

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 30 of 2019

MD. CHHAPIKUL @ SARIFUL MD. @ MOHAMMAD
VS.
THE STATE OF WEST BENGAL

For the Appellant	: Mr. Partha Pratim Sarkar, Adv.
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Abhijit Sarkar, Adv.
Hearing concluded on	: 1 st September, 2023
Judgement on	: 1 st September, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgment and order of conviction passed by the learned Additional Sessions Judge, Mekhliganj, Cooch Behar in Sessions Trial No. 06(09) of 2018.
2. By the impugned judgment learned trial court recorded an order of conviction against Md. Chhapikul @ Sariful Md. @ Mohammad for committing the offence under Section 14C of the Foreigners Act and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs. 40,000/- with default clause.
3. Heard Mr. Partha Pratim Sarkar, learned counsel for the appellant and Mr. Abhijit Sarkar, learned counsel representing the State.
4. S.I., Nakul Roy, Mekhliganj Police Station, Cooch Behar set the criminal administration of justice into motion by informing the

Officer-in-Charge of Mekhliganj Police Station, Cooch Behar in writing that to work out a source information as to the intrusion of foreign nationals from Bangladesh to the territory of India, harboured by one Sariful, he along with police force left for Kaushaldanga, 42, Niztaraf, P.S. Mekhliganj, Cooch Behar. The house of Sariful Mahammad was identified by the source of the informant and on search informant found two persons in a bed room of house Sariful Mahammad. Having found the police personnel in uniform, both of them tried to flee from window, but the police managed to apprehend one of them who disclosed that four days previous to that date they entered into Indian territory for smuggling of cattles and motor cycles with the help of Sariful Md, Julul Bokus, Mansur and Khalil. Police arrested those persons who could apprehend Sariful Md. and other Indian citizens.

5. The information since disclosed the offence cognizable in nature Mekhliganj P.S.Case No. 105 of 2018 was registered on 14th April, 2018. Police took up investigation and submitted a charge-sheet against the accused persons.
6. On 28th September, 2018 trial was commenced under Section 14C of the Foreigners Act against the appellant along with others.
7. During trial prosecution examined as many as five witnesses, PW-1 is informant, S.I. Nakul Roy who stated that on 14th April, 2018 at about 18.15 hours he received an information regarding intrusion of Bangladeshi Nationals, being harboured by Sariful Md. of Kuchaldanga, in order to work out the information he along with

force with the approval of the Officer-in-Charge of the police station left for the place of occurrence and apprehended one Bangladeshi Nationals who introduced himself as Asraf Ali. On further interrogation he disclosed that Sariful Md., Julul, Bokos, Mansur and Khalil used to give shelter to them and used to help them in smuggling cattle to Bangladesh.

8. PW-2, Ranjit Barman is a constable of police who accompanied PW-1 in conducting the raid and stated that Bangladeshi National was arrested from the house of Sariful Md. During cross examination he could not say anything as to the ownership of the said house.
9. PW-3, Prahlad Barua is a constable of police and a member of the raiding team who disclosed that Asraf Ali a foreign national was arrested from the house of Sariful Md.
10. PW-4, Ranjan Barman who is a civic volunteer and a member of the raiding team parroted the testimony of PW-2 and 3 and during cross-examination he stated that he did not enquire about the ownership of the house of Sariful Md.
11. PW-5, Surajit Biswas, S.I. of police who was entrusted with the investigation of the case. During investigation he visited the place of occurrence and prepared a rough sketch map, examined the available witnesses, recorded their statements under Section 161 of the Code of Criminal Procedure. He made an arrangement for recording of statement of accused Ashraf Ali, the foreign national, under Section 164 of the Code of Criminal Procedure.

12. During cross-examination he stated that he did not ascertain the ownership of the house from the members of the Panchayat or from the Pradhan or others. No other witnesses were examined.
13. In absence of any evidence whatsoever to substantiate the ownership of the house from where, allegedly the Bangladeshi National was arrested, the appellant could not have been held guilty within the meaning of Section 14C of the Foreigners Act, 1946. There is no evidence to show that the appellant/convict committed any offence within the meaning of Section 107 of the Indian Penal Code as well.
14. Most interestingly, the Bangladeshi National in his statement under Section 164 of the Code of Criminal Procedure before the learned Judicial Magistrate made it clear that soon after intrusion he was rounded up by the BSF personnel. This statement of the Foreign Nationals strikes at the root of the prosecution case a person who was arrested by BSF soon after entering into Indian territory cannot be expected to be in the house of the appellant.
15. Learned trial court recorded the order of conviction, in my humble opinion, upon absolute misreading of evidence. The judgment impugned should not be allowed remain in force and should be set aside which I accordingly do.
16. The appellant is discharged from bail bond subject to execution of bond under Section 437A of the Code of Criminal Procedure for six months.

17. The appeal is thus disposed of accordingly.

(SIDDHARTHA ROY CHOWDHURY, J.)