

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

CRIMINAL APPEAL NO. 675 OF 2021.

Appellant	Mian Dad son of Khair Muhammad. through Mr. Sajjad Ahmed Chandio, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Judgment	01.11.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Mian Dad son of Khair Muhammad was tried in the Special Court-II (CNS), Karachi in Special Case No.687 of 2017 in respect of FIR No.115 of 2017 u/s. 9-C of CNS Act, 1997 registered at PS Eidgah, Karachi and vide judgment dated 15.11.2021 appellant was convicted and sentenced to undergo R.I. for 12 years with fine of Rs.60,000/- and in case of default in payment of fine, he was ordered to suffer S.I. for 09 months more. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case are that on 25.05.2017 at about 1400 hours at Chishtia Chowk near Chishtia Masjid, Karachi the complainant SI Sajjad Ali of P.S Eidgah, Karachi along with other police officials apprehended the present accused and recovered 10 packets of Charas weighing 10 Kgs from his possession. After observing the formalities at the spot, the accused along with recovered contraband Charas brought at P.S where FIR was lodged against ^{him} him. Investigation was started by SI Arab Hussain, who filed the charge sheet against the accused.

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

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4. The prosecution in order to prove its case examined 04 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations leveled against him. However, the appellant did not give evidence on oath nor produce any DW in support of his defence.
5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal 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 dated 15.11.2021 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 appellant under instructions of the appellant stated that the appellant would not argue this case on merits and would accept his guilt provided that he is given a reduction in sentence: to some reasonable extent based on the following mitigating circumstances:-
 - a) That the appellant is first time offender and is capable for reformation.
 - b) That the appellant is a young man and had a family to support.
 - c) That the appellant, by not contesting the case on merits has shown genuine remorse.
 - d) That the appellant has served out almost ^{entire} his sentence, as per jail record.
8. Keeping in view of the above mitigating factors mentioned by the appellant, learned Additional Prosecutor General had no objection to the reduction in sentence to some reasonable extent.
9. We have gone through the evidence on record and note that the appellant was arrested on the spot by the police on 25.05.2017 and from his possession 10 Kgs of Charas was recovered.

10. The Police witnesses who arrested the appellant had no enmity with him and had no reason to falsely implicate the appellant in this case and the evidence is on the same lines and as such we find their evidence trustworthy and confidence inspiring and believe the same. The narcotics which was recovered from the appellant, produced a positive result when it was sent to the chemical examiner as such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and maintain his conviction.

11. With regard to sentencing based on the mitigating factors mentioned by the appellant earlier in this judgment and in particular no objection given by the learned Addl. Prosecutor General and the fact that the appellant has almost served out his sentence, we hereby reduce the sentences of the appellant to the time he has already undergone in jail and also waive off his fine. The appellant shall be released unless he is wanted in any other custody case.

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