
(2016) 12 CAL CK 0061
In the Calcutta High Court
Case No : CRA No. 27 of 2010

Md. Afil

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Foreigners Act, 1946 — Section 14A(b)

Citation : (2017) 171 AIC 431 : (2017) 1 CalLJ 368

Hon'ble Judges : Debasish Kar Gupta and Md. Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Mr. Tirthankar Ghosh, Ld. Advocate, for the Appellant; Mr. Ranabir Roy Chowdhury, Ld. Advocate, for the State

Final Decision : Dismissed

Judgement

Md. Mumtaz Khan, J.—The subject matter of challenge in this appeal is the judgment, order of conviction and sentenced dated February 26, 2009 and February 27, 2009 respectively passed by the Ld. Additional District and Sessions Judge, 1st Fast Track Court, Raiganj, Uttar Dinajpur in Sessions Case No. 242 of 2008. By virtue of the impugned judgment appellant was convicted for commissioning of the offence punishable under Section 14A(b) of the Foreigners Act and was sentenced to suffer rigorous imprisonment for 8 years and to pay a fine of Rs. 10,000/- in default to suffer rigorous imprisonment for six months more with direction for set off as per provisions of Section 428 of the Code of Criminal Procedure.

2. The case of the prosecution, in brief, is as follows:-

On August 3, 2008 at 17.05 hours P.W.2 by producing the appellant at the Hemtabad P.S. under arrest lodged a complaint to the effect that on that date on that date at 15.45 hours while he along with P.W.1, P.W.3, P.W.7, P.W.8 and force were performing special patrolling duty as per order of the S.P., Uttar Dinajpur to prevent infiltration as also to search the escaped eight under trial prisoners, all

Bangladesh nationals, on previous day from Raiganj District Correctional Home and were moving through the road at Chainagar near Indo Bangla Border, they found the appellant moving suspiciously near the under construction Border fencing. Accordingly, he was detained and on interrogation he disclosed his identity to be a resident of Tengria, P.S., Haripur, District, Thakurgaon, Bangladesh. On demand appellant failed to produce any passport or visa or any valid document for his entry into this country and as such he was arrested for violation of rules and regulations of the Foreigners (Amendment Act 2004).

3. On the basis of the above complaint, Hemtabad P.S. Case No. 72 dated August 3, 2008 was started against the appellant for the commission of the offence punishable under Section 14A(b) of the Foreigners Act and the case was endorsed to P.W.8 for investigation who then investigated this case and after completion of investigation submitted charge sheet being No. 69 of 2008 dated August 7, 2008 against the appellant for the commission of the offence punishable under Section 14A(b) Foreigners Act.

4. Charge was framed on January 2, 2009 against the appellant for the commission of the offence punishable under Section 14A(b) of the Foreigners Act and when the appellant pleaded not guilty to the charge trial commenced.

5. Prosecution examined 8 witnesses and also produced and proved the FIR (Ext. 1) and the rough sketch map with index of the P.O (Ext. 2) and thereafter on completion of trial and after examination of the appellant under Section 313 of the Code of Criminal Procedure. Learned Trial Judge passed the impugned judgement.

6. Mr. Tirthankar Ghosh, learned advocate was appointed as defence counsel in this appeal by this Court at the cost of the State vide order dated September 14, 2015.

7. We have heard Mr. Tirthankar Ghosh, learned defence counsel for the appellant and Mr. Ranabir Roy Chowdhury, learned advocate appearing for the state at length and considered the facts and circumstances of the case.

8. On perusal of the evidence of the prosecution witnesses on record it is evident that the defacto complainant (P.W.2) has fully corroborated the FIR and has specifically stated on oath that on August 3, 2008 at 15.45 hours while he along with other police officials and force were on special patrolling duty at Chainagar area, they noticed this appellant moving suspiciously towards Indian territory by crossing the Indian border. On seeing them appellant started fleeing away but they managed to apprehend him and during interrogation he disclosed his identity as "Md. Afil son of late Samser Ali of village Teghoria, P.S. Haripur, District Thakurgaon, Bangladesh". On demand appellant failed to produce any valid document like passport or visa for his entry into this country and as such he was apprehended and brought to the Hemtabad P.S. and the case was started. He identified the appellant in course of recording of his evidence before court. He was cross-examined by the defence at length but nothing came out contrary to

his statement made in his examination in chief.

9. The above statement of P.W.2 also found corroboration from P.W.1, P.W.3, P.W.4, P.W.5, P.W.6 and P.W.7 who were also member of the patrolling party. They also identified the appellant before the court. They were also cross-examined by the defence at length but their evidence remained unshaken.

10. P.W.8 is the I.O. who investigated the same and submitted charge sheet against the appellant. He also identified the appellant before the court. His evidence also remained unshaken during cross-examination.

11. The above evidences find corroboration from the statements of the appellant recorded during his examination under Section 313 of the Code of Criminal Procedure.

12. Learned trial judge taking into account the entire circumstances and the evidence on record held the appellant guilty of the offence punishable under Section 14A(b) of the Foreigners Act and sentenced him accordingly.

13. Therefore, taking into consideration the entire facts and circumstances on the basis of which the impugned judgment is passed, we are of the opinion that the impugned judgment need not require our interference.

14. In view of the above, we have no difficulty in reaching the conclusion that the conviction of the appellant under Section 14A(b) Foreigners Act and the sentence imposed thereunder is fully justified. We, therefore, dismiss the appeal and affirm the conviction and sentence imposed on the appellant.

15. Copy of this judgement along with the lower court records be sent down to the trial court for information and necessary action.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Md. Mumtaz Khan, J.—I agree.