

IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

Criminal Appeal No.769 of 2022.

Appellant	Asad S/o. Chaman Gul through Bahadur Khan Khattak, Advocate.
Respondent	The State through M/s. Zafar Ahmed Khan and Ali Haider Saleem, Additional Prosecutor General Sindh.
Date of hearing	10.05.2023.
Date of order	10.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Asad S/o. Chaman Gul was tried in the Court of Ist Additional Sessions Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS) Karachi Central in Special Case No.1490 of 2022 arising out of F.I.R. No.221 of 2022 U/s. 6, 9(c) of CNS Act, 1997 registered at P.S. Paposh Nagar, Karachi and vide Judgment dated 30.11.2022 the appellant was convicted and sentenced as under:-

Accused Asad S/o. Chaman Gul is convicted under section 265-H (ii) Cr.P.C. for offence U/s. 6, 9-C Control of Narcotic Substances Act, 1997 and sentenced to suffer R.I. of 07 years and 6 months along with fine of Rs.200,000/- (Rupees two lacs only). In case of default in payment of fine the appellant was ordered to suffer S.I. for 01 month more. Accused was also extended the benefit of Section 382-B Cr.P.C. for the period he has already remained in custody in this case.

2. Succinctly facts of the prosecution are that complainant SIP Shahid Nawaz of PS-Paposh Nagar, Karachi has arrested accused Asad S/o. Chaman Gul on 05.07.2022 at 1430 hours at inside road Paposh Nagar Graveyard, Qazi Kamal-ud-din Qutub Mazar, Paposh Nagar, Karachi and recovered Chars weighing 1025 grams as per digital scale and cash amount of Rs.570/- only under memo and lodged such FIR u/s. 6, 9(c) CNS Act, 1997.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. The appellant pleaded not guilty to the charge.
4. The prosecution in order to prove its case examined 04 P.Ws and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement denied the allegations against him. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.
5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant 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 passed by the trial court and there is no need to repeat the same in order to avoid duplication and unnecessary repetition.
7. At the very outset, learned counsel for the appellant under instructions of the appellant stated that the appellant did not contest the case on merits and accepted his guilt and prayed only for reduction in sentence based on the following mitigating circumstances:-
 - a) That the appellant is first time offender and is capable of reformation.
 - b) That the appellant is of young age and had a large family to support.
 - c) That by accepting his guilt the appellant has shown genuine remorse and saved the time of this Court.
 - e) That the amount of chars recovered from the appellant was relatively minor amount and only 25 grams is above the sentencing range.
8. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and find that the appellant was arrested on the spot on 05.07.2022 at 1430 hours inside the Graveyard where he was caught in possession of 1025 grams of Chars. The arresting police officer and mashir of recovery had no enmity or ill-will with the appellant and had no reasons to falsely implicate the appellant in a false case and we find the evidence to be reliable, trustworthy and confidence inspiring and believe the same. The prosecution has proved the safe custody and safe transmission of the recovered narcotics which produced a positive chemical report issued by the chemical examiner. Thus we find that the prosecution has proved its case against the appellant beyond any reasonable doubt for which he was convicted and as such we maintain his conviction

10. With regard to sentence based on mitigating factors mentioned by learned counsel for the appellant and the ^{prosecutor} no objection to a reduction in sentence by learned Additional ~~Magistrate~~ General, we hereby reduce the sentence of the appellant to R.I. of 03 years and waive off his fine.

11. The appeal is dismissed except as modified in terms of the sentence.