

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.391 of 2020

Appellant : Abdul Ghaffar @ Thosal son of
Muhammad Ishaq through
Mr. Muhammad Awais Shaikh,
Advocate.

Respondent : The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General, Sindh.

Date of Hearing : 22.04.2022

Date of Judgment : 22.04.2022

J U D G M E N T

The Appellant Abdul Ghaffar @ Thosal was tried in the Court of 1st Additional Sessions Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS), Karachi Central in Special Case No.102/2020 in FIR No.09/2020 under Section 6, 9(C) of CNS Act, 1997 registered at Police Station Haidery Market, Karachi; whereby he was convicted under Section 265-H(ii) Cr.P.C. and sentenced to suffer RI for 04 years 06 months and to pay fine of Rs.20,000/- (Rupees Twenty Thousand only) and in default thereof, he shall further suffer S.I. for 04 months. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case are that appellant was arrested by ASI Muhammad Azam Khan of PS Haidery Market on 09.01.2020 from street near Naddi Kinara Kauser Niazi Colony, Block-G North Nazimabad, Karachi and an amount of charas 1025 grams was recovered from him on the spot. The appellant then was taken to PS where the instant FIR was registered against him. 3

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed false implication. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. The facts and evidence of the case have been set out in the impugned judgment and as such there is no need to repeat the same here so as to avoid unnecessary repetition and duplication.

7. At the very outset, learned counsel for the appellant, under the instructions of the appellant, stated that he accepted his guilt and did not contest the case on merits and only sought reduction in his sentence based on certain special features/mitigating factors. Learned Addl. P.G, Sindh has raised his no objection for reduction of sentence in light of the special features/mitigating circumstances raised by the appellant.

8. Learned counsel for the appellant has sought reduction in sentence according to the following special features/mitigating circumstances;_

- i) The appellant is young person and is capable of reformation.
- ii) He has a large family whom he needs to support.
- iii) The appellant is suffering from serious medical ailment.
- iv) The appellant by accepting his guilt has shown genuine remorse.

9. We have gone through the record and found that appellant was arrested on the spot and 1025 grams charas was recovered

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from his possession by police officials, who had no enmity with the appellant, as such, we believe the evidence of police officials. The charas was kept in safe custody from the time of its recovery and was sent to the chemical lab for examination, which report received as Positive, which shows that prosecution has proved its case against the appellant beyond any reasonable doubt, therefore, we maintain his conviction.

10. With regard to sentencing, we note that the appellant has been sentenced in accordance with the sentencing guidelines laid down in the case of Ghulam Murtaza & others vs. the State [PLD 2009 Lahore 362] wherein sentencing guidelines were laid down in respect of the amount of recovery. In this case appellant has been sentenced to four years and 06 months and fine which is in accordance with the guidelines; however, we have noted that if the extra amount of 25 grams had not been recovered, he would have been sentenced under that guidelines to one year and nine months alongwith fine. In Ghulam Murtaza case (Supra), it was also observed that the sentencing guidelines could be modified at the discretion of the Court provided that there were some special features/mitigating circumstances which warranted such reduction in sentence.

11. Based on the above mitigating circumstances and keeping in view the relatively minor amount of recovery, we hereby uphold the conviction of the appellant but reduce the sentence to the time he has already undergone in jail which shall also include amount of his fine. As such, the appellant shall be released from custody unless he is wanted in any other custody case.

12. The instant Criminal Appeal stands disposed of in the above terms.