

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.207 of 2020

Appellant : Haroon Khan S/o Banaras Khan
Through Mr. Zahoor Ahmed, Advocate

Respondent : The State through Mr. Abrar Ahmed
Khichi, Addl. Prosecutor General,
Sindh.

Date of Hearing : 16.05.2022

Date of Judgment : 16.05.2022

J U D G M E N T

Appellant Haroon Khan was sent up to face trial in the Court of 1st Addl. Session Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS), Karachi Central in Special Case No.32 of 2020 in respect of FIR No.324 of 2019 under Sections 6/9 (c) of CNS Act, 1997 registered at Police Station Nazimabad, Karachi and vide impugned Judgment dated 26.02.2020 the appellant was convicted and sentenced to suffer rigorous imprisonment 04 years and 06 months and to pay fine of Rs.20,000/- and in default thereof, he was directed further simple imprisonment for 04 months more.

2. The brief facts of the prosecution case are that complainant ASI Fasiullah of P.S Nazimabad, Karachi has arrested accused Haroon and recovered Chars weighing 1040 grams and cash amount Rs.2270/- only and also arrested accused Ashraf Masih and recovered Chars weighing 1070 grams, and cash amount Rs.90/- only from near Railway station Mujahid Colony, Nazimabad No.4, Karachi on 17.11.2019 at 0200 hours, under memo and lodged such FIR under Section 6, 9 (c) CNS Act, 1997,

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 that he was innocent. He did not give evidence on oath or call any witness in support of his defence.
5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier in this judgment 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, did not press this appeal on merit; however, he stated that he would be satisfied with a reasonable reduction in sentence on account of the following special features/mitigating circumstances;_
 - a) The appellant is not convicted in any other narcotic case.
 - b) The appellant is a young man and capable of reformation.
 - c) The appellant is the breadwinner of a large family.
 - d) By admitting his guilt, he has shown genuine remorse.
8. We have gone through the evidence and find that the prosecution has proved its case beyond a reasonable doubt

through reliable, trustworthy and confidence inspiring evidence, which we believe, safe custody of the narcotic has been proven which lead to a positive chemical report and as such the conviction is maintained.

9. With regard to sentencing, in the light of the above special features/mitigating circumstances, learned Addl. P.G, Sindh had no objection to a reduction in sentence to some reasonable extent.

10. In the case of Ghulam Murtaza & others vs. the State [PLD 2009 Lahore 362], certain sentencing guidelines were laid down based on the amount of recovery of 1040 grams of Chars. The sentence handed down to the appellant was within sentencing guidelines; however, we note that had the recovery been 40 grams less, the appellant would only have been sentenced to 01 year and 09 months with fine of Rs.13,000/- and in default thereof, to suffer term of imprisonment of 04 months S.I and fine.

11. Based on the above mitigating circumstances raised by the appellant, the NOC of the Addl. P.G, Sindh and the fact that amount was only 40 grams over the threshold which led to sentence of 04 years and 06 months along with fine, we hereby, reduce the sentence of the appellant to 01 year and 09 months along with fine of Rs.13,000/- and in default of payment of fine, the appellant shall undergo a further period of 04 months S.I. The appellant shall have benefit of Section 382-B Cr.P.C and any remission available to him under the law.

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