

(2018) 12 GAU CK 0053
In the Gauhati High Court
Case No : CRL.A(J) 13 Of 2018

Saddam Hussain Dhubri

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Foreigners Act, 1946 — Section 14A(b), 14A
Code of Criminal Procedure, 1973 — Section 207, 313

Citation : (2018) 12 GAU CK 0053

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : Ujjal Choudhury, B J Dutta, B Chowdhury

Final Decision : Disposed Off

Judgement

RUMI KUMARI PHUKAN, J

(1) Heard Ms. J Choudhury, Amicus Curiae for the appellant assisted by Mr. B Choudhury. Also heard Mr. B J Dutta, learned Addl. PP, Assam.

(2) Both the Criminal Appeals arising out of same judgment, while the Criminal Appeal (J) No. 13/2018 was preferred from jail subsequently the regular Criminal Appeal was also preferred bearing No. 165/2018 and both the cases are now taken together and disposed by this common order.

(3) This appeal is directed against the judgment and order dated 25.09.2017 passed by the learned Sessions Judge, Dhubri in Sessions Case No. 54/2017 u/s 14-A (b) of Foreigners Act, 1946.

(4) On 28.12.2016, Foot Patrolling party of the "B" Coy, 67 Bn. BSF while on patrolling duty at around 12:45 P.M, during search and patrolling operation apprehended the accused/appellant Saddam Hussain, was apprehended at Pattamari market suspecting him to be a Bangladeshi National. There was some secret information that one Bangladeshi person is roaming in the market area.

While apprehended the accused/appellant could not satisfy the query made by the patrolling party regarding his nationality and as such he was produced before the concerned police station. The company Commander Officer Rajiv Kumar lodged the FIR. On the basis of the FIR, Dhubri PS Case No. 1341/2016 was registered u/s 14-A of the Foreigners Act, 1946 and after due investigation, charge sheet was submitted against him under said section of law.

(5) The case being triable by Court of Sessions, the same was committed to the said Court for favour of trial. Accordingly the learned Sessions Judge after furnishing the said document under the provision of 207 CrPC framed the charge u/s 14-A(b) of the Foreigners Act, 1946 and it was explained to the accused person to which he pleaded not guilty and claimed to be tried.

(6) The prosecution side examined as many as 9 witnesses to substantiate the charge and defence side examined none. Plea of defence is of total denial. But however, the accused in his statement u/s 313 CrPC stated that he is a Bangladeshi National and mistakenly cross the Indo-Bangla Border and entered into India.

(7) The learned Trial Court on examination of evidence on record and in view of the statement of the accused himself u/s 313 CrPC held the accused guilty and convicted him u/s 14-A(b) of the Foreigners Act, 1946 and sentenced him to maximum punishment of 8 years R/I under said said Section of law and also to pay a fine of Rs. 20,000/- (Rupees twenty thousand) only, in default to undergo simple imprisonment for six months.

(8) Being aggrieved with the aforesaid judgment and order, present two appeals have been preferred.

(9) I have heard the submission of learned counsel for the appellant as well as the learned Addl. PP, Assam.

(10) According to the learned counsel for the appellant, the accused who is a boy of tender age about 19 years, mistakenly entered into the premises of India and he was immediately apprehended by the BSF personnel otherwise there was nothing to show that he intended to overstay in India for any illegal gain. On the next it is submitted that the place wherefrom the appellant was apprehended was less than 1 (one) K.M from the India Border and in view of such aspect the submission of the accused that he was mistakenly entered into the premises of India can be accepted and there being no other illegal intention on the part of the accused to carry on such habitation in India, the learned Trial Court could have awarded of less punishment, having regard to the age and incident of the accused person.

(11) Learned counsel for the respondent Mr. Dutta has however contended that in view of the admission of the appellant/accused by itself about his nationality and he entered into India without any document, the learned Trial Court has rightly convicted the accused in terms of the Act. Referring to the evidence on

record, which is sufficient to prove the charge, it has been contended that there is no illegality in the aforesaid order to interfere into.

