

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-68 of 2023.

PRESENT

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Khadim Hussain Soomro,

Appellant : Raja alias Rajoo Mirzani Chandio, through
Mr. Nawabuddin Chandio, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandho,
Additional Prosecutor General.

Date of hearing : 07.11.2023.

Date of Judgment : 07.11.2023.

JUDGMENT.

Muhammad Saleem Jessar, J.- Through this criminal appeal, appellant Raja alias Rajoo son of Manthar alias Hassan Mirzani Chandio has challenged the judgment dated 11.09.2023, passed by learned Sessions Judge/ Special Judge (CNS), Kamber-Shahdadkot at Kamber, in Special Case No.68 of 2023 re-State v. Raja alias Rajoo, whereby the appellant having been found guilty of the charge was convicted for offence under Section 9(c), Control of Narcotic Substances Act, 1997 and sentenced to suffer rigorous imprisonment for 02 years and to pay fine of Rs.50,000/- (Rupees fifty thousand only), in case of default in payment of fine to undergo simple imprisonment for 01 month more, with benefit of Section 382-B, Cr.P.C.

2. Briefly, the facts of the prosecution case are that on 17.03.2023, SIP Khalid Nawaz Sandano of PS Warah, during patrolling apprehended the appellant/accused Raja alias Rajoo Mirzani Chandio at 0715 hours, near Thariri Sim Shakh on Warah-Nasirabad road and recovered from his possession charas weighing 2000 grams. After completing requisite formalities at the spot, the appellant and recovered charas were taken to police station, where FIR was registered.

3. The appellant pleaded 'not guilty' to the charge and claimed to be tried and the prosecution examined PW-1 complainant/p) Sif Khan, Nawaz Sandano, PW-2 mashir HC Ali Akbar, PW-3 PC Abdul Majed and PW-4 WASI Ayaz Ahmed Bhand. They produced the relevant documents. The trial Court, on the basis of evidence of these witnesses held the appellant guilty of the charge and sentenced him, as stated above.

4. Learned Counsel for the appellant, after arguing the appeal to some extent, contended that he would not press the appeal on merits if the sentence awarded to the appellant is reduced to the period which he has already undergone, further contending that the appellant is first offender and has no criminal record. He further submits that appellant, who is a young boy of 24 years of age, has repented over the alleged offence and will not repeat the same, hence he may be given a chance in his life to rehabilitate himself.

5. Learned Additional Prosecutor General raised no objection to the request made by learned Counsel for the appellant for reduction of the sentence, contending that the appellant has sufficiently been punished, as he has remained in jail for sufficient period.

6. According to the jail roll of appellant dated 03.11.2023 furnished by the Senior Superintendent, Central Prison & Correctional Facility, Larkana, the appellant is shown to have served 07 months and 20 days of sentence and has earned remissions for 01 year, 02 months and 05 days, thereby he has served total sentence of more than 01 year, 09 months and 25 days and the unexpired portion of his sentence is shown as 03 months and 05 days, including sentence of fine. The sentence which the appellant has served till date, appears to be adequate and sufficient. Moreover, the appellant, by committing the offence, apparently has not gained any monetary benefit. He is a young man of 24 years of age and is said to be alone breadwinner of his family.

7. In the case of *Niaz-ud-Din v. The State* (2007 SCMR 206), the Hon'ble Supreme Court was pleased to reduce the sentence of imprisonment for ten years awarded for possessing five kilograms of heroin to imprisonment for six years. It may be observed here that there is lot of difference between charas and heroin with reference to their injurious effect on health and monetary benefit to the persons trafficking in the business.

8. In our opinion, the appellant has sufficiently been punished and he is not shown to be involved in any other case of like nature. Therefore, in order to give a chance to the appellant in his life to rehabilitate himself so also following the dictum laid down in the cases of *Gul Naseeb v. The State* (2008 SCMR 670) and *Niaz-ud-Din v. The State* (2007 SCMR 206), instant appeal is dismissed as not pressed and the impugned judgment to the extent of conviction of the appellant is maintained; however, the sentence awarded to him by the trial Court vide impugned judgment dated 11.09.2023 is reduced to the imprisonment which he has already undergone in incarceration. The sentence of fine is also remitted in the circumstances. Appellant Raja alias Rajoo Mirzani Chandio shall be released forthwith, if he is not required to be detained in any other case.

9. With the above modification in the sentence, this appeal is disposed of.


JUDGE 7/11/2023

*Qazi Tahir PA/**