

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE
BONGAIGAON**

G.R. CASE NO.273/2014.

U/S.14(A)(b) of the Foreigners Amendment Act, 2004.

STATE

-VS-

1) Babul Mia @ Bablu

.....Accused.

**Present : Mrs.M.De,
Chief Judicial Magistrate,
Bongaigaon.**

Counsel for the Prosecution : Sri T.Bhowmik

... ..A.P.P.

Counsel for the defence : Ratan Debnath

.....Advocate.

Date of recording evidence : 26.08.14,08.09.14 and 22.09.14.

Date of argument : 05.11.14.

Date of judgment : 05.12..2014.

J U D G M E N T

1) This is a case of entering into the India without any Passport.

2) The prosecution case inter-alia is that on 07.04.2014 the complainant Anwarul Hussain Vice President of BDC AAMSU lodged an ejahar to the effect that on the basis of secret information from the Bongaigaon Anchalik AAMSU as well as VDP the accused was apprehended with the help of the local people when he was loitering in

their locality. On suspicion the apprehended accused was asked to produce the documents about his identification. However, when the accused failed to produce any documents he himself stated before them that he was a citizen of Bangladesh of Balamjhar village and district Gaibandha. Thereafter, he was apprehended by the local people there and handed over to the police. Hence, this case.

3) On receipt of the ejahar the police registered a case U/S.14(A) (b) of the Foreigners Act read with section 4 of the Passport Entry into India Act, 1920 and Rule 6 of the Passport Entry into India Rule,1950.

4) Thereafter, the police started investigation , as part of investigation police produced the accused before the Learned Chief Judicial Magistrate, Bongaigaon for recording the confessional statement of the accused and after maintaining all the formalities the same was recorded by the Learned Judicial Magistrate 1st Class, Bongaigaon. On completion of investigation, police laid charge-sheet against the accused under the said sections of law.

5) Accused was produced before the Court and copies were furnished to him. As the accused expressed his inability to engage any lawyer to defend his case, so Sri Ratan Debnath has been appointed as state defence counsel to defend the accused. Thereafter, finding prima-facie material against the accused the particulars of offence against U/S.14 (A)(b) of the Foreigners Amendment Act,2004 were explained to the accused to which he pleaded not guilty and claimed to be tried.

6) Prosecution examined as many as 8(Eight)) PWs in support of his case. Accused has been examined U/S.313 Cr.PC. Defence plea is of total denial.

7) **POINT FOR DETERMINATION :**

i)Whether the accused entered into or stayed in India without any valid documents required for such entry or stay in India as alleged u/s 14A(b) of The Foreigners Ammendment Act 2004?

DECISION AND REASONS FOR DECISION :

8) Prosecution examined as many as 8(Eight) Pws, including the formal witness I.O as well as the Learned Judicial Magistrate 1st Class, Bongaigaon.

9) I have carefully gone through the entire evidence on record. Defence plea is of total denial but during trial defence did not produce any documents to show that the accused is an Indian National.

10) **PW-1 is the informant Md.Anwarul Hussain** who stated that at the time of the incident he was the Vice President of the Bongaigaon District of Assam Minorities Student Union. On the fateful night at about 8/8.30 P.M. the local people of Bhowlaguri village informed him that they had caught a Bangladeshi National and asked him to go there. On receiving of the information over phone, he reached the place of occurrence and saw that a huge crowd had gathered around the accused person. Thereafter, he interrogated the accused and came to know the name of the accused from the accused himself as Babul Mia. He further stated that the accused stated to him that he was a Bangladeshi National. Thereafter, he informed the police over phone and thereafter filed a written ejahar against the accused. Ext-1 was the ejahar and Ext-1(1) was his signature. He further stated that while he was interrogating the accused the accused could not show any documents regarding that he is an Indian National.

11) In his cross-examination he stated that the accused stated to him that he is a Bangladeshi National belonging to Gaibandha district. He stated that he did not know as to how the accused had entered into India. It was suggested to him that the accused was a resident of Kolkata and that his family members stay in Kolkata which he denied.

12) **PW-2 Ajar Ali** deposed that on the fateful evening of 07.04.14 at about 6.30/7.00 P.M. while he was in his village Bhowlaguri he along with others saw the accused loitering around Bhowlaguri PHC in a most suspicious manner. Thereafter, he along with others started interrogating the accused who stated to him that he was a resident of Bangladesh and had come to India in search of work and when he asked

the accused regarding that whether he had any valid Passport or not then the accused could not show anything. Thereafter, the accused was handed over to the police.

13) In his cross-examination he stated that the accused divulged to him that he had entered into India but did not give any details. Certain suggestions were put to him that the accused was a resident of Kolkata where he was residing with his family members and the accused was pressurized by the local people to say that he was Bangladeshi National which he denied. He further stated that he is a resident of Balamjhar of P.O. and district Gaibandha of the country of Bangladesh.

14) **PW-3 Abdul Mazid** also stated that in the same manner as PW-1 and PW-2.

15) In his cross-examination he did not know since how many days the accused was staying in Bongaigaon. He further stated that he did not know when the accused had come from Bangladesh and did not get any documents regarding the fact that he was Bangladeshi National.

16) **PW-4 Kalu Gaji** stated that he came to know about the incident over phone that the Bangladeshi National had been caught and on being called to the place of occurrence he went to the place of occurrence and found that the public had gathered around the accused who had stated to him that he was a Bangladeshi. Thereafter, the accused was handed over to the police. He further stated that the accused had no documents to show that he is an Indian National.

17) In his cross-examination he stated that he did not get any documents to show that the accused was a Bangladeshi.

