

IN THE COURT OF JUDICIAL MAGISTRATE 1ST

CLASS:::::NALBARI

Present: **SMTI NADIA REHMAN, LLM, AJS**

Dated: 01.09.2022

P.R.Case No. 241 of 2021

Mukalmua P.S.Case No. 220/2021

(F.I.R. registered u/s 14 of the Foreigner Act 1946 r/w
Section 12(c) of the Passport Act 1967)

COMPLAINANT :	State of Assam Jiaur Rahman (Informant)
REPRESENTED BY	Mr. Hem Chandra Sarma, Ld. APP
ACCUSED	Md. Sakib Ahmed @ Anamul Hussain (A-1) S/O Md. Khalil Ali Vill- Molibad, P.S. Dan Mandir, Dist – Dhaka (Bangladesh)

REPRESENTED BY	Smti. Tribeni Devi Ld. Legal-Aid Counsel
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Date of Offence	10-05-2021
Date of FIR	10-05-2021
Date of Charge sheet	31-05-2021
Date of charge framed	16-08-2021
Date of commencement of evidence	03-11-2021
Date on which judgment is reserved	18-08-2022
Date of Judgment	01-09-2022
Date of the Sentencing Order, if any	01-09-2022

:Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release On Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Sakib Ahmed @ Enam	11.05.21	In Judicial Custody	u/s 14 of the Foreigner Act	Convicted	S.I. of 10months and a fine of Rs. 2000/-for offence	11 months 22 days

	ul Huss ain			1946 r/w Sectio n 12(c) of the Passp ort Act 1967		under Sec 14 of Foreigner's Act, 1946 in default to S.I. of 14 days	
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(J U D G M E N T)

1. In this case the accused person namely Md. Sakib Ahmed @ Anamul Hussain, S/O: Lt. Khalil Ahmed, P.S.: Danmandir, Dist:-Dhaka (Bangladesh), stood for trial u/s 14 of the Foreigner Act 1946 r/w Section 12(c) of the Passport Act 1967.
2. Prosecution case as unfolded from the ejahar, dated 10.05.2021, lodged before O/C Mukalmua P.S., by the informant Jiaur Rahman is that on 10.05.2021 at about 10 a.m., accused Md. Sakib Ahmed @ Inamul Hussain was loitering in their village chowk suspiciously. On interrogation of the informant, he identified himself as Bangladeshi National. The informant being a conscious citizen, lodged this present ejahar. Hence, this case was arisen.

3. Upon receiving ejahar, the O/C Mukalmua P.S., registered the case as Mukalmua P.S. case No.220/2021 u/s 14 of the Foreigner Act 1946 r/w Section 12(c) of the Passport Act 1967 and arrested the accused and forwarded to the Court. The accused person was given legal aid. On completion of investigation, police filed charge sheet against the accused person namely Md. Sakib Ahmed @ Anamul Hussain u/s 14 of the Foreigner Act 1946 r/w Section 12(c) of the Passport Act 1967.
4. During trial, the accused person namely Md. Sakib Ahmed @ Anamul Hussain has been in judicial custody. Relevant copies of the documents were furnished to Ld. Legal Aid Counsel on behalf of accused u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 14 of the Foreigner Act 1946 r/w Section 12(c) of the Passport Act 1967 and contents of the charges were read over and explained to A1 to which, he pleaded not guilty and claimed to be tried.
5. Prosecution in support of the case examined four witnesses and declined to adduce further evidence.

6. The accused is examined u/s 313 of Cr.P.C. The plea of the accused is of total acceptance. Defence declined to adduce evidence on his behalf.
7. This court has heard argument of both sides at length and accordingly formulated the points for determination of this judgment.

