

Narcotics - Conviction upheld

Sentence not in line with Guidelines

Mutagen Guidelines have reduced

04

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No.499 of 2021

1. For hearing of main case.
2. For hearing of M.A. No.9752 of 2021
3. For hearing of M.A. No.9753 of 2021

10.01.2022

Mr. Zulfiqar Ali Shaikh, Advocate for the Appellant

Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh

J U D G M E N T

Mohammad Karim Khan Agha J. The Appellant Jahangir Khan s/o Nisar Khan was convicted in the Model Criminal Trial Court/1st Additional District & Sessions Judge Malir, Karachi, in Sessions Case No.1574/2021 in respect of FIR No.192/2021, PS Quaidabad under section 6/9-C, CNS Act 1997, vide judgment dated 01.09.2021, and was sentenced to suffer Rigorous Imprisonment for ten years and fine of Rs.5,00,000/- (Rupees Five Lacs) and in case of failure to pay the fine the accused shall undergo six months simple imprisonment in addition to the main sentence. The benefit of section 382 (b) Cr.P.C. was also extended to the accused.

2. Being aggrieved and dis-satisfied by the aforesaid impugned judgment the appellant has filed this appeal against his conviction and sentence.

3. The brief facts of the case are that on 15.04.2021 Rana Shah Muhammad of PS Quaidabad was on patrol when he received spy information that one person was available near Afridi Coach Adda near Moula Madad Graveyard Landhi Karachi and was selling Charas. SIP Shah Muhammad based on the aforesaid spy information proceeded to the relevant place where the spy pointed out the person who was selling drugs at 0555 hours. The police apprehended the suspect whose name was Jahangir Khan and on his search recovered 1600 grams of Charas. The Appellant Jahangir Khan was arrested and FIR was lodged against him under section 6/9-C, CNS Act 1997.

4. After usual investigation the matter was challaned and sent up for trial. At trial the appellant pleaded not guilty to the charge and claimed his innocence.

7

5. In order to prove its case, the prosecution examined three PWs and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement claimed false implication. He did not examine himself on Oath or call any witness in support of his defence case.

6. After appreciating the evidence of record the learned trial judge convicted and sentenced the appellant as set out earlier in the judgment.

7. Learned counsel for the appellant has argued that the appellant is innocent and has been falsely implicated in this case; that there are major contradictions in the evidence of the prosecution witnesses; that no independent mashir was associated in the recovery of the narcotics and that no safe custody of the narcotics has been proven and as such for any of the above reasons he should be acquitted of the charge by being extended the benefit of doubt.

8. On the other hand, learned Additional Prosecutor General Sindh has fully supported the impugned judgment.

9. We have heard the parties and considered the record.

10. We find that the prosecution has proved its case against the appellant beyond reasonable doubt for the following reasons;

(a) That the appellant was arrested red-handed on the spot by the police where narcotics were recovered from him. The appellant has suggested no enmity against any police official and it is well settled by now that in such circumstances the evidence of the police PWs can be safely relied upon and we hereby rely upon the same.

(b) That there are no material contradictions in the evidence of the Police PWs which evidence shows an un-broken corroborated chain of events from the arrest of the appellant on spy information and recovery of narcotics from the appellant on the spot to the safe custody of the narcotics to a positive chemical report.

(c) That with regard to the safe custody of the narcotics we have noted that the narcotics were immediately taken into possession, sealed and were placed in the malkhana for which an entry has been exhibited and on the very next day the narcotics were taken by the I.O. to the Chemical Lab in sealed condition which produced a positive chemical report which followed the relevant protocols and as such we find that safe custody of the narcotics has been fully

proven especially keeping in view the fact that no allegation was ever made that the narcotics were tampered with.

(d) With regard to the fact that there was no independent mashir this is not a requirement under the Control of Narcotics Substances Act 1997. Even otherwise it has come in evidence that the arrest and recovery was made in the early hours of the morning near a graveyard where nobody was present.

(e) In his Section 342 Cr.P.C. statement the appellant admitted that the mobile phone which was recovered from him at the time of his arrest belonged to him and he wanted the return of the same which shows that the appellant was arrested on the spot and that the recovery was not foisted upon him.

11. With regard to sentence, we note that the appellant has been sentenced as mentioned earlier in this judgment. We find however that this sentence is not in accordance with the sentencing guidelines as laid down in the case of **Ghulam Murtaza vs. The state** (2009 PLD Lahore 362), whereby on the basis of the recovery from the appellant (1600 grams Charas) he ought to have been sentenced to four years and six months Rigorous Imprisonment along with fine of Rs.20,000/- and in default of fine undergo further sentence of five months. We also note that there are no aggravating circumstances which might justify the sentence of four years and six months being increased to that which was handed down to the appellant.

12. Under these circumstances the conviction of the appellant is upheld and his appeal is dismissed, however, the appellant's sentence is reduced to four years and six months Rigorous Imprisonment with fine of Rs.20,000/- and he shall further undergo period of five months imprisonment in default of payment of fine. The appellant shall have the benefit of section 382 (b) Cr.P.C. and any other remission available to him under the law.

This appeal is disposed of in the above terms.