

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No.383 of 2004

Date

Order with signature of Judge

For hearing of Case

15.04.2016

Mr. Fazlur Rehman, advocate for Appellants.

Ms. Rahat Ahsan, D.P.G.

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This appeal is directed against conviction of the appellants under Section 14(2) Foreigner Act, 1946 to suffer R.I four (4) years and fine of Rs.5000/- and in default in payment of fine they shall suffer R.I for six months more. They were ordered to be de-ported after completion of the terms of sentence. It is alleged that appellants were arrested on the pointation of NARA (National Alien Registration Authority) and FIR No.184/2003 at P.S Mithader Karachi was registered. The prosecution has not examined any of the members of NARA to establish that they were arrested or prosecuted on the pointation of NARA. Only two PWs were examined PW-1 HC Syed Mehdi Ali and PW-2 ASIP Muhammad Arif Khan. Eleven persons were arrested by police and nine of them were acquitted. The accused/appellants have produced at the time of trial their N.I.C issued to them in 1980 and nikhanama. Two appellants were convicted despite the aforesaid documents only on the ground that they failed to produce any documents prior to 1980 as alleged by the prosecution. In Cr. case burden of proof is on prosecution and not on the accused. Allegation of crossing Wagha border in

1980 could not be established by the two prosecution witnesses, who were not even in service of police in 1980 and the person who has reported that they have crossed Wagha border in 1980 illegally has neither come in the witness box nor any other evidence was produced to show the how the prosecution discovered that the appellants have crossed the border at Wagha. The important thing is that once the CNIC was issued to the appellants unless CNIC were found forged and fabricated, they have sufficient proof of nationality. The failure of prosecution challenge that the CNIC were not genuine is enough to create doubt that there was any truth in the story of crossing the border in 1980.

In view of the above this Cr.Appeal is allowed, the order dated 12.10.2004 is set aside. Bail bond stand discharged.

JUDGE

SM