18) **PW-5 Md.Mahab Ali** also stated that in the same manner as other PWs.

19) **PW-6 Md.Khayaruddin Ahmed** also stated in the same manner as stated by the previous PWs.

20) In his cross-examination he stated that he specifically asked the accused and the accused informed him that he was a resident of Balamjhar village of Gaibandha district in Bangladesh.

21) PW-7 the I.O, Nidamul Islam deposed that on being informed while patrolling duty about the accused being Bangladeshi, he took the accused with him to the Police station for interrogating. The members of AAMSU also accompanied him to the Police Station. Thereafter, one of the AAMSU member had lodged the ejahar. Thereafter, the O/C endorsed him with the investigation of the case and he started investigation and arrested the accused and sent him to the Court for recording his confessional statement which has been duly recorded on 08.04.2014. Thereafter, he completed the investigation and filed the charge-sheet against the accused. Ext-2 was the sketch map and Ext-2(1) was his signature. Ext-3 was the charge-sheet and Ext-3(1) was his signature.

22) In his cross-examination he stated that he did not find any documents to prove that he is an Indian National. Nothing material was extracted from his cross-examination.

23) PW-8 is the Learned Judicial Magistrate, Bongaigaon who deposed that on **08.04.14** on being endorsed with the recording for confession statement of the accused Md.Babul Mia she sent the accused to the Judicial custody for reflection of his mind for recording his confessional statement. Thereafter, on 10.04.14 accused Babul Mia was produced before her and thereafter, at 12.10 p.m. she recorded his confessional statement after maintaining all the formalities regarding confessional statement U/S.164 Cr.P.C. She further stated that the accused had voluntarily made his confessional statement. Ext-4 is the confessional statement of the accused and Ext-4(1) and 4(4) are her signatures. Ext- 4(5) is the signature of accused Babul Mia which was made in her presence.

24) From the evidence on record, it appears that the police as well as PWs stated that the accused is a Bangladeshi National who belongs to Balamjhar village of Gaibandha district of the country of Bangladesh. During trial, the accused has not adduced no documentary as well as oral evidence to show that he is an Indian National.

Before discussing the case further the bare perusal of the sections of the Foreigners Act becomes imperative.

25) Section 9 of the Foreigners Act relates to burden of proof which read as under :-

“If in any case not falling under section 8 any question arises with regard to this Act or any order made or direction given there under, whether any person is or is not a foreigner of particular class or description the onus of proving that such a person is not foreigner or is not a foreigner of such particular class or description as the case may be, shall notwithstanding anything contained in the Evidence Act 1872, Act(1 or 1972) lie upon such person.”

26) In the instant case, at hand, it appears that apparently the accused is not an Indian National and that the accused entered into the India without any passport or visa. The accused in his 313 Cr.PC statement stated that he is a resident of Balamjhar village of district Gaibandha of Bangladesh and that he entered into India along with his family members through Bangladesh and his family members are at present staying in Kolkata. He was brought to Bongaigaon by some linkman for working. Normally a person does not claim paternity and nationality falsely. In view of the above, it can be presumed the accused is a Bangladeshi National.

27) Section 14 (A)(b) of the Foreigners Amendment Act read as under :-

Penalty for entry in restricted areas etc,:-

"Whoever enters into India or stay in any area in India without valid documents required for such entry or for such stay, as the case may be, under the provision of any order made under this Act or any direction given in pursuance thereof and thereby punished to for imprisonment for a term which shall not be less than two years, but may extend to 8 years and shall also pay liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand and if he has entered into India a bond in pursuance of clause(f) of

sub section (2)of section 3, is bond shall be forfeited and any person bound thereby shall pay penalty thereof, or show-cause to the satisfaction of the convicting Court while such penalty could not be paid by him.”

28) In terms of para 3 of the Foreigners Orders , 1948, permission to 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 the 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 the competent authority.

29) In the result, I find the accused guilty U/S.14(A)(b) of the Foreigners Amendment Act, 2004 and he is convicted accordingly under said section of law.

30) Heard the accused on the point of sentence.

31) Statement of the accused is duly recorded.

32) Accused prayed for leniency in sentencing him. However, I am of the opinion that nature of offence committed by the accused deserves no leniency. Hence, I am not inclined to extend to Probation of Offenders Act of section 2 and 3 of the Probation of Offenders Act.

33) Learned defence counsel submitted that the accused is a young man and is the only earning member of the family. There is nothing in the evidence to show that the accused did any foul words during his stay in the territory of India for both reasons some people become foreigners though their forefathers were Indian before creating Pakistan and Bangladesh.

34) In view of the above discussion, I am of the opinion that accused deserves to be punished under the said section of law. Accordingly, accused is ordered to suffer S.I. for 2(two) years and pay a

fine of Rs.10,000/-(Rupees ten thousand) i/d S.I. for three moths. U/S.428 Cr.PC the detention period undergone is set off against the terms of imprisonment.

35) The seized documents be destroyed in due course of law.

36) 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 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 detention 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 detention 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.

37) **In view of the discussion above, the Superintendent of Police(B), Bongaigaon is hereby asked to take steps for deporting/pushing back the accused person to Bangladesh after serving out of imprisonment. Let a copy of the judgment & Order be sent to the S.P(B),Bongaigaon 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, Goalpara for his information and necessary action. Accordingly, this case is disposed of on contest. Before parting I must appreciate the assistance rendered by the Ld. State Counsel Mr.Ratan Debnath. the prosecution.**

32) Given under my hand and seal of this Court on this 5th day of December, 2015.

Dictated & Corrected by me

(Mrs.M.De)

**Chief Judicial Magistrate
Bongaigaon.**