POINTS FOR DETERMINATION:

- (i) *Whether on or before 10.05.2021 , the accused person have entered into India at such time and by such route and as such port or place without observing the condition of arrival which are prescribed under law and have contravened provisions and thereby committed an offence under Section 14 of the Foreigner Act 1946 ?*
- (ii) *Whether on or before 10.05.2021 the accused have attempted to depart from India without valid travel documents and thereby committed an act u/s 12 (c) of the Passport Act 1967?*

REPRODUCTION OF RELEVANT PORTIONS OF EVIDENCE ON RECORD

8. This court has carefully gone through the entire evidence-on-record and materials placed before this court.
9. The prosecution has examined four witnesses namely Jiaur Rahman, Abdul Malik, Abdul Goni and Dr. Abu Hafiz Jalal.
10. PW1/informant Jiaur Rahman during his examination-in-chief has deposed that he is the informant of this case. He lodged FIR against Sakib Ahmed. The occurrence took place about six months ago at about 8 p.m., at night at Damdama Pathar, under Mukalmua P.S., Nalbari. At the time of occurrence he was present near the place of occurrence. One Abdul Goni informed him over phone that an unidentified person was sitting on the road in front of a shop of Sahidul Islam at their village and his language was not understood by him. Then, immediately he came to the place of occurrence and on being asked he told that he is from Bangladesh in Bangla language. Then the informant instantly called over phone to the I/C Doulashal outpost informing about that person. After that, police came and the police instructed him and Abdul Goni to arrange some food to the accused and accordingly we took the accused to the hotel of Abdul Malik to feed him. After

that, police took the accused to the police station. Next day morning, he went to Doulashal outpost and lodged the FIR against Sakib Ahmed. Ext.1 is the ejahar and Ext. 1(1) is his signature.

11. During cross-examination, PW1 admitted that on appearance he could know that his age is about 20 years. He also admitted that he met him at 8 p.m., at night. Further, he admitted that neither the accused showed nor he searched for any document like passport, visa etc., of the accused person. He also admitted that he did not ask the accused person how he crossed the border to India. Again, he admitted that on suspicion he informed the police about the accused that he is from Bangladesh and there are no documents to proof the same.
12. PW-2 Md. Abdul Malik in his examination-in-chief deposed that he knows the informant of this case but he does not know the accused person. The occurrence took place about four months ago at about 9-9:30 p.m., at night at Damdama Pathar, under Mukalmua P.S., Nalbari. At the time of occurrence, he was present at his hotel near the place of occurrence. At that time, Jiaur Rahman and Abdul Goni came to his hotel along with the accused Sakib Ahmed and told him that they brought the accused as per instruction

of police to feed him in his hotel. After the accused person had his food, he saw that police came and took the accused to the police station.

13. During cross-examination the PW2 admitted that on appearance he could know that his age is about 22 years. He also admitted that when he saw the accused, he could not understand his language. Further, he admitted that on being asked about the accused, the informant Jiaur Rahman and Abdul Goni told him that the accused is from Bangladesh. He also admitted that he did not ask the accused anything.

14. PW3 Abdul Goni in his examination-in-chief has deposed that he knows the informant but he does not know the accused. He saw the accused on the day of occurrence. The occurrence took place one year ago at about 8 p.m., at their village. At the time of occurrence, he was coming towards Damdama Pathar Chowk. He saw some police personnel at the place of occurrence. He also saw the accused at the place of occurrence and he was speaking in the language of Bangladesh. He understood his language a little. The accused told to the police that he was coming from Bangladesh. After that, police took him in their car to the police station.

15. During cross-examination PW3 admitted that he does not know whether he was coming from Bangladesh.
16. PW-4 Dr. Abu Hafiz Jalal, the I.O. of the instant case deposed in his evidence that on 10.05.2015, he was working as S.I., at Mukalmua P.S. On that day, informant namely Jiaur Rahman had filed a written ejahar at Mukalmua P.S. On receipt of the FIR, the O.C. Mukalmua P.S. had registered the case as Mukalmua P.S. Case No.220/21 u/s 14 Foreigner's Act, 1946 and 12(C) Passport Act, 1967 and he was given the task of investigation. On the same day i.e., on 10.05.2021, he recorded the statement of informant and other witnesses, visited the place of occurrence and then he found the accused person of this case namely Sakib Ahmed at the P.O. and then he arrested him and recorded his statement. The accused spoke in Bangladeshi language. After that he forwarded him to the Court. On the same day, he also drew the sketch map. He filed charge-sheet against accused Sakib Ahmed on 31.05.2021 vide C.S.No.147/2021 u/s 14 Foreigner's Act, 1946 and 12(C) Passport Act, 1967. Ext.P-2/PW-4 is the sketch map. Ext.P-2(1)/PW-4 is his signature. Ext.P-3/PW-4 is the charge-sheet and Ext.P-3(1)/PW-4 is his signature.

