

WS

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-30 of 2023.

PRESENT

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Jawad Akbar Sarwana,

Appellant : Siraj Ahmed Lolai Buledi, through Mr. Muhammad Ali A. Pirzado, Advocate.

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

Date of hearing : 02.04.2024.

Date of Judgment : 02.04.2024.

J U D G M E N T.

Muhammad Saleem Jessar, J.- Through this criminal appeal, appellant Siraj Ahmed son of Qamaruddin, by caste Lolai Buledi, has challenged the judgment dated 03.05.2023, passed by learned 1st Additional Sessions Judge/MCTC/ Special Judge for CNS, Kamber, in Special Case No.143 of 2022 re-State v. Siraj Buledi, 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 14 years and to pay fine of Rs.400,000/- (Rupees four hundred thousand only), in case of default in payment of fine to undergo simple imprisonment for 01 year more, with benefit of Section 382-B, Cr.P.C.

2. Briefly, the facts of the prosecution case are that on 29.07.2022, SIP Zahid Hussain Memon of PS Nasirabad, during patrolling apprehended the appellant/accused Siraj Lolai Buledi at 1800 hours from beside Abra House located at Nasirabad-Wagan Road and recovered from his possession charas weighing 5000 grams. After completing requisite formalities at the spot,

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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/IO SIP Zahid Hussain Memon, PW-2 mashir PC Barkat Ali, PW-3 dispatch rider PC Muhammad Saleem and PW-4 WHC Zamir Hussain Gopang. 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 during the course of his arguments contended that the appellant was booked in this case on 29.07.2022 i.e. prior to the promulgation of the Amended Control of Narcotic Substances Act (Act. No.MM of 2022); however, the trial Court has convicted him under the new amended law, which is the conflict of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that there is difference between the quantity of the contraband sent to the Laboratory for analysis, as, according to the memo of recovery, out of 5000 grams, 2000 grams charas was segregated as sample and per report of the laboratory the gross weight of the contraband was 1770 grams, whereas net weight was 1750 grams; besides, there is difference in between the number of slabs of contraband. He also contended that there are many discrepancies and contradictions in the evidence of the prosecution witnesses and no description of the contraband has been given. He, therefore, submitted that by taking such discrepancies in the prosecution case as mitigating circumstances, if the sentence awarded to the appellant is reduced to the period which he has already undergone, he would not press instant appeal on merits, further contending that the appellant is first offender and has no past criminal record. He further submits that appellant, who is a young boy of 23/24

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. The above contentions raised by learned Counsel for the appellant are borne out from the record, as the offence is shown to be of 29.07.2022 i.e. prior to the promulgation of the Amended Control of Narcotic Substances Act (Act. No.MM of 2022), whereas, the learned trial Court has awarded conviction to the appellant under the new law, which is in conflict with Article 12 of the Constitution of Islamic Republic of Pakistan, 1973. Per prosecution case, 2000 grams charas, out of the total 5000 grams, was sealed as sample and sent for analysis; however, per report of the laboratory the gross weight of the contraband was found 1770 grams and its net weight was 1750 grams. There is also difference in between the number of slabs of contraband. The sentence which the appellant has served till date, appears to be adequate and sufficient. The appellant, by committing the offence, apparently has not gained any monetary benefit. He is a young man of 23/24 years and is not shown involved in any other case of like nature.

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 03.05.2023 is reduced to the imprisonment which he has already undergone in incarceration. The sentence of fine is also remitted in the circumstances. Appellant Siraj son of Qamaruddin Lolai Buledi 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


JUDGE

Qazi Tahir PA/*