

(2018) 06 CAL CK 0102
In the Calcutta High Court
Case No : C.R.A. 226 of 2017

Md. Jakaria Abu Taheb Md. Khaled

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Foreigners Act, 1946 — Section 14

Indian Penal Code, 1860 — Section 120B, 121, 121A, 122, 123, 124A, 467, 468, 471, 474

Explosive Substances Act, 1908 — Section 3, 4, 4(b)

Code Of Criminal Procedure 1973 — Section 428

Citation : (2018) 06 CAL CK 0102

Hon'ble Judges : JOYMALYA BAGCHI, J;RAVI KRISHAN KAPUR, J

Bench : Division Bench

Advocate : Swapan Kr. Mallick, Aarun Kumar Maity,Sukanya Bhattacharyya,

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.

Nobody appears for the appellant. Mr. Mallick, learned Advocate of this Court is requested to appear as amicus curiae on behalf of the appellant. The

appeal is directed against the judgement and order dated 21.9.2016 passed by the learned Additional District and Sessions Judge, 2nd Court, Sealdah,

South 24-Paraganas in Sessions Trial No.3(1) 10 [Sessions Case No.3 (6) 09] convicting the appellant and Safiquil Islam for commission of offence

punishable under Section 14 of the Foreigners Act as also the appellant under Section 474 of the Indian penal Code and Section 4(b) of Explosive

Substance Act and directing the appellant and Safiquil Islam to suffer simple imprisonment for two years for commission of offence punishable under

Section 14 of the Foreigners Act and the appellant to suffer rigorous

imprisonment for seven years for the offence punishable under Section 474 of the Indian Penal Code and to pay fine of Rs.10,000/- in default to suffer simple imprisonment for five years more for the offence punishable under Section

474 of the Indian Penal Code and to suffer rigorous imprisonment for ten years and to pay a fine of Rs.20,000/- in default to suffer simple

imprisonment for seven years for the offence punishable under Section 4(b) of the Explosive Substance Act, with a further direction that the appellant

and Safiqul Islam be pushed back to Bangladesh by the appropriate authority.

The prosecution case, as alleged, against the appellant and other accused persons is to the effect that on 6.3.2009 at around 1.30 P.M., the appellant

was arrested by P.W.2, S.I. Santanu Chatterjee, S. I. of Police attached to Special Task Force, Kolkata while he was going towards A. P. C. Road

along Kaiser Street carrying a big bag in his right hand on the suspicion that the appellant is a Bangladeshi national and was a member of Lasker-

eTaiba, a terrorist organisation and was involved in preparation of highly explosive devices to wage war against the Government of India. On

interrogation, the appellant disclosed his identity. Upon search, various Compact Disks and other articles were recovered from his possession. A

computerised railway ticket from Berhampore to Sealdah dated 6.3.2009, another railway ticket for onward journey from Howrah to Delhi by Kalka

Mail on 6.3.2009 were seized. An S. T. D. slip of P.C.O. styled as â??Jaimatadiâ?? dated 6.3.2009 was also seized along with the driving licence

and voterâ??s identity card in the name of the appellant. Apart from the aforesaid, a steel tiffin box containing some brownish sticky substance

suspected to be explosive was also seized. The seizures were effected in the presence of independent witnesses and P.W.2 handed over the appellant

with the seized articles to Narkeldanga Police Station where the instant criminal case was registered on the basis of his complaint.

In the course of investigation one Abdus Sadak, Safiqul Islam and Shanwaz Sk. @ Chandan were arrested and pursuant to the leading statement of

Abdus Sadak, other incriminating articles were recovered. In conclusion of investigation, charge-sheet was filed against the appellant and other

accused persons under Sections 121/121A/122/124A/120B/474 of the Indian Penal Code and under Section 3 / 4 of the Explosive Substance Act and

under Section 14 of the Foreigners Act.

The case being a sessions triable one was committed to the Court of Sessions and was transferred to the Court of the Additional District and Sessions

Judge, 2nd Court, Sealdah for trial and disposal. Charges were framed under the aforesaid sections against the appellant and other accused persons

who pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 20 witnesses. It was the specific defence of the appellant

that he was an Indian National and was innocent. In support of his defence, appellant examined his father as D.W.1. In conclusion of trial, the trial

judge by judgement and order dated 21.9.2016 convicted and sentenced the appellant and Safiqul Islam, as aforesaid. Other accused persons were,

however, acquitted of the charges levelled against them.

Mr. Mallick, learned Counsel appearing as amicus curiae submitted that the appellant is an Indian national as would appear from the evidence of DW

1. He was born in Bihar and had his education in West Bengal and Benaras. Ration card and other documents were also produced in support of such

plea. It is also submitted that seizures from the possession of the appellant has not been proved beyond doubt and the prosecution case suffered from

various improbabilities and is liable to be thrown out.

