

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Zulfiqar Ali Sangi*

CRIMINAL APPEAL NO.329 OF 2021.

Appellants

(1) Muhammad Junaid S/o Angez Badshah (2) Abdul Razzaq S/o Karam Ali, and (3) Matlab Khan S/o Daftar Khan through Tariq Mehmood A. Khan, Advocate.

Respondent

The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

Date of Judgment

31.10.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellants Muhammad Junaid S/o Angez Badshah (2) Abdul Razzaq S/o Karam Ali, and (3) Matlab Khan S/o Daftar Khan were tried in the Court of Ist Additional Sessions Judge (Model Criminal Trial Court) Karachi South in Sessions Case No.1711 of 2020 in respect of FIR No.336 of 2020 u/s. 6/9(c) of CNS Act, 1997 registered at PS Aziz Bhatti, Karachi and vide judgment dated 29.05.2021 appellants were convicted and sentenced to undergo R.I. for 10 years with fine of Rs.50,000/- each and in case of default in payment of fine, they were ordered to suffer S.I. for 06 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 28.06.2020 SIP Sadaruddin of PS Aziz Bhatti was on patrolling duty with the subordinate staff. During patrolling he received spy information that from Sohrab Goth one car of blue color was coming in which three persons were sitting who are drug dealers and having huge quantity of charas were present at Sir Shah Suleman Road near Manila Center, Gulshan-e-Iqbal, Karachi. On such information they reached at pointed place at about 0100 hours on 28.06.2020, stopped and apprehended them and asked their names to which they disclosed their names as Muhammad Junaid S/o Angez,



Badshah (2) Abdul Razzaq S/o Karam Ali, and (3) Matlab Khan S/o Daftar Khan. Complainant conducted personal search of accused Muhammad Junaid, who was sitting on driving seat, one brown color purse, cash Rs. 1000/-, CNIC and one mobile phone Nokia black colour were recovered. From the personal search of accused Abdul Razzaq who was sitting with the seat of driver one purse black colour, cash Rs.600/-, CNIC and one mobile phone Samsung Touch Screen were recovered and from the personal search of Accused Matlab Khan who was sitting on the back side seat of car one black colour purse, cash Rs. 400, one mobile phone were recovered. Further search of car bearing No.ANE-026, Maker Toyota Corolla, Blue colour, Engine No.4035095, chassis No.0033599 Model 2007 was conducted and from the driving seat of car 06 packets charas weighing 3740 grams wrapped in yellow tape and from rear seat of car 05 packets charas weighing 2825 grams wrapped in yellow tape and from the back side seat of car 04 packets charas weighing 2460 grams wrapped in yellow tape were recovered. Such property was sealed separately on the spot. Complainant prepared memo of arrest and recovery on the spot in presence of PC Aamir Siddiqui and co-mashir was PC Shiraz Ahmed. Thereafter, the complainant brought the accused and recovered property to police station where such FIR was lodged.

3. After usual investigation, the challan was submitted before the concerned trial Court against the appellants to which the appellants 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 levelled 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.

3



6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 29.05.2021 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 the appellants under instructions of the appellants stated that he did not press the appeal on merits provided that the appellants were given some reasonable reduction in their sentence based on the following mitigating circumstances:-

- a) That the appellants had no conviction in any narcotics case and were capable of reformation.
- b) That the appellants had a large family to support.
- c) By not contesting the case on merits the appellants have admitted their guilt and shown genuine remorse.
- d) That the appellants had served out a major part of their sentences.

8. Based on these mitigating factors mentioned by the appellants, learned Additional Prosecutor General had no objection to the reduction in their sentences to some reasonable extent.

9. We have gone through the evidence on record and note that all the appellants were arrested on the spot and caught red handed in a car which contained huge quantity of charas which when sent for chemical report produced a positive result.

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 and find that the prosecution has proved its case against the appellants beyond any shadow of doubt and maintain their convictions.

11. With regard to the sentences awarded to the appellants, it is noted that 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), this Court was given the discretion to alter the sentence, if some special

features/mitigating circumstances existed which justified the same. Based on the mitigating circumstances/special features raised by the appellants and noted above and the no objection given 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 reduce the sentences of the appellants Muhammad Junaid S/o Angez Badshah (2) Abdul Razzaq S/o Karam Ali, and (3) Matlab Khan S/o Daftar Khan to one already undergone in custody and waive their fines. The appellants shall be released unless they are wanted in any other custody case.

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

*Shahzad Soontro*