

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,  
CHIRANG (BTAD), KAJALGAON**

**GR No.449/15**

Under Section 14 Foreigner's Act,1946  
R/W section 4 of Passport Entry into India Act,1920  
R/W section 6 of Passport Entry into India Rules,1950

Present : Sri K.C. Boro, AJS  
Chief Judicial Magistrate  
Chirang (BTAD), Kajalgaon, Assam

State of Assam

-Vs-

Sohidul Islam.....Accused person

For the State : D.K. Deb, Learned Addl. P.P.  
For the Defence : PankajBaidya ... Ld.Legal Aid Counsel

Evidence Recorded on : 17-04-2016  
19-04-2016  
02-05-2016  
01-09-2016

Argument Heard on : 17-12-2016

Judgment Delivered on : 17-12-2016

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

**1.** The prosecution case in brief is that on 18-12-2015 at about 11:30 AM while the complainant, Sub-Inspector, Samir BhusanBanik, I/C of Dadgiri Petrol Post was on duty in Dadgiri market, a suspected person was loitering there. When the complainant asked the person, the person introduced himself as

a Bangladeshi national. He had entered into Dadgiri without any valid document with him and to this effect the complainant lodged an FIR with Runikhata Police Station.

**2.** Receiving the FIR, Officer-in-charge, Runikhata Police Station registered a case directing S.I. Lakshman Kr. Das to investigate the case. During his investigation he went to the place of occurrence and recorded the statement of the complainant and witnesses. He also drew up a sketch-map of the place of occurrence. After completion of the investigation, the Investigating Officer(I.O.) submitted charge sheet against the accused under section 14 of Foreigner's Act,1946, R/W section 4 of Passport Entry into India Act,1920, R/W section 6 of Passport Entry into India Rules,1950. The accused was produce before the Eleka Magistrate by the I.O, seeking police custody of 14 days and it was granted by the Eleka Magistrate I/C till 02-01-2016. Accused was remanded to judicial custody as prayed before Eleka Magistrate by the I.O, Lakshman Kr. Das of Runikhata Police Station on 02-01-2016.

**3.** In course of production of the accused before this court this court was pleased to pass order on 11-03-16, 13-06-2016 & 21-07-2016 respectively.

Foreign national Sohikul Islam is produced from Abhayapuri District Jail. Seen him. He is heard in person. He has stated of his inability to engage a lawyer on his own. He has been booked U/S- 14 of Foreigner's Act, 1946 R/W Sec 4 of Passport Entry India Act, 1920 & R/W Sec 6 of Passport Entry into India Act, 1950. Investigating Officer has already submitted charge-sheet against the accused, Sohikul Islam under the said section U/S- 14 of Foreigner's Act, 1946 R/W Sec 4 of Passport Entry India Act, 1920 & R/W Sec 6 of Passport Entry into India Rules, 1950. I am of the considered view that the accused has none to look after him and his case. There are catena of judgment regarding such including Monica Bedi. Accordingly Ld. Advocate PankajBaidya is hereby appointed as Legal Aid Counsel to conduct the

case on behalf of the accused. Let the copy of this order be supplied to the Ld. Advocate so that he could conduct the case until further orders.

In the meantime, copy of relevant documents as required U/S 207 of Cr.PC was furnished to the accused. After hearing both the parties and considering the material on record charge was framed against the accused U/S- 14 of Foreigner's Act, 1946 R/W Sec 4 of Passport Entry India Act, 1920 & R/W Sec 6 of Passport Entry into India Rules, 1950. It is read over and explained to the accused to which he pleaded not guilty but stood to face the trial.**(11-03-16)**

On perusal of statements recorded by this court it is a fact that the accused is a man of unsound mind and his is incapable of his defence. For the preparation of defence, advocate PankajBaidya has been appointed as Legal Aid Counsel to conduct the case for the accused since 11-03-2016. It may be referred to section 328 of Cr.PC. It is also seen the petition being no. 1097(1) filed by the advocate for the accused under section 328/330 of Cr.PC with a prayer to pass necessary order. I am of the considered view that the further proceedings of the case can be postponed and hence it is postponed on the submission of the advocate for the accused under section 328/330 of Cr.PC. Investigation Officer of the case is hereby directed to medically examine the accused, Sahidul Islam at LokPriyaGopinathBordoloiReginal Institution of Mental Health (LGBRIMH), Tezpur, Assam and to report before this court after 1 month. In the meantime, the accused be remanded to judicial custody till 27.06-16 during which investigation Officer is to take step of it forthwith so that the accused would be medically examined and report to the undersigned within the stipulated period from today. **(13-06-2016)**

