

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

Criminal Appeal No.D-180 of 2019.

Present:-

Mr. Justice Muhammad IqbalKalhoro.

Mr. Justice Khadim Hussain Tunio.

Date of hearing: 02.04.2020.

Date of decision: 02.04.2020

Appellant: Through Mr. Imtiaz Ali Abbasi, advocate.

The State: Through Mr. ShahzadSaleemNahiyoon, D.P.G.

**JUDGMENT**

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MUHAMMAD IQBALKALHORO, J:-Appellant Bismillahwas arrested along with co-accused Ali Ahmed when they were travelling in a 2D corolla caron 29.06.2018 at about 1600 hours by SIP Laiq Muhammad Zardari of P.S. Manglialong with his staff on a tipoffand from each of them2100 grams of Charas each was recovered. Such memo was prepared on spot and consequently the appellant and co-accused were booked in the present case.

2. During the trial, prosecution examined complainant SIP Laiq Muhammad Zardari, MashirH.C. IlyasGul and I.O. of the case namely Inspector Muhammad JavedKamali who produced all the relevant documents including report of the chemical examiner. The trial Court after recording the statement of appellant under section 342 Cr.P.C. has decided the case vide impugned judgment dated 28.09.2019,whereby the case against co-accused Ali Ahmed who during the trial absconded and was declared proclaimed offender has been kept on dormant file, whereas, the appellant has been convicted and sentenced to undergo R.I. for five (05) years and six (06) months and to pay fine of Rs.25,000/- and in case of default thereof to further undergoS.I. for five (05) months with benefitcontemplated under section 382-B Cr.P.C duly extended to him.Hence, this appeal.

3. Learned counsel for the appellant after arguing the appeal on merits at some length submits that appellant is first offender and is 48 years of age, therefore, if the period of sentence already undergone by him is treated as sentence, he will not press the appeal on merits.

4. Learned Deputy Prosecutor General has recorded his no objection to this proposal.

5. We have considered submissions of parties and perused the material available on record. The prosecution witnesses have supported the case against the appellant on all salient features viz-a-viz his arrest at the spot, recovery of alleged Charas from him, etc. The chemical report is also in positive and it shows that property was received by the Chemical Examiner in a sealed condition which establishes its safe transmission. However, it is an admitted fact that the appellant is the first offender and no case of like nature or otherwise has ever been registered against him. The appellant has remained in jail for 10 months 02 days and has earned remission of 04 months and 12 days. We are of the view that the punishment appellant has already undergone is sufficient for a first offender like appellant particularly when learned defence counsel has disclosed that the appellant is remorseful of his past and wants to improve himself. Considering these facts as well as no objection extended by the learned Deputy Prosecutor General, we see no impediment legal or otherwise to accede to the request of learned defence counsel for reduction of sentence.

6. Accordingly, this criminal appeal is dismissed on merits, however, sentence of the appellant is reduced to the period already undergone by him which shall include the period which the appellant is required to undergo in case of default of fine. Therefore, the appellant shall be released forthwith if not required in any other custody case.

7. The appeal is disposed of in the terms as stated above.

JUDGE

JUDGE