant took the Bangladeshi national to the Gauripur Police Station and filed the FIR of the case.

**3.** Based on the FIR, the Officer In-charge of the Gauripur Police Station registered the case No.872/2015, for offences under Section 14 (A) (b) (c) of the Foreigners Act, 1946, r/w Section 6 (A) of Passport (Entry into India) Rules 1950, against the suspected Bangladeshi national Sakibul Hasan @ Harunar Rashid 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 offences under Section 14 (A) (b) (c) of the Foreigners Act, 1946, r/w Section 6 (A) of Passport (Entry into India) Rules 1950, against the suspected Bangladeshi national Sakibul Hasan @ Harunar Rashid 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) (b) (c) of the Foreigners Act, 1946 is exclusively triable by the Court of Sessions, 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 was framed against the accused Sakibul Hasan @ Harunar Rashid. 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 six witnesses. The accused did not examine any witness.

**7.** In his examination under section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the allegations levelled against him are false and baseless.

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

Whether the accused Sakibul Hasan @ Harunar Rashid is a Bangladeshi national and he has entered into the village Alomganj, under Gauripur Police Station, Assam, India, which is a restricted area as per 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-2 Mahir Uddin Ahmed, the informant has deposed on the day of the occurrence, at around 08:00 p.m, Eskar Ali of their village called him to his house over phone and accordingly, he went to his house. In the house of Eskar Ali, showing the accused, Eskar Ali told him that the accused is a Bangladeshi national and asked him to do the needful. He then asked the accused whether he is a

Bangladeshi national or not. The accused told him that he is a Bangladesh national and since last five years he had been working in Delhi. Then he asked him how he came to the house of Eskar Ali. The accused told him that as he had worked with the son of Iskar Ali, he has come to the house of Eskar Ali with the son of Iskar Ali. Then he asked the accused whether he has got any passport or other document to enter into India. The accused replied in the negative. Then he took the accused to the Gauripur police station and filed the ext-2 FIR of the case. Ext-2 (1) is his signature therein.

**11.** In the cross-examination he has stated that he has not submitted any document to prove that he is the Secretary of the Village Defence Party of their village. He found the accused in the house of Eskar Ali. He did not write the FIR himself. He has signed in the FIR as the informant. He has denied the suggestion that he did not tell the police that the accused told him that he is a Bangladesh national. He has denied the suggestion that the accused did not tell him that he is a Bangladesh national. He has denied the suggestion that the daughter of Eskar Ali had love affair with the accused and dissatisfied with the same, Eskar Ali has levelled false charge against the accused that he is a Bangladesh national and in collusion with Eskar Ali, he has filed this false case against the accused. He has denied the suggestion that the accused is not a Bangladesh national and he has deposed falsely.

**12.** PW-3 Eskar Ali has deposed that about two years ago, one day, at around 06:30 p.m., the accused came to his house and when he asked the accused where his house is, he told him that his house is in Bangladesh. Then he called the VDP Secretary and told him about the matter. The VDP Secretary handed over the accused to the police.

**13.** In the cross-examination he has stated that the police did not record his statement. He has denied the suggestion that the accused did not tell him that his house is in Bangladesh. He has denied the suggestion that the accused never came to his house and he has deposed falsely. He did not go to the police station.

**14.** PW-1 Sontosh Ali, a police constable has deposed that on 07-10-2015, he was posted at the Gauripur Police Station. On that day, the Officer In-charge of the Gauripur Police Station brought the accused to the police station and directed him to search the body of the accused. Accordingly, he searched the body of the accused and found one mobile phone with a Sim card of Bangladesh and seized the same vide ext-1 seizure list. Ext-1 (1) is his signature therein.

**15.** In cross examination he has stated that he had only searched the body of the accused. He has stated that he had never been to Bangladesh. Before the said incident, he did not know the accused. The Officer In charge of the Gauripur Police Station did not issue any written order to search the body of the accused. He has denied the suggestion that he did not tell the Investigating Officer that he searched the body of the accused. He does not remember whether Ishahaque Ali was also brought to the police station on that day. He did not have any devise to check a Sim card. The mobile handset that he seized from the accused is available in the market. He has denied the suggestion that he did not search the body of the accused and have deposed falsely. He has not seen the mobile handset and the SIM card in the Court today. He did not prepare the seizure list. He has denied the suggestion that the seizure list is a manufactured one. He has denied the suggestion that he has deposed falsely.

**16.** PW-4 Omed Ali has deposed that about two years ago, one day, at around 06:30 p.m., the VDP Secretary Mohir Uddin Ahmed called him and told him that a Bangladesh national has come to the house of Eskar Ali (PW-3) and asked him to go to the house of Eskar Ali. Accordingly, he went to the house of Eskar Ali. There, he met the VDP Secretary and found the accused. He asked the accused what was his name and the accused told him that his name was Sakibul Islam. When he asked the accused where his house is, the accused told him that his house is in Bangladesh. Then the VDP Secretary handed over the accused to the police.