In the meantime, it is seen the report furnished by the consultants of LGB Regional Institution of Mental Health, Tezpur, Assam stating that the patient (Sohidul Islam) is found to be conscious, oriented but uncooperative and guarded. His speech is incoherent. He has a restricted affect with an impaired judgment, reasoning and insight. So, the treating team is of the opinion that at present he is suffering from Psychosis not otherwise classified for which treatment has been given accordingly. Psychosis means a mental disorder in which thought and emotions are so impaired that perception of external reality is severely affected. It is also heard submission from the Ld. Addl. P.P. who has submitted of the mental health condition of the accused is not a mentally retarded person. He is a psychosis. It is held that the accused is neither a mentally ill person nor a complete fir person. It is opined by the consulting doctors of LGB Regional Institution of Mental Health, Tezpur, Assam that the patient (Sohidul Islam) has to continue regular medication and follow up for his satisfaction recovery. The trial can be initiated against him.

**(21-07-16)**

**4.** During trial prosecution examined as many as 5 (five) prosecution witnesses as PW1 to PW5 including I.O. The evidence of the prosecution was closed. The statement of the accused was recorded under section 313 of Cr.PC. His plea was of total denial of the allegation made against him by the prosecution. He refused to give his defence. Argument was heard as advanced and submitted by the advocate appearing for the parties including the learned Additional Public Prosecutor (APP).

## **5. POINT FOR DETERMINATION**

**5(i)** Whether the accused person is a foreigner under section 14 of the Foreigner's Act, 1946 (since amended in 2004 as section 14(c)) read with section 4 of Passport Entry into India Act,1920 and read with section 6 of Passport Entry into India Rules, 1950 and thereby committed offences punishable under section 14 of the Foreigner's Act,1946 read with section 4 of Passport Entry into India Act,1920 and read with section 6 of Passport Entry into India Rules, 1950 ?

## **6. DECISION AND REASONS THEREOF**

**6.** PW1 testified of knowing the accused and the complainant. On 18-12-2015 at about 11:00 AM while he was on duty in the Dadgiri market their I/C of Dadgiri Petrol Post noticed a suspected person loitering there. When he grilled the person about his identification, he introduced himself as Bangladeshi national. PW2 testified that their I/C of Dadgiri Petrol Post noticed a suspected person moving there. When he asked the person about his identification, he introduced himself as Bangladeshi national. PW3 proved Ext-1 and Ext-1(1) as his FIR and signature on it. On 18-12-2015 at about 11:00 AM while he was on duty in the Dadgiri market he noticed a suspected person loitering there. When he asked the person about his identification, he introduced himself as Bangladeshi national. He further testified that the accused entered into India without any valid document of India. PW4 & PW5 testified the same version of PW1, PW2 & PW3. PW6 testified that he was directed to investigate the case by the O/C, Runikhata Police Station and accordingly he investigated the case visiting the place of occurrence where he drew up a sketch-map of the place of occurrence marked as Ext-2 . Ext-2(1) is his signature. He also recorded the statement of the accused and the accused himself admitted that he is Bangladeshi. After completion of the investigation he submitted charge sheet against the accused under section 14 of Foreigner's Act,1946, R/W section 4 of Passport Entry into India Act,1920, R/W section 6 of Passport Entry into India Rules,1950 marked as Ext-3 and Ext-3(1) his signature.

7. Learned APP submits that the accused Sahidul Islam, S/O Lt. Mobarak Ali, being a resident of village:-Gondhairchar. P.O:- BamunSushan, P.S:- Ghatail, Dist:-Tangail (Bangladesh) entered into India. On being grilled by the PW-1 and PW-6 the accused introduced herself as Bangladeshi National. He came to Dadgiri by a Bhutanese orange carrying truck from Bangladesh Bhutan, a SAARC country may supply their granite and orange to the SAARC countries like India and Bangladesh. It can be informed that the accused belongs to Bangladesh and his is a Bangladesh National. He can speak Bangla and his body appearance and language is like a Bangladesh National. During trial prosecution the accused failed to exhibit any document particulars as well as oral evidence showing that he is an Indian National. The contention of the Learned Legal Aid Counsel is that the accused is a mentally ill person. He was not arrested by the PW-3 and PW-6 in presence of vital witness NirenRay, Mrisen nor the PW-6 not communicated to the Border Police of Bangladesh or External Affairs Department, Govt. of India or Home Ministry or Passport Authority of Bangladesh proving that Sahidul Islam is a Bangladesh National. In my opinion, the accusedSahidul Islam is not mentally ill person nor a complete fit person but a psychosis. He appears to be normal man built in psychosis from time to time which is curable by treatment under the cover of his unsound mind and is prohibited from entry to India.

