

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

CRIMINAL APPEAL NO.381 OF 2021

Appellant	Nasir s/o, Ghulam Qadir through Mr. Hanif Baloch, Advocate.
Respondent	The State through Mr. Habib Ahmed, Special Prosecutor, ANF.
Date of Judgment	20.10.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Nasir son of Ghulam Qadir was tried in the Special Court-II (CNS) Karachi in Special Case No.902/2014 under FIR No.32/2014 u/s 6/9-C read with Sections 14/15 of CNS Act 1997, registered at PS ANF Clifton, Karachi and vide judgment dated 08.07.2021 he was convicted and sentenced under section 265-H(ii) Cr.P.C. for offence under section 6/9-C of CNS Act, 1997 for life imprisonment and imposed fine of Rs.3,00,000/- and in case of default in payment of fine he shall undergo S.I. for two years more. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 31.10.2014 at 1600 hours at Street No.4 Mahensera Colony, Allah Dad Goth, Land No.22, Karachi Complainant Inspector Mohammad Muzammil Ahmed of PS ANF Clifton, Karachi along with other ANF officials apprehended accused namely (i) Nasir and recovered 09 packets of Charas Garda weighing 10.100 Kgs from his possession while accused persons namely (ii) Nadir and (iii) Tahir have managed to escape from the spot. After observing the required formalities at the spot arrested accused alongwith the recovered contraband was brought to PS ANF Clifton, where FIR was lodged against the accused persons.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

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4. The prosecution in order to prove its case examined 04 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 08.07.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the appeal on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating circumstances :-

- i) The appellant is a young man and has large family to support.
- ii) The appellant is a first time offender and capable for reformation.
- iii) By accepting his guilt the appellant has shown genuine remorse and saved the time of this court.
- iv) The appellant had served out a substantial portion of his sentence.

8. He also pointed out that since the recovery of the narcotic which was made from the appellant as per chemical report weighed only 9.858 Kgs under the CNS Act he should not have been sentenced to life imprisonment but instead to a lesser sentence.

9. We have gone through the evidence on record and find that the prosecution had proved its case against the appellant beyond reasonable doubt through reliable and confidence inspiring evidence and as such his conviction is maintained.

10. When learned Special Prosecutor, ANF was confronted with the amount of recovered narcotic and its weight he confirmed that as per chemical report the amount of recovered narcotics was less than 10 Kg and as such the sentence handed down to the appellant was not in accordance with law. Even in the case of **Ghulam Murtaza v The State** (2009 PLD Lahore 360) wherein sentencing guidelines have been given, sentence ought to have been 12 years and 06 months and even otherwise in the case of **Ghulam Murtaza (supra)** this court had discretion to modify the sentence if some special features/mitigating circumstances were available.

11. We note from the jail role that the appellant has already served out almost 12 years in custody and as such taking into consideration the mitigating circumstances and the fact that he was wrongly sentenced, in the first place we hereby reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

12. The instant appeal stands disposed of in the above terms.