

Narcotics : Undergone

185797

## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

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

CRIMINAL APPEAL NO. 387 OF 2021.

Appellants	Muslim son of Moosa and Meer Jan son of Muhammad Rafique, through Mr. Tahir Hussain, Advocate.
Respondent	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh.
Date of Judgment	16.09.2022

### JUDGMENT

Mohammad Karim Khan Agha, J:- The appellants Muslim son of Moosa and Meer Jan son of Muhammad Rafique were tried in the Court of Ist Additional Sessions Judge (Model Criminal Trial Court) Karachi South in Sessions Case No.2493 of 2020 in respect of FIR No.303 of 2020 u/s. 6/9(c) of CNS Act, 1997 registered at PS Kalakot, Karachi and vide judgment dated 07.07.2021 appellants were convicted and sentenced to undergo R.I. for 07 years with fine of Rs.50,000/- each and in case of default in payment of fine, they were was ordered to suffer S.I. for 07 months more. However, the benefit of section 382-B Cr.P.C. was extended to the appellants.

2. The brief facts of the prosecution case are that on 17.11.2020 at about 2100 hours, the appellants were arrested at Cheel Chowk, Lyari, Karachi, by the police party of P.S Kalakot, Karachi South, headed by complainant / ASIP Shariq Mahmood, when accused Muslim was found in possession of 2210 grams Heroin, while accused Meer Jan was also found in possession of 2330 grams Heroin, which were taken into police custody in presence of the official witnesses.

3. After usual investigation, the challan was submitted against the appellants/accused to which they pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied the allegations leveled against them. However, the appellants did not give evidence on oath nor produce any DWs in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed this appeal against their 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 07.07.2021 passed by the trial court therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for both the appellants under instructions of both the appellants stated that the appellants would not argue this case on merits and would only seek reduction in sentences to some reasonable extent based on the following mitigating circumstances:-

- a) That both the appellants were young man and had families to support.
- b) That both the appellants were first time offenders and were capable for reformation.
- c) That both the appellants, by not contesting the case on merits have shown genuine remorse.
- d) That both the appellants have served out a substantial portion of their sentence, as per jail record.

8. Keeping in view of the above mitigating factors mentioned by both the appellants, learned Additional Prosecutor General had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and note that both the appellants were arrested on the spot by the police and from their possession 2210 & 2330 grams of heroin were recovered respectively.



10. The Police witnesses who arrested the appellants had no enmity with them and had no reason to falsely implicate the appellants in this case and as such we find their evidence trustworthy and confidence inspiring and believe the same. Safe custody of the narcotics has been proven which produced a positive chemical test and as such we find that the prosecution has proved its case against both the appellants beyond a reasonable doubt and maintain their conviction.

11. We note that both the appellants have been sentenced in accordance with the guidelines laid down in the case of Ghulam Murtaza (PLD 2009 Lahore 362). However, in Ghulam Murtaza case (supra), it was set out that the Court in its discretion could alter the sentence, if there was some special features/mitigating circumstances which justify the same. Based on the mitigating circumstances/special features raised by the appellants and the no objection by the learned Additional Prosecutor General and in particular the fact that the appellants have served out a majority of their sentence as per Jail Roll, we hereby maintain the conviction of the appellants but reduce the sentence of both the appellants Muslim son of Moosa and Meer Jan son of Muhammad Rafiq to time already undergone in custody and waive their fines. Both the appellants shall be released unless they are wanted in any other custody case.

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