

SIRAJUL HOQUE

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v.

THE STATE OF ASSAM & ORS.

(Criminal Appeal No. 267 of 2019)

FEBRUARY 14, 2019

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[R. F. NARIMAN AND VINEET SARAN, JJ.]

Foreigners' Act, 1946:

s.9 – Burden of proof – Citizenship status of proceedee – Appellant declared foreigner by the Foreigner's Tribunal holding that there was discrepancy in the name of the grandfather – Upheld by the High Court – On appeal held: Appellant's great grandfather's name and father's name appear the same throughout the document – However, only discrepancy is found in grand father's name – In some of the documents Kefatullah later became Kematullah and in NRC Registration details of the year 1971, grandfather noted to be Kefatullah – Appellant also produced Permanent Account Number, including photo identity cards issued by the Election Commission of India, identity cards issued to his brother including voters lists in which his name appears – In view thereof, it cannot be said that Kematullah is not the same despite being named Kefatullah in some of the documents – Grandfather and fathers' identity etc. established successfully by the appellant – Further, the mere fact that the father may later have gone to another village is no reason to doubt this document – Thus, the judgment of the High Court as well as Foreigner's Tribunal set aside.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 267 of 2019.

From the Judgment and Order dated 13.06.2017 of the High Court at Guwahati (The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh) in W.P. (C) No. 1011 of 2017.

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Pijush K. Roy, Mrs. Kakali Roy, Rajan K. Chourasia, Advs. for the Appellant.

Tushar Mehta, SG, Ms. Madhvi Diwan, ASG, Shuvodeep Roy, Riju K. Sarkar, Ms. Aishwarya Bhati, Ms. Shraddha Deshmukh, Damodar Solanki, B.V. Balaram Das, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. Leave granted.

B 2. The present appeal raises an issue as to whether the appellant herein has been declared to be a foreigner incorrectly. By the Foreigner's Tribunal judgment dated 19.01.2017, after referring to some of the documents produced by the appellant, and after finding that there was a discrepancy in the name of the grandfather and the fact that the grandfather and the father later lived in different villages, the Tribunal declared the appellant to be a foreigner. The High Court dismissed the writ petition filed against the same judgment stating:

C "Having said that we may look into the written statement filed by the petitioner before the Tribunal. In a proceeding before the Foreigners' Tribunal where the citizenship status of the proceedee is being questioned, that too, by the State, the proceedee must disclose all material facts within his special knowledge relevant for establishing his citizenship at the first instance itself i.e., in the written statement. In other words, he must be able to plead about his identity as a citizen of India. This would be as per the requirement of Section 9 of the Foreigners' Act, 1946, which is in pari materia to the provision of Section 106 of the Evidence Act, 1872. Thereafter, the material facts pleaded in the written statement are required to be proved in accordance with law by adducing cogent and reliable evidence. In the written statement, petitioner did not even mention his name; not to speak of his date of birth or year of birth. All that he stated was that he was born at Village-Sagolchora in the district of Dhubri and that his parents were voters in the voters' list of 1997. His grand-parents were voters of 1966-1970. Only in the verification column, he described his name as Sirajul Haque. This is all that the petitioner stated in the written statement. This is not only inadequate but does not in any manner lead to the identification of the petitioner as an individual, not to speak of identification of the petitioner as a citizen of India. It is not a case of violation of the principles of natural justice or procedural impropriety. Neither can it be said to be a case of perversity."

3. We have heard learned counsel for both sides extensively and have gone through the documents produced by the appellant ourselves.
H On a perusal of the same, we find that a number of documents have

been relied upon by the appellant starting with a voters' list of his grandfather Kematullah in villge Sotobashjani. There is no doubt that the great grandfather's name Amtullah appears as Amtullah throughout the document. Equally, there is no doubt about the father's name which appears as Hakim Ali throughout. The only discrepancy found is that in some of the documents Kefatullah later becomes Kematullah. However, what is important to note is that his father's name Amtullah continues as Amtullah and the other family members associated continued as such. Also produced are NRC Registration details of the year 1971 of the grandfather who is noted to be Kefatullah in this document. Other voters lists are then produced where the letter F becomes the letter M with other family names remaining the same. In fact, the appellant has himself produced a document of 1981 from the Income Tax Department giving his Permanent Account Number. Apart from these documents, certain other later documents have also been produced including photo identity cards issued by the Election Commission of India and identity cards issued to his brother including voters lists in which the appellant's name appears.

4. Having gone through these documents, we are of the view that it is not possible to state that Kematullah is not the same despite being named Kefatullah in some of the documents. This being so, the grandfather's identity, father's identity etc. has been established successfully by the appellant. Further, the mere fact that the father may later have gone to another village is no reason to doubt this document.

5. We, therefore, set aside the judgment of the High Court as well as the Foreigner's Tribunal and allow the appeal.

6. As a result thereof, the appellant is liable to be set free at once.