

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.512 of 2020

Date

Order with signature of Judge

For hearing of main case.

14.02.2022

Mr. Tariq Mehmood A. Khan, Advocate for the Appellant
Mr. Abrar Ahmed Khichi, Additional Prosecutor General Sindh

J U D G M E N T

Mohammad Karim Khan Agha J. The Appellant Muhammad Waseem s/o Muhammad Hussain was convicted by the court of 1st Additional Sessions Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS), Karachi Central in Special Case No.287 of 2020 in respect of FIR No.98/2020 under section 6, 7 (c) of CNS Act 1997 lodged at PS Nazimabad Karachi and vide impugned judgment dated 06.11.2020 was sentenced to suffer Rigorous Imprisonment for four years and six months and to pay fine of Rs.20,000/- and in default thereof he shall suffer simple imprisonment for five months more.

2. Brief facts of the case are that complainant SIP Muhammad Arshad of PS Nazimabad was on patrol and observed the accused in suspicious condition and apprehended him and on his search recovered charas weighing 1020 grams. The appellant was arrested and subsequently an FIR was registered against him.

3. After usual investigation the case was challaned and the appellant when charged pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four PWs and exhibited numerous documents and other items. The appellant in his section 342 statement claimed false implication. He did not gave evidence on oath or call any DWs in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the learned Trial Court vide the impugned judgment dated 06.11.2020 convicted and sentenced the appellant as mentioned earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. Facts of the case and the evidence have already been fully reproduced in the impugned judgment and as such there is no need to reproduce the same so as to avoid unnecessary repetition and duplication.

7. Whilst reading out of the evidence learned counsel for the appellant on the instructions of the appellant, who was present on bail did not press this appeal on merits and admitted his guilt provided that the sentence handed down to the appellant was reduced to time already undergone in custody based on numerous mitigating factors. In mitigation he stated that;

- (a) The appellant was a first time offender in respect of a Narcotics case;
- (b) That the appellant was of a young age and was capable of reformation;
- (c) That the appellant had to support his family who would suffer if the appellant would be returned to jail;
- (d) That by accepting his guilt the appellant had shown his genuine remorse.

8. Based on these mitigating factors learned A.P.G. had no objection to the appellant's sentence being reduced to that already undergone.

9. We have gone through the evidence and find that the prosecution has proved its case against the appellant beyond any reasonable doubt based on the fact that the appellant was arrested red-handed on the spot and recovery was made from him by the police officials who had no enmity with the appellant and whose evidence we find trustworthy and confidence inspiring and which we believe, that safe custody of the Narcotic substance which was recovered has been proven and that the chemical report is positive.

10. We have considered the mitigating factors raised by the appellant and also noted that on account of the recovery being 20 grams above 1000 the appellant was sentenced to four years and six months imprisonment and fine of Rs.20,000/- which sentence would have been only one year 11 months imprisonment but for this additional 20 grams and that also the appellant under these circumstances would have served out his sentence.

11. Taking these mitigating factors/special features into account as well as no objection given by the learned A.P.G. While exercising our discretion under Ghulam Murtaza's case (2009 PLD Lahore 362) on account of the special features mentioned above the appellant is sentenced to time already spent in jail and which shall also include his fine.

12. The appellant is present on bail, his bail bond stands cancelled and surety is discharged.

13. This appeal is disposed of in the above terms.

Amjad PA*