8. It can be inferred that he belongs to Bangladesh couple with his admission that he is Bangladeshi National. During trial the accused person has not adduced any documentary as well as oral evidence showing that he is an Indian national. The section 9 of the Foreigners Act relates to **"burden of proof"** which reads as-**" if in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given there under, whether any person is or is not a foreigner of a particular class or description the onus the proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872, (1 or 1972) lie upon such person."** In the instant case there is no dispute that the accused person is not

India national. There is also no dispute that the accused person entered into India without passport and visa. Can this court on the basis of his statement recorded under section 313 Cr.PC hold that the accused person is a Bangladeshi National. It is found that the spoken language of the accused person is Bengali and his physical structure and color are like Bangladeshi national. The accused person has stated in his statement recorded under section 313 of the Cr.PC that he is residing with her widow mother and one younger brother in the village Gondhairchar, PO-BamunSushan, P.S.:- Ghotail, Dist-Tangail, Bangladesh. Normally a person does not claim paternity and nationality falsely. In view of the discussion made above, it can be presumed that the accused person is a Bangladeshi National.

**9.** It is held in the paragraph of 46 of the Judgment **Moslem Mondal and OrsVs Union of India (UOI) and Ors reported in "MANU/GH/0112/2010"** that in the context of the entry into India, when a person enters into Indian territory without appropriate permission evidenced by appropriate documents, such as, visa, etc, he commits a punishable offence under 14 of the Foreigners Act 1946. For section 14 of the Foreigners Act, 1946, the following sections shall be substituted, namely:- Penalty for contravention of provisions of the Act, etc. '14. Penalty for contravention of provisions of the Act, etc.-.Whoever-

- (a) remains in any area in India for a period exceeding the period for which the visa was issued to him;
- (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part there under;
- (c) contravenes the provisions of this Act or of any order made there under or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-

section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him. Explanation.-For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920)

**10. The section 14(c) of the Foreigners Act reads as :**  
**"Whoever contravenes the provisions of this Act or of any order made there under or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him."**

**11. In terms of Para 3 of the Foreigners Order 1948, permission to enter India shall be refused if the prescribed authority is satisfied that** the foreigner is not in possession of a valid 'passport' or 'visa' for India or has not been exempted from the possession of a passport or visa ; he is a person of unsound mind or a mentally defective person ; he is suffering from loathsome or infectious disease in consequence of which, in the opinion of the medical officer of the port or the place of entry, as the case may be, the entry of the foreigner is likely to prejudice public health; or he has been prohibited from entry under an order issued by a competent authority. I find the accused person guilty under section 14(c) of the Foreigners (Amendment) Act, 2004 and he is convicted accordingly.

**12.** On the point of sentence the accused person is heard and to that effect his statement is recorded. Considering nature of offence the benefit laid down under section 360 of the Cr.PC is not given to the accused person. In my opinion he deserves to be punished.

**13.** The accused person has prayed for leniency in sentencing him. It has been submitted by the Ld. Legal Aid Counsel that the accused is a mentally ill person and he was loitering around the Dadgiri market bazar of the Chirang district for last two days from the date of his arrest on 19-12-15. Ld Legal Aid counsel further contended that the accused is a unsound mind and he is declared as psychosis. Hence the accused be acquitted from the charge of 14(c) of Foreigners' Act, 1946 (since amended in 2004). There is nothing in the evidence brought by the prosecution that the accused person did any foul work during his stay in the territory of India. For political reasons some people became foreigners though they or their forefathers were Indian once on creation of Pakistan and Bangladesh. While the widow mother of the accused comes to know that his son is being detained in the jail of a foreign country, the entire world will fall on her head. Learned APP submits that the accused Sahidul Islam, S/O Lt. Mobarak Ali, being a resident of village:-Gondhairchar. P.O:- BamunSushan, P.S:- Ghatail, Dist:-Tangail (Bangladesh) entered into India. On being grilled by the PW-1 and PW-6 the accused introduced herself as Bangladeshi National. He came to Dadgiri by a Bhutanese orange carrying truck from Bangladesh Bhutan, a SAARC country may supply their granite and orange to the SAARC countries like India and Bangladesh. It can be informed that the accused belongs to Bangladesh and his is a Bangladesh National. He can speak Bangla and his body appearance and language is like a Bangladesh National. During trial prosecution the accused failed to exhibit any document particulars as well as oral evidence showing that he is an Indian National. In view of discussions made above I am of the opinion that the accused person requires to be punished leniently. If the accused person is punished leniently, in my considered view, the very purpose of the section 14(c) of the Foreigners Act will not be frustrated. **Accordingly, the accused, SohidulIslam is hereby ordered to suffer Simple Imprisonment for 1(one) year and 5 months and to pay fine ofRs. 500/-(Rupees five**