On the other hand, Mr. Maity, learned Counsel appearing for the State argued that the evidence of the police witnesses are supported by independent

witnesses with regard to seizure of forged documents and explosives from the appellant. FSL report proved by P.W. 8 established that the seized

material in the steel box was a mixture of ammonium nitrate, petroleum and hydrocarbon which was highly explosive. It is also submitted that the

evidence of the Chief Electoral Officer (P.W.6) as well as the R.T.O. Officer (P.W. 10) showed that the voter's identity card as well as the

driving licence seized from the possession of the appellant were fake. Hence the prosecution case has been proved beyond reasonable doubt.

P.W. 2, Santanu Chattopadhyay, S.I. of Police attached to Special Task Force, Kolkata and the de facto complainant in the instant case is the most

vital witness in the instant case. He deposed that he had received information that one Md. Jakaria, an LeT trained terrorist was coming from

Bangladesh to Kolkata with a view to go to Delhi to indulge in subversive activities. He, upon taking written permission from his superior, held raid and

arrested the appellant while he was coming with a black coloured luggage in his

hand through Kaiser Street towards A.P.C. Road. The appellant disclosed his identity. Thereafter, upon search of Jakaria he found wearing apparels, three moserbaer C.Ds, one spiral diary (pocket diary) containing a number of addresses and phone numbers as well as formula for preparation of bombs, explosives etc. He also found two books, one written in English and another in Urdu. He also seized a small tiffin box containing a brownish sticky substance from the appellant. Two railway tickets were recovered from the right side of the pocket of his kurta. One was from Berhampore to Sealdah and another was from Howrah to Delhi dated 06.03.2009. From his money bag, Indian currency notes, voter's identity card and driver's license were found. Telephone booth slip was also recovered. Articles were seized under a seizure list in the presence of the witnesses. The appellant with the seized articles was produced before Narkeldanga police station and P.W. 2 lodged written complaint with the said police station resulting in registration of the instant case.

P.W. 3 and P.W. 4 are the independent witnesses who were present at the time of search and seizure. They corroborated the evidence of P.W. 2 and identified the appellant as well as seized articles in Court. They also identified their signatures in the seizure list. P.W. 16, Bhutnath Banerjee, S.I. of police, Narkeldanga police station deposed that he received a written complaint from P.W. 2 and drew up the formal first information report under Sections 121/121A/122/123/ 124A/120B/467/468/471 of the Indian Penal Code and under Section 14 of the Foreigners Act. He proved the formal F.I.R. as exhibit no. 14. He identified the appellant. He also proved the general diary entries no. 534 dated 06.03.2009 and 536 as material exhibit no. 49 which were recorded contemporaneously with regard to the registration with the aforesaid first information report.

P.W. 6, Nikhil Kumar Sahana, the Chief Electoral Officer deposed that he received the voter's identity card standing in the name of the appellant from the Deputy Commissioner of Police, Detective Department of Kolkata. He found that the EPIC card was fake. Similarly P.W. 10, Ashok Kumar Ray, deposed that he received the driving licence bearing no. WB 202000692328 from the office of the Deputy Commissioner of Police, STF, Calcutta. He found that the said licence standing in the name of the appellant was fake.

P.W. 7, Bikash Chandra Sarkar, is the Reservation Supervisor Sealdah Station (Railway) who deposed that the railway ticket recovered from the

possession of the appellant for travel to Delhi on Kalka mail was genuine. P.W. 8, Dr. Dilip Kumar Kuila, a Senior Scientific Officer, Central Forensic

Science Laboratory, Calcutta, who received three sealed paper packets from D.C., S.T.F., Calcutta in connection with this case. Those packets were

marked as 2099A, 2099B and 2099C respectively. Packet 2099A contained one steel container which contained some grease like semi solid materials.

Packet 2099B contained two green coloured rectangle shaped soap cake like material and some soap like substance. Packet 2099C contained two

cylindrical shaped metallic tubes fitted with electrical wires. He examined the articles and found that Packet 2099A contained explosive substances.

He proved his report in the Court.

P.W. 9, Arun Kumar Pal, a Junior Scientific Officer of Central Forensic Science Laboratory, Calcutta, received one sealed paper packet marked

â??â?? containing three Compact Discs (CDs). On examination, 13 pictures files and 13 movie files were retrieved from the said CDs. He proved

his report.

P.W. 11, Biplab Majumder, compared the hand-writings on the railway cancellation form with the admitted writings of the appellant. He deposed that

they were written by one and the same person.

P.W. 12, Syed Md. Amjad Ali, official interpreter of the High Court, interpreted the book in Urdu language seized from the appellant into English.

P.W. 14, Mithu Pal, deposed that he ran the S.T.D. booth. Police seized counter part slips of STD payment roll from his booth. He signed on the said

slips. He identified the appellant in the Court as well as in the course of test identification parade before P.W. 15, Judicial Magistrate.

