

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 34 of 2009

Abdul Salam

-Vs-

The State of West Bengal

For the Appellant : Mr. Pritam Roy

For the State : Ms. Faria Hossain
Ms. Mamata Jana

Heard on : 20.02.2023, 04.08.2023.

Judgment on : 29.09.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order of conviction dated 12.09.08 passed by the Learned Sessions Judge, Dakshin Dinajpur at Balurghat in Sessions Trial No. 65 of 08 arising out of Sessions Case No. 178 of 2008 convicting the appellants under Section 14A(b) of the Foreigners Act.
2. The prosecution case precisely stated one Santosh Kumar Sarkar, S.I. of police, Balurghat P.S. lodged a written complaint in producing the accused person before Balurghat P.S. on 20.10.2007 alleging that at 20.30 hours he along with his force on mobile duty had been to Balurghat Bus Stand and found the accused person moving suspiciously and on being asked the accused disclosed his name and address of Bangladesh and on demand he

failed to produce any valid passport or visa or any document of his entry into the Indian territory and they arrested the accused for violation of the provision of Section 14(A) of the Foreigners Act. On the basis of the aforesaid complaint Balurghat P.S. Case No. 324/2007 dated 20.10.2007 under Section 14(A) of the Foreigners Act was started and the Investigating Officer on completion of the investigation submitted charge-sheet against the accused under the above Section of the Foreigners Act.

3. The prosecution had cited 5 witnesses.

4. PW-1, Santosh Kumar Sarkar, who was posted as the S.I. of Police at Balurghat P.S. on 20.10.2007, alongside, PW-2, PW-3 and one N.V.F. Kailash Barman, stated in his deposition that they were engaged in a patrol duty within the town. During this patrol, at 8:30 p.m., they arrived at Balurghat Municipal Bus Stand where they encountered an individual behaving in a manner that aroused suspicion. Upon further investigation, the aforementioned individual identified himself as Abdul Salam, claiming to be a Bangladeshi national and providing his address. However, it was established that he lacked valid documentation permitting his entry into India. Consequently, PW-1 proceeded to effectuate the arrest of the said individual, subsequently invoking Section 14A(b) of the Foreigners Act as the basis for the charges.

Additionally, PW-1 attested to the presence of a temporary police camp situated at the aforementioned bus stand and emphasized the substantial crowd present in the area during the relevant timeframe since buses run till 9:30 pm. (This statement was corroborated by PW-2 and PW-3)

PW-1 was the scribe of the complaint marked as Ext. 1.

In his cross-examination PW-1 stated that the place of occurrence, where the appellant was arrested, was not mentioned in the F.I.R.

5. PW-2/ D. Dhar Barman was posted as the A.S.I of police at Balurghat P.S. on 20.10.07.

6. PW-3/A. K. Gupta who was posted as a Constable of Police at Balurghat Traffic on 20.10.07, confirmed his presence during the arrest of the appellant. However, he mentioned that he would not be able to identify the arrested person.

7. PW-4/D. Chatterjee was posted as the Inspector of Police at Balurghat P.S on 20.10.07. He stated that on the said day, he received a complaint from PW-1 against the appellant and on the basis of that complaint, he charged the appellant under Section 14A(b) of the Foreigners Act. The received copy of the endorsement of the case was marked as Ext. 1/1. The formal part of the F.I.R. filed by him was marked as Ext. 2.

8. PW-5/A. K. Das was posted as the S.I of police at Gangarampur P.S. on 20.10.07. He stated that he had examined one witness related to this case but he did not prepare any sketch map related to this case. Moreover, PW-5 clarified that he had conducted inquiries with the adjacent shop owners at the place where the incident occurred. Nevertheless, he did not document their statements. Additionally, he made it explicit that he neither conducted any search and seizure operations nor obtained the signature of the public witness during the course of this case. Furthermore, PW-5 confirmed that he

did not collect any documentary evidence supporting the claim that the appellant was a Bangladeshi National.

9. The appellant by his petition dated 25.11.08, *inter alia*, prayed as follows :-

"With due respect and humble submission I the humble Petitioner beg to state that I was Convicted by the Learned Sessions Judge Dakshin Dinajpur at Balurghat on 12/9/2008 in C/W Sessions Case No. 178/08 and session Trial No. 65/08 under Section 14A(b) Foreigners Act, and was sentence to R.I. for 7 (Seven) Yrs and Fine Rs. 30,000/-(Rs. Thirty thousand) I.d R.I for 1(One) Year.

That Sir, I am a Bangladeshi National Vill. Dighail P.O. Junile under the P.S. Barai-Gram Dist. Nator. Bangladesh. I came India without Visa, Passport which is wrong. I am confessing guilty for the Crime. I praying for your mercy. I will never do such type of crime in future.

That Sir, I am a poor man consisting of four family Members. I was the only earning member of my family. They will go through starvation in absence of me.

That Sir, I also pray before your Hon'ble Court that an Advocate may kindly be Ordered to engage as Amicus Curie to defend my case at Govt. cost due to my Financial insolvency. My Appeal may kindly be accepted and an order may kindly be passed for releasing me from Correctional Home and pushed back to Bangladesh. And for this act of kindness I shall be grateful to you forever."

10. It transpired from record that appellant was released from Berhampore Correctional Home and the appellant had been deported to Bangladesh on 14.05.2015.

11. In view of the above discussions, the Criminal Appeal being No. CRA 34 of 2009 is accordingly dismissed.

12. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
13. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)