**hundred) in default to which Simple Imprisonment for another 1 (one) month. The sentence shall run concurrently. Set off detention period already undergone by the accused during investigation and trial from 02-11-16. Considering all aspects no articles seized from the possession of the accused. No order as to the seizure.**

**14.** Regarding deportation of foreigners, the Hon'ble Gauhati High Court has already given directions in the Judgment- **Md. Rustom Ali Vrs State of Assam reported in "MANU/GH/ 0252/2011"** and the said directions are reproduced below:- (a) Once a reference is made by the jurisdictional SP (B) to the **Foreigners** Tribunal, his/her name should be deleted from the electoral rolls forthwith. (b) It will be the entire responsibility of the SP (B) of the districts to ensure presence of the foreign nationals under reference to the Tribunal so that later on after finalization of the proceeding declaring him/her to be a foreign national, there is no excuse that he/she is not available for detention and deportation. In other words, it will be the responsibility of the SP (B) either to detain him/her in detention camp or to allow him/her to remain on bail subject to the condition that he/she would be available for detention and deportation, in the event of the reference being answered against him/her and no excuse will be entertained that he/she is untraceable and his/her whereabouts are not known. (c) Since the stand of the Respondents is that the provisions of the Immigrants (Expulsion from Assam) Act, 1950 are applicable and can be applied towards detection and deportation of foreign nationals, the jurisdictional SP(B) may invoke the provisions of the said Act towards that end, which will be in addition to detection and deportation of foreign nationals under the **Foreigners** Act, 1946. (d) The jurisdictional SP (B) shall also take into account the fact that the provisions of Passport (Entry into India) Act, 1920 being applicable to the State of Assam, the provisions therein towards arresting the foreign nationals who are illegally staying in Assam, are also applicable and can be invoked, wherever found necessary. (e) In case of any reference being made to the **Foreigners** Tribunal against a particular person, it may also be found out as to whether his spouse and other relations including the parents are also suspected **foreigners** requiring reference of their cases to the **Foreigners** Tribunals. (f) In terms of

the affidavit filed on 25.11.2010 by the Central Govt., both the Union and the State Government shall evolve formula/ procedure for early disposal of cases relating to foreign nationals. In this connection, they may refer to the stand of the Central Govt. in Paragraph 14 of their affidavit filed on 5.1.2011, by which 16 (sixteen) weeks time was prayed for towards evolving methodology for early disposal of cases by the **Foreigners** Tribunals. In this connection, they will bear in mind that the procedure to be followed is summary in nature and the burden of proof is always with the suspected **foreigner**. Any amount of delay in deciding the cases always leads to serious consequences with felling effects on integrity, sovereignty and security of the State.

### **ORDER**

**15. In view of the foregoing discussion, the Superintendent of Police (B), Chirang is hereby asked to take steps for deporting /pushing back the accused, Sahidul Islam to Bangladesh after serving out of imprisonment. Let a copy of the Judgment & Order be sent to the S.P(B), Chirang for information and necessary action. Let a copy of this Judgment be supplied to the accused person at free of cost. Also, a copy of order is furnished to the Supdt. of District Jail, Abhayapuri and Kokrajhar for his information and necessary action. Accordingly, this case is disposed of on contest. The Learned Additional Public Prosecutor has strength of his submission that that of the Learned Legal Aid Counsel. I must appreciate the assistance rendered by the Ld. Legal Aid Counsel Mr. PankajBaidya.**

**(Sri K.C. Boro, AJS)**  
Chief Judicial Magistrate  
Chirang (BTAD), Kajalgaon

Dictated & corrected by me

Transcribed by K.Laskar,  
Stenographer Grade-III

### **LIST OF ANNEXURE**

1. PW1 : BasudevKisku
2. PW2 : Prabhat Barman
3. PW3 : Samir BhushanBanik
4. PW4 : Sriram Gupta
5. PW5 : Sahjamal
6. Ext.1 : Ejahar
7. Ext.1(1) : Signature of PW3 on Ejahar

Chief Judicial Magistrate  
Chirang (BTAD), Kajalgaon