

(2019) 04 CAL CK 0013

In the Calcutta High Court

Case No : Criminal Appeal (CRA) No. 64 Of 2017

Belayet @ Belal Hossain & Anr

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

Foreigners Act, 1946 — Section 14A(b), 14(b)
Indian Penal Code, 1860 — Section 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 313, 428

Citation : (2019) 04 CAL CK 0013

Hon'ble Judges : Joymalya Bagchi, J;Manojit Mandal, J

Bench : Division Bench

Advocate : Sekhar Kumar Basu, Somnath Banerjee, Arun Kumar Maity, Amita Gaur

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J

The appeal is directed against the judgment and order dated 27th September/29th September, 2016 passed by the learned Additional Sessions Judge, Tehatta, Nadia in Sessions Case No. 11 (1) 2015 [Sessions Trial No. 1 (03) 2015] convicting the appellants for commission of offence punishable under Section 14A(b) of the Foreigners Act and convicting appellant no.1 namely, Belayet @ Belal Hossain for commission of offence punishable under Section 471 IPC and sentencing them to suffer rigorous imprisonment for eight years and to pay fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 14A(b) of the Foreigners Act and sentencing appellant no.1 namely, Belayet @ Belal Hossain to suffer rigorous imprisonment for eight years and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 471 IPC; both the sentences shall run concurrently.

The prosecution case as alleged against the appellants is to the effect that on

10th October, 2014 at about 09:55 hrs. Jayanta Chakraborty, IC, Tehatta Police Station (PW5) received source information that one Bangladeshi national was residing in a rented house at Palashipara under Tehatta Police Station. After recording the said information as GDE No.429 dated 10th October, 2014 and upon intimation to the Sub-Divisional Police Officer, Tehatta, he along with other police personnel left the police station to work out the information. He reached Palashipara at 10:45 hrs. and met the appellants namely, Belayet @ Belal Hossain, s/o. Late Amir Hossain of 12 No. Uttar Jatrabari, P.S. Jatrabari, P.O. & Dist. Dhaka, Bangladesh and Reshma Hossain @ Pakhi, w/o. Belayet @ Belal Hossain of the selfsame address with a minor child named Rejuyan Hossain. Upon interrogation both of them confessed that they were Bangladeshi nationals and were residing at Palashipara for more than six months in the house of Kanaklata Biswas (PW6). They failed to produce any valid passport and visa with regard to their entering Indian territory. Accordingly, they were arrested under Foreigners Act and case being Tehatta Police Station Case No. 720 of 2014 dated 10th October, 2014 under Section 14(b) of the Foreigners Act was registered for investigation. In conclusion of investigation, charge-sheet was filed against the appellants under Section 14A(b) of the Foreigners Act and subsequently, supplementary charge- sheet was also filed under Sections 468/471 of the Indian Penal Code. The case being a sessions triable one was committed to the court of sessions and transferred to the Court of the learned Additional Sessions Judge, Tehatta, Nadia for trial and disposal. Charges were framed under Section 14A(b) of the Foreigners Act against both the appellants while charges under Sections 467/468/471 IPC were framed against appellant no.1 namely, Belayet @ Belal Hossain. The appellants pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 11 witnesses and exhibited a number of documents. In conclusion of trial, the trial Judge by the impugned judgement and order dated 27th September/29th September, 2016 convicted and sentenced the appellants, as aforesaid.

Mr. Sekhar Kumar Basu, learned senior advocate appearing for the appellants submitted that the prosecution has not been able to prove that the appellants were foreign nationals. There is nothing on record to show that appellant no.1 namely, Belayet @ Belal Hossain had knowingly used forged documents. Hence, the appeal is liable to be allowed.

On the other hand, learned advocate appearing for the State submitted that there is ample evidence on record to show that the appellants are foreign nationals and appellant no.1 namely, Belayet @ Belal Hossain had knowingly used forged documents namely, Voters Identity Card, PAN card, ration card, school certificate, passbook of SBI, Kakdwip Branch and acknowledgement letter relating to an application for passport to create an impression that he is an Indian national. Hence, the appeal is liable to be dismissed.

PW5, Jayanta Chakraborty, IC, Tehatta Police Station is the de-facto complainant in the instant case. He deposed he had received source information that one

Belayet @ Belal Hossain, a Bangladeshi national was residing at Palashipara with his family. Acting on such information, he along with other police personnel went to the premises to Kanaklata Biswas where the appellants were residing as tenants. The appellants could not produce any valid document relating to their nationality. He arrested the appellants along with the child. He lodged written complaint (Exbt. 2).

PW1 (Prodyut Chakraborty) and PW3 (Sandhya Halder) were members of the raiding party along with PW5 and had corroborated the evidence of PW5.

PW6, Kanaklata Biswas is the owner of the premises where the appellants were residing as tenant. She deposed the appellants were residing as tenant in the first floor of her premises since three years. Police personnel came to her house and arrested the appellants.

PW2 (Insan Sk.) and PW4 (Gopal Halder) were also tenants under Kanaklata. They corroborated the evidence of PW6 that the appellants were residing in the premises of Kanaklata as tenants and were arrested by the police. PW2 was a signatory to the seizure list relating to the seizure of articles from the room of the appellants.