17. In his cross-examination, this PW4 admitted that he arrested the accused on suspicion but in his statement u/s 161 of CrPC, he confessed that he was coming from Bangladesh. He also admitted that in his statement u/s 161 of the CrPC, the accused stated that he came to India by crossing the border due to his economic crisis. Further, he admitted that he did not seize any documents from the accused and during investigation he did not contact with the family members of the accused.

APPRECIATION OF EVIDENCES

18. PW1 Jiaur Rahman deposed that he was informed over phone from Abdul Goni about an unidentified person who was sitting on the road in front of a shop of Sahidul Islam at their village and his language was not understood by him and then he immediately came to the place of occurrence. He then asked the accused person about his whereabouts and the accused him that that he is from Bangladesh in Bangla Language and then he informed to the I/C Doulashal outpost and then police came and instructed him and one Abdul Goni to arrange some food to the accused and accordingly took the accused to the hotel of Abdul Malik to feed

him. PW2 corroborated to the extent that four months ago at about 9-9.30 pm, at night at Damdama Pathar Chowk, he was present in his hotel and at that time , PW1 and Abdul Goni came to his hotel and brought along accused person and told him that accused was brought as per instruction of police to feed him in his hotel. PW3 further deposed that he saw the accused on the day of occurrence at Damdama Pathar Chowk and he also saw police and he heard the accused speaking in a different language and telling the police that he is from Bangladesh.

19. It is pertinent to mention here that PW1, PW2 and PW3 are independent witness in this case and there appears no vested interest on their part to depose against the accused person. Further, all three of them deposed that they had heard the accused person speaking in a different language.

20. Further, PW4, the Investigating Officer of this case also corroborated the statement of the independent witnesses and further deposed that even in the statement of the accused recorded under Sec 161 Crpc, the accused have confessed that he is a Bangladesh National. Although extra judicial

confession cannot be relied upon but it is permitted to use the same for corroborating the evidences recorded during trial and in this case in hand, there is a strong support of evidence towards the statement of the accused person recorded under Sec 161 Crpc.

21. During trial, the statement of the accused was also recorded under Sec 313 Crpc and questions were put to him. In his statement, the accused admitted that six months ago at around 8 p.m. at night, he was sitting on the road in front of a shop and when PW1 asked him about his origin, he told him that he was from Bangladesh and that PW1 and PW3 gave him food in a hotel and later on, police came and took him to police station and when police interrogated, he told them in Bangladeshi language that he is from Bangladesh. But he denied that he crossed the border himself and stated that some people gave him intoxicated food and tied him by his hands and legs and blindfolded him and brought him here. He further stated that now he wants to go back to Bangladesh.

22. The position of law is that an accused cannot be held guilty only on the basis of admission of his guilt made in his statement recorded under Sec 313 Crpc. But while appreciating evidences, the Court is

permitted to get support and reference of such statements in order to reach in a decision. The prosecution released its initial burden to make out a case against the accused and the statement of the accused also has come in favour of the prosecution.

23. Although, during evidence, it has come to light that the accused was not asked to produce documents in relation to his citizenship but when being charged to be an illegal citizen, the accused person should have showed eagerness to produce documents to prove his citizenship as in trials under Sec 9 of Foreigners Act, 1946, the burden of proof is on the accused person to prove that he is not a foreigner.

24. In **Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665**, it was held that Burden of Proof, is on alleged foreigner to show that he is not one.

