

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.316 of 2020

Appellant	:	Rasool Bux S/o Ahmed Through Mr. Zaheer Ashraf Qazi, Advocate
Respondent	:	The State through Mr. Siraj Ali Khan Chandio, Additional Prosecutor General, Sindh.
Date of Hearing	:	30.03.2022
Date of Judgment	:	30.03.2022

J U D G M E N T

Appellant Rasool Bux was convicted in the Court of 1st Addl. Session Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS), Karachi Central in Special Case No.68 of 2020 in respect of FIR No.233 of 2019 under Sections 6/9 (c) of CNS Act, 1997 registered at Police Station Gulbahar, Karachi vide Judgment dated 28.02.2020 and was sentenced to undergo four (04) years and six (06) months R.I and to pay fine of Rs.20,000/- and in default of payment, the appellant was to undergo a further period of 04 months S.I. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that complainant SIP Asif Zia of P.S Gulbahar, arrested the accused from Puliya Haji Mureed Goth, Gulbahar, Karachi on 28.12.2019 at 1000 hours and 14 pieces of Charas were recovered from him weighing 1085 grams. Thereafter, the appellant was arrested and the instant FIR was lodged.

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 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 submitted under the instructions of the appellant that he accepted his guilt and did not contest the case on merits and only sought reduction in his sentence. Learned Addl. P.G, Sindh; however, was not agreeable to this proposition and left this aspect to the discretion of this Court.

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

- i) The appellant is 46 years old of age and is capable of reformation.
- ii) He has a large family whom he needs to support.
- iii) He has no previous conviction in any narcotic case.
- iv) The appellant by accepting his guilt has shown genuine remorse.
- v) That according to appellant in his 342 Cr.P.C statement, Charas which was recovered from him was for his personal use and not for supply.

9. 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]; however, it was 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.

10. Based on the above mitigating circumstances and keeping in view the relatively minor amount of recovery and the fact that the appellant has already served out most of his sentence, 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 fine. As such, the appellant shall be released from custody unless he is wanted in any other custody case.

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