

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 995 of 2013

***Hedlu Barman @ Swapan Barman
Vs.
The State of West Bengal***

Amicus Curiae : Mr. Niladri Sekhar Ghosh, Adv.,
Md. Selim Malik, Adv.,
Ms. Sompurna Chatterjee, Adv.

For the State : Mr. N. P. Agarwala, Adv.,
Mrs. S. Patel, Adv.

Heard & Judgment on : 16.12.2021.

Bibek Chaudhuri, J.

This is an appeal filed by the convict, namely, Hedlu Barman @ Swapan Barman assailing the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track, 1st Court at Raiganj, Uttar Dinajpur in Sessions Case No. 80/2013 corresponding to Sessions Trial No. 41/2013 on 3rd October, 2013. The appellant was convicted under Section 14 of the Foreigners Act and sentenced to suffer simple imprisonment for three years and also

to pay fine of Rs.20,000/-(Rupees Twenty Thousand), in default, to suffer simple imprisonment for another one year for committing offence punishable under Section 14C of the Foreigners Act, 1946.

Kaliaganj Police Station Case No. 329/2012 was registered on 11th November, 2012 under Section 14A and 14B of the Foreigners Act against four accused persons, namely, Sajahan, Ahasan Ali, Rabiul Islam and Karimul on the basis of a *suo motu* complaint filed by one Sub-Inspector, Bablu Shil stated, *inter alia*, that the above-named persons were Bangladeshi nationals and they crossed the international boundary of Bangladesh and India and took shelter in the house of the appellant. The said arrested four persons had no valid document to enter into the Indian territory and the appellant helped them to enter into the Indian territory and illegally gave shelter to them to his house.

While the above-named accused persons faced trial under Section 14A and 14B of the Foreigners Act, the appellant faced separate trial under Section 14C of the Foreigners Act.

After filing of the charge-sheet the case was transferred to the 1st Fast Track Court of the learned Additional Sessions Judge for trial. The above-named Bangladeshi nationals pleaded guilty for committing the offence under Section 14A(b) of the Foreigners Act and they were convicted and sentenced accordingly. It is submitted by the learned

advocate for the State that they were also repatriated to their own country. The present appellant pleaded not guilty and accordingly, he faced trial.

The learned Trial Judge framed the following points for consideration :-

- (i) Whether the appellant gave shelter to four Bangladeshi nationals who entered into Indian territory without having any valid document?
- (ii) Whether the prosecution was able to prove the case against the appellant beyond any reasonable doubt.
- (iii) Whether the appellant is liable to be convicted.

It is already recorded that the appellant was convicted and sentenced for committing offence under Section 14C of the Foreigners Act.

Section 14C of the Foreigners Act runs thus:-

"14-C. Penalty for abetment. – Whoever abets any offence punishable under Section 14 or Section 14-A or Section 14-B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation. – For the purposes of this section, -

- (i) *an act or offence is said to be committed in consequence of the abetment, when it is committed in*

consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the offence;

(ii) the expression "abetment" shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code (45 of 1860)".

Thus, Section 14C deals with the penalty for abetment of any offence punishable under Section 14 or Section 14A or Section 14B. Explanation II of Section 14C states that the expression 'abetment' shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code.

Section 107 of the Indian Penal Code states that a person abets the doing of a thing, who – First. - Instigates any person to do that thing; or Secondly. – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

In the instant case only evidence that came forward against the appellant is that he gave shelter to four numbers of Bangladeshi nationals in his house. There is absolutely no evidence that the appellant instigated the said four Bangladeshi nationals to cross the

international border between Bangladesh and India and entered into this country without any valid document. There is also no evidence that the appellant conspired with the other accused persons for commission of the offence or that he knowingly and intentionally aided the said four Bangladeshi nationals to commit offence under Section 14A(b) of the Foreigners Act. Moreover, in course of evidence, P.W. 1, Bablu Shil who arrested four numbers of Bangladeshi nationals stated that he personally did not collect any document to prove that the house wherefrom Bangladeshi nationals were apprehended was owned by the appellant.

No local people was examined to identify the place wherefrom Bangladeshi nationals were arrested as that of the house of the appellant.

Even assuming that the appellant gave shelter to the said four persons to stay in his house, such act does not *ipso facto* constitute an offence under Section 14C of the Foreigners Act.

For the reasons stated above, this Court is of the view that the learned Trial Judge misinterpreted the penal provision of Section 14C of the Foreigners Act and wrongly recorded conviction of the appellant.

Accordingly, the impugned judgment and order of conviction and sentence is liable to be set aside.

Thus, the appeal is **allowed** on contest.

The appellant be discharged from bail bond at once.

Let a copy of this judgment be sent to the learned Trial Court along with the lower Court record.

The parties are at liberty to act on the server copy of this judgment.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

***Srimanta/Mithun
A.Rs. (Court)***