**17.** In the cross-examination, he has stated that he had never been to Bangladesh. The police did not record his statement. He did not go to the police station. He has denied the suggestion that the accused did not tell him that his house is in Bangladesh. He knows Rezina of his village. The accused used to work with the

brother of Rezina in Mumbai. He does not know if the accused had contacted Eskar Ali over phone and wanted to marry his daughter. He has denied the suggestion that for the same, they have filed this case against the accused. He does not know to which country the accused belong.

**18.** PW-5 Alema Khatun has deposed that about two years ago, one day, at around 06:30 p.m., the accused came to their house and out of suspicion; her father asked him what his name was and where his house is. The accused told her father that his house is in Bangladesh. Her father then called the VDP Secretary and told him about the matter. The VDP Secretary then handed over the accused to the police.

**19.** In the cross-examination, she has stated that Rezina of their village is her friend. The accused used to work with the brother of Rezina in Mumbai. The accused came from Mumbai and was staying in the house of Rezina. At that time, she was studying in a college. She has denied the suggestion that she did not tell the police that the accused came to their house and out of suspicion, her father asked him what his name is and where his house is. She has denied the suggestion that she did not tell the police that the accused told her father that his house is in Bangladesh. She has denied the suggestion that she did not tell the police that the VDP secretary handed over the accused to the police. She has denied the suggestion that the accused did not tell her father that his house is in Bangladesh. She never talked with the accused. She has denied the suggestion that she has deposed falsely.

**20.** PW-6 S.I. Kulesh Chakraborty, the Investigating Officer of the case has deposed that on 31-10-2016, he was posted at the Gauripur Police Station as Attached Officer. On that day, the Officer In-charge of the Gauripur Police Station entrusted him the case diary of this case to complete the investigation. Accordingly, he perused the case diary and found that the investigation was complete and hence, finding sufficient evidentiary materials against the accused, submitted charge sheet for offences under Section 14 (A) of the Foreigners Act, r/w Section 6 (A) of the Indian Passport Act against the accused Sakibul Hassan @ Harunar Rashid. Ext- 3 is the charge sheet and ext- 3 (1) is his signature therein.

**21.** In the cross-examination, he has denied the suggestion that after perusing the case diary, he found that the accused Sakibul Hassan @ Harunar Rashid is an Indian national and he has submitted false charge sheet against the accused.

**22.** From the testimonies of the prosecution witnesses, it is crystal clear that the accused was apprehended from the house of the PW-3 Eskar Ali suspecting him to be a Bangladeshi national and he confessed that he is a Bangladeshi national. Except suggesting to the prosecution witnesses that the accused is not a Bangladeshi national, the defence did not adduce any positive evidence to prove that the accused 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.

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

**23.** 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 is at village Uttar Kagojpur (Pukurpar), P.S. Sharsha, District-Josher, Bangladesh. Therefore, it must be held that the accused is Bangladeshi national.

**24.** 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 Sakibul Hasan @ Harunar Rashid beyond all reasonable doubt. Therefore, I hold the accused Sakibul Hasan @ Harunar Rashid guilty of committing an 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.

**25.** 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.

**26.** Heard the convict on the question of sentence. He has pleaded leniency in awarding the punishment. But, in the facts and circumstances of the case, I do not think it proper to punish the accused leniently.

**ORDER**

**27.** Considering the entire facts and circumstances of the case, I sentence the convict Sakibul Hasan @ Harunar Rashid to undergo rigorous imprisonment for seven 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. Issue jail warrant, accordingly.

**28.** After the convict Sakibul Hasan @ Harunar Rashid serves out the sentence, he shall be deported to Bangladesh.

**29.** Destroy the seized articles in due course of time.

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

**31.** Signed, sealed and delivered in the open Court on this the 20<sup>th</sup> day of September, 2017, at Dhubri.

(A.Chakravarty)  
Sessions Judge, Dhubri

Dictated & corrected by me.

(A. Chakravarty)  
Sessions Judge, Dhubri

**A P P E N D I X**

**1. PROSECUTION WITNESSES:**

P.W-1 Sontosh Ali  
P.W-2 Mahiruddin Ahmed  
P.W-3 Eskar Ali  
P.W-4 Omed Ali  
P.W-5 Alema Khatun  
P.W-6 Kulesh Chakraborty

**2. PROSECUTION EXHIBITS:**

Exhibit-1 Seizure list  
Exhibit-2 FIR  
Exhibit-3 Charge sheet

(A.Chakravarty)  
Sessions Judge, Dhubri