P.W. 19, Sandip Chowdhury, S.I. attached to Kolkata at S.T.F./Special Task Force deposed that he went to Jagtai village at Suti PS along with

accused Abdul Sadak for the purpose of making recoveries pursuant to statement of the said accused. Pursuant to the statement of the Sadak, a black

coloured plastic bag was recovered under the mattress of his bed on a cot. The accused took out a detergent soap. After breaking the soap into two

pieces he took out two silver coloured metallic tubes with a blue coloured thing which were attached to a red coloured insulated wire. The accused

also took out a hand written letter which was addressed to one Jakaria in Bengali language. He seized those articles. He prepared a seizure list and obtained signature of the witnesses.

P.W. 20, Salil Kumar Ray, is the investigating officer in the instant case. In 2009 he was posted at Special Task Force as Inspector of Police. He took over investigation of the present case as per order of Deputy Commissioner of Police, STF. He took the case diary from P.W. 2 and went through the entire records of the case. He recorded the statement of the appellant who revealed the names of his associates including Abdul Sadak. The latter was in custody in connection with a case of Detective Department. He was shown arrested in this case. Prior to showing him arrested in this case, he was interrogated. He was shown arrested on 06.03.2009 and was produced before the Magistrate on 07.03.2009. He was taken into police custody on 07.03.2009. As per his requisition the plan maker (PW 1) was taken to the place of occurrence. The plan maker (PW 1) drew up the sketch map of the place of occurrence.

He seized the counter-parts of STD payrolls from a shop in Sisir market, Sealdah. On 14.03.2009 he conducted the raid with P.W. 19 at the house of Abdul Sadak and as per the statement of the said accused, two broken pieces of detergent soap containing two silver metallic tubes with insulated wires and a hand-written letter were recovered from his house. He proved the articles in Court. Pursuant to the statement of Md. Jakaria he arrested one Sahanawaz Sk. @ Chandan. He sent the steel round shaped tiffin box containing the brownish sticky substance, two metallic silver tubes, two pieces of OK soap and three CDs for FSL examination. He sent the driving licence of the appellant for examination by Motor Vehicles Department.

On 19.5.2009 he sent the voter's card to the office of the Chief Electoral Officer for verification. On 25.5.2009 he obtained report from CFSL, Motor Vehicles Department and Election Office. He obtained translation of urdu script seized from the appellant. He obtained sanction from the government for prosecution under section 121 IPC and also sanction from Commissioner of Police and submitted charge sheet.

From the aforesaid evidence it appears that the appellant was apprehended by P.W 2 when he was going on 6.3.2009 towards APC road along Kaiser Street. Various incriminating articles including driver's licence, voter's

s identity card and a steel box containing sticky substance

suspected to be explosive were seized from the appellant under a seizure list. Evidence of P.W 2, in this regard, is supported by independent witness

namely P.W 3 and 4. P.W 3 and 4 identified the appellant and the seized articles in Court and proved their signatures on the seizure list. Furthermore,

evidence of P.W 14 including the counterfoils seized from his STD booth corroborates the version of the aforesaid witnesses that the appellant was

present in Kolkata at the time of his arrest and detention along with the aforesaid incriminating articles. Hence, the prosecution case with regard to the

arrest of the appellant in Kolkata on 6.3.2009 along with incriminating articles has been proved beyond reasonable doubt.

From the evidence of P.W 8, Senior Scientific Officer it appears that the brownish sticky substance contained in the steel box seized from the

appellant contained ammonium nitrate with petroleum hydrocarbon which is highly explosive. Hence, the charge under section 4(b) of the Explosives

Act has been proved beyond reasonable doubt. Coming to the issue of citizenship of the appellant, it appears that the appellant examined his father as

DW 1. The witness deposed that he earlier resided at village Bawrah, Pilagarh, P.S Kadua, District - Katihar, Bihar and was presently residing in

village Sohar District - Uttar Dinajpur, West Bengal. He had seven sons and four daughters including the appellant. He deposed that the appellant was

born in Bihar and pursued his education at Loharpool Madrasa, district - Uttar Dinajpur and passed Alim from Benaras, U.P. He was unable to prove

the originals of the ration cards of the appellant in Court. He also failed to produce any birth certificate of the appellant or any contemporaneous

document pertaining to his education in India. On the other hand, voter's identity card which was seized from the possession of the appellant was

found to be a fake one as per the evidence of the Chief Electoral Officer, P.W 6. Driving licence seized from the appellant was also found to be

forged.

Hence, I am of the opinion that the prosecution has been able to prove that the appellant was not an Indian national and that he had in possession of

forged documents in order to support his false plea of Indian citizenship. In the light of the aforesaid discussion, I uphold the convictions and sentences

imposed upon the appellant. The sentences imposed upon the appellant shall run

concurrently. Period of detention undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentences imposed upon him in terms of section 428 Cr.P.C.

Appeal is, accordingly, dismissed. I record my appreciation for the able assistance rendered by Mr. Mallick, learned advocate as amicus curiae in

disposing of the appeal. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once. Photostat

certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.