

IN THE HIGH COURT OF SINDH AT KARACHIPresent:Mr. Justice Mohammad Karim Khan AghaMr. Justice Khadim Hussain TunioCRIMINAL APPEAL NO.344 OF 2021

Appellant: Tariq son of Ghulam Muhammad through Mr. Maroof Hussain Hashmi, Advocate.

For State: Mr. Mohammad Iqbal Awan, Additional Prosecutor General, Sindh.

Date of hearing: 31.01.2022

Date of announcement: 07.02.2022

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Tariq son of Ghulam Muhammad has preferred this Criminal Appeal against the impugned judgment dated 21.05.2021 passed by the learned 1st Additional Sessions Judge, Malir, Karachi in Session Case No.114 of 2021, F.I.R. No.494 of 2020 u/s. 6/9-C, CNS Act 1997 of PS Quaidabad Karachi whereby the appellant has been convicted for offence under section 9-C CNS Act, 1997 and awarded sentence to suffer R.I. ten years (10) with fine of Rs.100,000/- (Rupees One Lac) and in default of payment he shall further undergo S.I. of 02 months. Benefit of Section 382-B was also extended to the appellant.

2. The brief facts of the prosecution case per FIR are that on 17.11.2020 at about 10.00 p.m. ASI Shakeeb Shah arrested present accused Tariq on the spy information from Star Ground Moula Madad Graveyard alongwith Chars which weighed 1620 Grams, hence the FIR was lodged u/s.6, 9(c) CNS Act, 1997.

3. After usual investigations a formal charge was framed against the accused to which he denied all the allegations leveled against him. He claimed to be an innocent and prayed for trial.

4. The prosecution to prove its case examined 03 PW's who exhibited various documents and other items in support of the prosecution case. There after the prosecution case was closed. The appellant recorded his statement under section 342 Cr.PC wherein he denied all the allegations.
5. Learned Judge of the trial court after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 21.05.2021, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant 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, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.
7. After reading out the evidence, learned counsel for the appellant, under the instructions of the appellant stated that he did not press this appeal on merit and that the appellant would accept his guilt provided that the sentence handed down to the appellant is reduced. In support of his contention he put forward numerous mitigating circumstances. When this proposal was put to learned APG, he had no objection to the reduction of sentence based on the mitigating factors raised by the appellant.
8. We have gone through the evidence and we find the evidence of the PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on spot red-handed with narcotics which led to a positive chemical report after being kept in safe custody, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.
9. In the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362] certain sentencing guidelines were laid down based on the type of narcotic and amount of the narcotic recovered. In this case 1620 grams of charas was recovered from the appellant which lead to him being sentenced to 10 years RI. We note that such sentence is not in conformity with the guidelines under which the appellant ought to have been sentenced to 4 years and 6 months RI with fine. Learned APG has confirmed that the correct sentence was 4 years and 6 months with fine and as such we initially reduce the appellant's sentence from 10 years RI and fine to 4 years and 6 months RI with fine. It was also pointed out that the sentencing guideline could be modified at the discretion of the court provided

that there were some special features which warranted such reduction in sentence.

10. In this case, we find numerous special features/mitigating factors raised by learned counsel for the appellant which can justify a reduction in sentence which are as follows:

- i) That the appellant is a first time offender.
- ii) That the appellant is a relatively young man and is capable of reformation.
- iii) That he is the sole breadwinner of his family, who relies on his income.
- iv) That the appellant has fully accepted his guilt and as such has shown genuine remorse.
- v) That the recovery from the appellant was relatively minor and that he would have fallen in an even lesser sentencing range but for the recovery of an extra few hundred grams of charas and in such circumstances would have served out more than half of his sentence.

11. As such based on the above mitigating factors/special features and keeping in view the no objection in reducing the appellant's sentence to time served by the learned APG we hereby uphold the conviction of the appellant but reduce his sentence to time already under gone in jail including his fine and as such the appellant such be released from jail unless he is wanted in any other custody case.

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