25. Moreover, even while recording statement under Sec 313 Crpc, the accused declined to adduce defence evidence where he had the opportunity to produce documents if any to rebut that he is not a foreigner which allows this Court to presume that accused had no documents to prove his nationality.

26. Also, it is held in paragraph 46 of the Judgment **Moslem Mondal and Ors. Vs. Union of India (UOI) and Ors. Reported in "MANU/GH/0112/2010"** that in the context of 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 Sec 14 of Foreigners Act, 1946.

27. Considering the factors above, I find the accused person guilty under Sec 14 of Foreigners Act, 1946 and he is convicted accordingly. The Passport Act, 1967 is to regulate the departure from India of citizens of India and other persons and for matters incidental or ancillary thereto. The Passport Act, 1967 is not applicable in the present case. Hence, accused is acquitted from the charge under Sec 12 (C) of Passport Act, 1967.

28. I have considered the case of the accused in the germane provision of Probation of Offenders act. The accused crossed the international boundary without valid documents. The same leads to economic as well as administrative problems. Considering the nature of the offences and the plea of A1, the benefit of Section

3 and 4 of Probation of Offenders Act has not been extended to the accused person.

HEARING OF SENTENCE

29. I have heard A1 on the point of sentence. He pleaded for mercy as it is his only offence without knowing the implication of law. He further stated that he is a poor and illiterate guy and unintentionally he committed the mistake and stated that he is innocent. He expressed his repentance for the unintentional commission of the charged offence and undertakes not to repeat the same in future and prays for mercy and requested him to send him in his Country at the earliest.

ORDER

30. Considering the nature of the crime and the fact that the convicted named Sakib Ahmed @ Enamul Hussain has been in detention in jail since 11.05.2021, and his plea for mercy, I am inclined to treat him with leniency, in the result "the convicted is sentenced to suffer simple imprisonment for a period of 8 months and a fine of Rs. 2,000/- only for the offence u/s 14 of Foreigner's Act 1946, and in default to pay the fine with simple imprisonment for 14 days.

30. The period undergone by the convicted accused in judicial custody shall be set off from the period of sentence imposed today.
31. Seized article if any shall be disposed of in due course as per procedure prescribed by law.
32. Inform PS1 to do needful.
33. The Superintendent District Jail, Nalbari is directed to make all necessary arrangement for deportation of the convict after completion of his sentence and hand over the convict to the Superintendent of Police (Border) after sentence undergone by the accused in order to deport the convict (foreigner) to his native country after proper verification.
34. Forward a copy of this order to the Superintendent District Jail, Nalbari for information and necessary action.
35. Let a copy of the Judgment & Order be sent to the S.P., Nalbari for information and necessary action.
36. Let a copy of Judgment be forwarded to Ld. District Magistrate, Nalbari in terms with the provisions of Law.

37. Let a copy of this Judgement be given to the accused free of costs.

38. Dealing assistant to do needful.

The instant case stands disposed of.

SMTI NADIA REHMAN, LLM, AJS
J. M. 1ST CLASS, NALBARI.

APPENDIX**LIST OF PROSECUTION/DEFENCE/COURT****WITNESSES:****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Md. Jiaur Rahman	Informant
PW-2	Md. Abdul Malik	Independent witness
PW-3	Md. Abdul Goni	Independent witness
PW-4	Dr. Abu Hafiz Jalal	Investigating Officer

B. Defence Witnesses, if any: Nil**C. Court Witnesses, if any : Nil****LIST OF PROSECUTION/DEFENCE/COURT****EXHIBITS**

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext.1	Ejahaar
2	Ext.P-1(1)	Signature of the informant
3	Ext.P-2/PW-4	Sketch map
4	Ext.P-2(1)/PW-4	Signature of PW-4
5	Ext.P-3/PW-4	Charge sheet
6	Ext.P-3(1)/PW-4	Signature of PW-4

B. Defence : Nil**C. Court Exhibits: Nil****D. Material Objects: Nil**

Smti. Nadia Rehman, LLM, AJS

J. M. 1ST CLASS, NALBARI.