PW11, Chandan Dutta is the Investigating Officer in the instant case. He took over investigation of the case and visited the place of occurrence. In course of investigation, he seized the voters' card, one ration card, one school certificate, a State Bank of India pass book and acknowledgement letter of an application for passport of appellant no.1 namely, Belayet @ Belal Hossain under a seizure list (Exbt. 1). He made investigation with regard to the veracity of the said documents. He visited the office of the Sub-divisional Food & Supply Controller, Kakdwip, office of the BDO, Kakdwip, Sitarampur High School, Kakdwip and State Bank of India, Kakdwip Branch to verify the seized documents. He submitted written requisition to Sitarampur High School, Kakdwip (Exbt. 14), to the Sub-divisional Controller, Food & Supply, Kakdwip (Exbt. 15), to the BDO, Kakdwip (Exbt. 16) and Branch Manager, SBI, Kakdwip Branch (Exbt. 17). Finally, he submitted charge-sheet. He seized one computer generated copy of an application for passport (Exbt. 13). Subsequently, he collected report from the office of the Sub-divisional Food & Supply Controller, Kakdwip that the ration card in the name of Belayet @ Belal Hossain was a fake one. He collected report from the Headmaster of Sitarampur High School (HS), Shrinagar, Makarpara, P.S. Kakdwip 24-Parganas (South) (Exbt. 4) and submitted supplementary charge-sheet.

PW7, Asit Kumar Bhuiya was the Headmaster of Sitarampur High School, Kakdwip. He corroborated the evidence of the aforesaid police officer (P.W. 11) and deposed that on 11th November, 2014 he received written request from the said police officer with regard to verification of documents relating to appellant no.1 namely, Belayet @ Belal Hossain. On search of official records he did not find any document in support of the transfer certificate in the name of Belayet @

Belal Hossain. He signed the written report relating to the matter to the said police officer (Exbt. 4).

Similarly PW9 (Nikhil Ch. Das) and 10 (Arun Kr. Tala) being the Chief Manager, S.B.I, Kakdwip Branch and the former Inspector, Food & Supply, Kakdwip Block, 24-Parganas (South) respectively deposed that they had received written requisitions from the aforesaid investigating officer and have submitted reports (Exbt. 7) and (Exbt. 5) that the ration card standing in the name of Belayet @ Belal Hossain was a fake one and the pass book was obtained by submitting such fake documents. Furthermore, during the examination of the appellants under Section 313 of the Code of Criminal Procedure, the appellants have not raised any protest with regard to their address quoted in the said examination sheet namely, "12 No. Uttar Jatrabari, P.S. Jatrabari, P.O. & Dist. Dhaka, Bangladesh."

From the aforesaid evidence on record it appears that the appellants were residing as tenant in the premises of Kanaklata Biswas (PW6) for the last three years. On source information I.C., Tehatta Police Station (PW5) conducted a raid in the said tenanted premises and arrested the appellants on the suspicion that they are Bangladeshi nationals. Appellant no.1 namely, Belayet @ Belal Hossain produced various documents viz. ration card, transfer certificate and bank passbook in support of his plea that he was an Indian national. Investigating Officer (PW11) sent requisitions to the various authorities namely Headmaster, Sitarampur High School (HS), Srinagar, Makerpara, Kakdwip, 24-Parganas (South) (PW7), Chief Manager, SBI, Kakdwip Branch (PW9) and the Office of Sub-divisional Food & Supply Controller, Kakdwip for verification of documents. PWs 7,8 & 9 were examined in court. They deposed that on enquiry that the ration card and transfer certificate produced by the appellant no.1 namely, Belayet @ Belal Hossain were fake. Appellants also did not raise any protest during their examination under Section 313 of the Code of Criminal Procedure, their permanent address at Bangladesh was quoted in the examination sheet.

Evidence on record including the conduct of the appellants particularly appellant no.1 namely, Belayet @ Belal Hossain in knowingly using forged documents in support of the false plea of Indian citizenship leave no doubt in my mind that they were foreign nationals who had illegally entered the country and appellant no.1 had knowingly forged and fabricated documents in a desperate plea to hide such fact.

In the light of the aforesaid discussion, I uphold the conviction recorded against the appellants.

Coming to the issue of sentence imposed on the appellants I find that the maximum sentence under section 14A(b) of the Foreigners Act has been imposed on the appellants. Although I have no doubt in my mind that the appellants are foreign nationals, there is nothing on record to show that they were indulging in any illegal and/or anti-national activities in the country. On the other hand, they were residing as a family with a minor child.

Balancing the aforesaid aggravating and mitigating factors, I consider it prudent that instead of imposing the maximum sentence of rigorous imprisonment for eight years each under section 14A(b) of the Foreigners Act upon the appellants, sentence imposed upon them may be modified. Accordingly, I direct that the appellants shall suffer rigorous imprisonment for five (5) years each and to pay fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for six months more for the offence punishable under section 14A(b) of the Foreigners Act and appellant no.1 namely, Belayet @ Belal Hossain shall suffer rigorous imprisonment for five (5) years and to pay fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under section 471 of the Indian Penal Code. Both the sentences shall run concurrently.

With the aforesaid modification as to sentence, the appeal is disposed of.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

Upon completion of period of sentence, appellants shall be pushed back to their country of origin in accordance with law.

Copy of the judgment along with L.C.R. be sent down to the trial court at once.

Copy of the judgment be sent to the Union of India as well as to the State Government for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.