

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Appeal No. D-92 of 2017

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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- 1. For hearing of MA 4177-17.
- 2. For Regular Hearing.

Present:
Mr. Justice Abdul Rasool Memon &
Mr. Justice Aftab Ahmed Gorar.

Mr. Achar Khan Gabole Advocate for appellant.
Mr. Abdul Rehman Kolachi, Deputy Prosecutor General.

Date of hearing: 15-08-2017.
Date of Judgment: 15-08-2017.

J U D G M E N T

Aftab Ahmed Gorar J., Through this Crl. Appeal, aappellant Nisar Ahmed Shah has challenged his conviction and sentence awarded to him vide judgment dated 21.6.2017 passed by leanerd Special Judge (CNSA), Ghotki, whereby appellant for offence under section 9-C of CNS Act, 1997 and sentenced to suffer R.I for 4½ years and to pay fine of Rs. 20,000/- and in case of default, to suffer S.I. for 05-months more with benefit of section 382-B CrPC extended to appellant.

2. The facts of the prosecution case in nutshell are that on 01.02.2016 at about 1700 hours, complainant ASI Muhammad Aslam alongwith his subordinate staff while on patrol duty received spy information and apprehended appellant near bridge of Meero Chachar and secured 1100 grams of Charas, a small knife and cash of Rs. 1000/- from the possession of appellant in presence of Mashirs.

3. During trial, prosecution examined PW-1 compalinant ASI Muhammad Aslam, who produced memo of arrest and recovery, attested copy of entries of departure and arrival so also FIR, PW-2 Mashir P.C. Abdul Shakoor and PW-3 I.O/SIP Aqeel Ahmed Shar, who produced corresponding letter and report of Chemical Examiner. Thereafter, side of prosecution was closed.

4. The statement of appellant was recorded in terms of section 342 CrPC, wherein he denied the prosecution story and submitted that he is innocent and Charas has been foisted upon him. However, appellant did not examine himself on oath in disproof of charge so also declined to record statements of defence witnesses.

5. Learned trial court after hearing learned counsel for parties by judgment dated 21.6.2017, convicted and sentenced the appellant as stated above.

6. Learned counsel for appellant mainly contended that appellant is innocent and has falsely been implicated by the police. He further contended that there are major contradictions and infirmities in the evidence of prosecution witnesses and that evidence adduced by the prosecution at trial was not properly assessed and evaluated by learned trial court. He further added that evidence produced at trial by the prosecution is insufficient to warrant conviction against the appellant. He further contended that trial court has not observed the established rules of the appreciation of evidence in deciding the case. It is also contended that appellant is in young age and is first offender and previous non-convict and there is no other instance of appellant's involvement in any case, therefore, he also prayed for reducing the sentence of the appellant to that of already undergone as the appellant has served out major portion of sentence in jail.

7. Learned Additional P.G conceded to the reduction of sentence of appellant to that of already undergone.

8. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

9. From perusal of record, it is quite clear that the prosecution On scanning the evidence of prosecution witnesses, it transpires that PW-6 PC Fazal Karim in his cross-examination has deposed that all the Mashirnamas of place of wardhat, inspection of injuries to injured ASI Rehmatullah were prepared at police station where he was all along present. Furthermore, PW-4 ASI Rehmatullah, who is injured in this case, in his cross-examination, has deposed that no bullet hit to his private car nor any sort of scratch received to his car and he has not mentioned in the mashirnama or in the FIR about private car.

9. As per jail roll dated 10.8.2017, both the appellants have served out their sentence for 04-years and 01-month with remissions of 06-months and 18-days, as such they have served out their major portion of sentence inside jail.

10. For the foregoing reasons and looking to the previous conduct of the appellants so also while following the dictum laid down in case of Niaz-ud-Din v. The State (2007 SCMR 206), while dismissing the both CrI. Jail Appeals, we are persuaded to reduce the sentence of imprisonment of both appellants to that of already undergone including the sentence of fine amount. Both appellants are in jail. They be released forthwith, if they are not required in any other case.

11. The constitution petition No.D-1033 of 2017 seeking suspension of sentence by releasing the appellants on bail stands dismissed as not pressed being infructuous.

JUDGE

JUDGE

Ahmed