

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.439 of 2020
Criminal Jail Appeal No.452 of 2020

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

Appellant:	Sikandar Masih S/o. Sabir Masih through Mr. Javaid Ahmed Rajput, Advocate.
Respondent:	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General.
Date of hearing:	17.01.2022.
Date of Announcement:	20.01.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Sikandar Masih S/o. Sabir Masih has preferred the instant appeals against the judgment dated 21.09.2020 passed by Learned Ist Additional Sessions Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS), Karachi Central in Special Case No.179 of 2020 arising out of Crime No.61/2020 u/s. 6/9-C of the C.N.S. Act, 1997, registered at P.S. Gulberg, Karachi whereby the appellant was awarded R.I for 04 years and 06 months along with fine of Rs.20,000/-. In default of payment of fine he has to undergo further S.I. for 05 months more. Benefit of section 382-B Cr.P.C. has also been extended to the appellant.

2. The brief facts of the prosecution case are that complainant SIP Yaseen of PS Gulberg, Karachi has arrested accused Sikandar Masih and recovered Charas weighing 1060 grams and cash amount Rs.300/- only from Surat Factory Road, Block-5, F.B. Area, Karachi on 24.02.2020 at 0200 hours under memo and lodged such FIR u/s. 6, 9 (c) CNS Act, 1997.

3. After completion of investigation of the case, the I.O. submitted the charge sheet against the accused person to which he pleaded not guilty and claimed trial.

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 all the allegations leveled against him. He did not examine himself on oath or call any DW in support of his defence case.

5. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as stated above, hence, the appellant has filed this appeal against his conviction. It is noted that the appellant was granted bail by this court vide order dated 24.12.2020 and his sentence suspended.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 21.09.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. After reading out the evidence, learned counsel for the appellant, under the instructions of the appellant who was present on bail stated that he did not press this case on merit and that the appellant would accept his guilt provided that the sentence handed down to the appellant was reduced. In support of his contention he put forward numerous mitigating circumstances. When this proposal was put to learned APG, he had no objection to the reduction of sentence based on the mitigating factors raised by the appellant.

8. We have gone through the evidence and we find the evidence of 4 PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on spot red-handed with narcotics which led to a positive chemical report after being kept in safe custody, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

9. In the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362] it was pointed out that the sentencing guideline could be modified at the discretion of the court provided that there were some special features which warranted such reduction in sentence.

10. In this case, although the sentence handed down to the appellant is in accordance with the sentencing guidelines, we find numerous special

features/mitigating factors raised by learned counsel for the appellant which can justify a reduction in sentence which are as follows:

- i) That the appellant is a first time offender.
- ii) That the appellant is relatively young man and is capable of reformation.
- iii) That he is the sole breadwinner of his family, who relies on his income.
- iv) That the appellant has fully accepted his guilt and as such has shown genuine remorse.
- v) That the recovery from the appellant was relatively minor and that he would have fallen in an even lesser sentencing range but for the recovery of an extra 60 grams of charas and in such circumstances would have served out more than half of his sentence.

11. As such based on the above mitigating factors/special features and keeping in view the no objection in reducing the appellants sentence to time served by the learned APG we hereby uphold the conviction of the appellant but reduce his sentence to time already under gone in jail including his fine. The bail bonds of the appellant shall be discharged and he is free to go.

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

Muhammad Arif