

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

CRIMINAL APPEAL NO.557 OF 2022

Appellant : Fahad Dad son of Allah Dad
through Mr. Tahir-ur-Rehman,
Advocate

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

Date of Hearing : 10.04.2023

Date of Judgment : 10.04.2023

J U D G M E N T

Muhammad Karim Khan Agha, J. Appellant Fahad Dad was tried in the Court of Ist Addl. Session Judge/Model Criminal Trial Court/Special Court (CNS) Karachi Central in Special Case No.1346 of 2022 in Crime No.244 of 2022 under Sections 6/9 (b) of CNS Act, 1997 registered at Police Nazimabad and vide Judgment dated 15.09.2022 was sentenced to R.I. for 06 years and 06 months and to pay fine of Rs.100,000/-. In default of payment of fine the appellant was to undergo for 15 days S.I. more. However he was also extended the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 18.05.2022 at about 430 hours policy party headed by SIP Muhammad Kashif of PS Nazimabad, Karachi has arrested accused Fahad Dad s/o Allah dad and recovered a piece of chars wrapped in yellow solution tape weighing 295 grams on digital scale and cash amount Rs.300, from KMC School, Kathiwari Mohalla, Nazimabad No.3, Karachi under memo and registered this FIR.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined (04) four PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. The facts and evidence of the case are set out in the impugned judgment and there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

7. At the very outset learned counsel for the appellant, under instructions, did not plead his case on merit and accepted his guilt provided that he was given some reasonable reduction in sentence based on the following mitigating circumstances.

- a) He was first time offender and was capable for reformation;
- b) He had a large family to support;
- c) By admitting his guilt he has shown genuine remorse; and
- d) The amount of recovery was only 295 grams charas which was a relatively minor amount.

8. Based on the mitigating circumstances learned APG had no objection to the reduction of sentence to the minimum sentence under the law.

9. We have gone through the evidence on record and find that the appellant was arrested by the police with 295 grams charas in his possession. The police party who were involved in the

arrest and recovery have given evidence which is corroborative of each other and no enmity has been suggested against them. As such we find the prosecution evidence to be trustworthy, reliable and confidence inspiring and believe the same. The prosecution has also proved safe custody and safe transmission of the narcotic which resulted in a positive chemical report as such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and maintain his conviction.

10. With regard to the sentencing we note that the appellant has been sentenced under the CNS Act as amended by Sindh Amendment Act, 2021 which provided for a sentence not less than three years imprisonment with fine not less than Rs.100,000/- (Rupees One Lac). We note that the appellant has been sentenced to imprisonment of six (06) years and (06) six months with fine of Rs.1,00,000/-.

11. Based on the mitigating circumstances mentioned above and no objection given by the learned Additional Prosecutor General Sindh to a reduction in sentence, the sentence of the appellant is reduced to the minimum under the law which is three (03) years ^{R.} _L and fine of Rs.1,00,000/- (Rupees One Lac) and in default thereof appellant shall suffer SI for 15 days more. Thereafter, the appellant shall be released unless he is wanted in any other custody case. Appellant is also extended the benefit of Section 382 Cr.P.C.

12. The instant Criminal Appeal is disposed in the above terms.