(12) Pursuant to the rival submission of learned counsel for both the parties, I have gone through the impugned judgment and order as well as the evidence on record. So far as the evidence of PW-1 Mahabir Singh & PW-2 Naresh Prasad Yadav and PW-8 Deepak Kumar, who were BSF personnel and posted at Border Observation Post of the 67 Bn. BSF, Situated at pattamari, P.S Dhubri, all of them have given similar evidence that PW-1 received an information that a Bangladeshi National was roaming at Pattamari market and on the instruction of the Company Commander Rajeev Kumar/ PW-3 they went there and found the accused/appellant near a computer shop. They then apprehended the accused and queried about the nationality and took him to their office. When they asked about the residence of the accused/appellant, he told that his house is in Bangladesh and mistakenly, he had crossed the border prior to 2 days and entered into India without any valid passport or any other documents. The accused was then handed over to the Dhubri Police Station and filed the Ext-1 is the FIR and Ext-1(1) of the signature of PWs-1, 2, 3, & 8 and gave similar statement.

(13) Supporting the evidence all above witnesses, the PW-4 Moinul Hoque and PW-5 Mahar Uddin who have their shop near the Pattamari market have stated that BSF personnel apprehended the accused/appellant nearby their shop and they came to know that he is a Bangladeshi National.

(14) PW-6 Sadek Ali and PW-7 Barkat Ali, who happened to be the VDP of the village Sasterghat and shopkeeper near at Pattamari market respectively, having known about the apprehension of a person of Bangladeshi National, they went to the place of occurrence and found that accused was apprehended by the BSF personnel as mentioned above.

(15) The evidence of Investigating Officer/PW-9 Gaznobi Ahmed is a formal in nature who has stated about the receipt of the FIR and submission of the accused by the BSF personnel in their police station. After due investigation, he submitted charge sheet against the accused/appellant. On a query made to the Investigating Officer, who have visited the place of occurrence he has stated that in Pattamari market wherefrom the accused was apprehended is situated less than one kilometre distance from the Indo-Bangla Border, which has not been completely fenced. So, the evidence on record coupled with the statement of the accused himself given u/s 313 CrPC that is sufficient to prove that the accused was apprehended on the fateful day and he is found to be a Bangladeshi National, entered in India without any document. Accordingly it has been rightly held that the charge u/s 14-A(b) of the Foreigners Act is proved against the accused person. The accused nowhere tried to project any story rather than he has admitted the fact that he is from Bangladesh by mistakenly, he entered into the territory of India. The evidence of the BSF personnel is also stands corroborated by the other evidence on record and as it is found that there is a

clear admission on the part of the accused about the allegation. Accordingly nothing remains to interfere into the findings of the learned Trial Court regarding the proof of charge.

(16) However, having regard to the submission of learned counsel for the appellant, this Court has also taken note of the fact that the place wherefrom the accused was apprehended was nearby to the India border and in view of such open border anybody can access into India's territory. On the other hand, this Court finds that the accused is a boy of tender age about 19 years and he entered into India's territory in Dhubri district only two days prior to apprehension and there is no evidence to show that his intention was to continue to reside in India by such illegal entry. Having of valid passport and other related documents is necessity when a person intends to stay in India, which is not the case of the petitioner. The submission that he mistakenly entered into India in view of such short distance can't also be discarded.

(17) Having regard to the matters on record, the age and antecedent of the accused/appellant, the impugned judgment is found to be on higher side. Accordingly the sentence is reduced to the minimum punishment of 2 (two) years as provided under the said provision and the fine amount is also reduced to Rs. 10,000/- (Rs. ten thousand) only, in default, R/I for 2 (two) months.

(18) Appreciating the assistance rendered by learned Amicus Curiae Mr. Ujjal Choudhury, Advocate an amount of Rs. 7,000/- be given to him by the Gauhati High Court Legal Service Authority.

(19) With the observations made above, both the appeals stand disposed of. Return the LCR.