

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.71 of 2022

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Appellant	Syed Qasim Abbas S/o Syed Gulzar Husain through Mr. Riaz Ali Samtio, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General, Sindh.
Date of Hearing	13.10.2022
Date of Order	13.10.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Syed Qasim Abbas S/o Syed Gulzar Hussain was tried in the Court of 1st Additional Sessions Judge/Model Criminal Trial Court (MCTC-I)/Special Court CNS Karachi Central in Special Case No.833/2021 under FIR No.972/2021 U/s 6/9-C CNS Act, 1997 at PS Azizabad, Karachi and vide judgment dated 01.01.2022 he was convicted of the said offence and sentenced to suffer R.I. for 04 years and 06 months with direction to pay fine of Rs.20,000/- and in case of default, he shall serve S.I. for 05 months more. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that complainant SIP Najeebullah Khan of PS Azizabad has arrested accused Syed Qasim Abbas and recovered slab type charas weighing 1015 grams and cash amount of Rs.250/- from road block-8 near Yaseenabad graveyard F.B. Area, Karachi on 22.08.2021 at 0110 hours under memo and lodged the instant FIR.

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3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 03 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 the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 01.01.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the case on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating factors:-

- i) That the appellant was a young man with a large family to support.
- ii) That the appellant was a first time offender and was capable of reformation.
- iii) That the appellant had admitted his guilt and shown genuine remorse.
- iv) That the appellant had served out a major portion of his sentence.

8. When confronted these special features/mitigating circumstances, learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the appellant was arrested on the spot and recovered 1015 grams charas from his₇

possession by the police party, who had no enmity with the appellant for falsely implicating him in this case, as such, we find **their** evidence to be reliable, trustworthy and confidence inspiring. **Further, the safe** custody of the recovered narcotic has also been proved which led to a positive chemical report, as such, the prosecution has proved its case against the appellant beyond any reasonable doubt.

10. With regard to sentencing taking into account the special features/mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a large part of his sentence, we hereby maintain the conviction of the appellant; however, reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

11. The instant appeal stands disposed of in the above terms.

Kamran/PA