

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

CRIMINAL APPEAL NO.586 OF 2020

Appellant	Muhammad Waseem S/o Muhammad Saleem Through Mr. Muhammad Jameel, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

CRIMINAL JAIL APPEAL NO.632 OF 2021

Appellant	Muhammad Mohsin S/o Muhammad Siddiq Through Syed Lal Hussain Shah, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Judgment	15.04.2022

JUDGMENT

Mohammad Karim Khan Agha: Appellants Mohammad Waseem and Muhammad Mohsin were convicted in the Court of Session Judge, Karachi West in Sessions Case No.357 of 2020 in Crime No.192 of 2020 under Sections 6/9 (c) of CNS Act, 1997 registered at Police Station Pakistan Bazar, Karachi vide Judgment dated 04.12.2020 and appellant Muhammad Mohsin was sentenced to 04 years and 06 months R.I. and to pay fine of Rs.20,000/- and in default of payment, the appellant Muhammad Mohsin was to undergo a further period of 05 months S.I. Appellant Muhammad Waseem was sentenced to 05 years and 06 months R.I. and to pay fine of Rs.25000/- and in default of payment of fine he shall suffer S.I. for 05 months and 15 days more. However, both the appellants were also given the benefit of Section 382-B Cr.P.C.

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2. The brief facts of the case are that on 30.06.2020 at 2130 hours during the course of patrolling SIP Muhammad Afzal of PS Pakistan Bazar, Karachi had arrested both the appellants from the road adjacent to Al-Hadeed Lawn near H-1 Bus Stop, Sector No.16, Orangi Town, Karachi and recovered 1450 and 2000 grams of Charas from their possession respectively. Hence they were arrested and booked in the aforesaid FIR.

3. After usual investigation the matter was challaned and both the appellants were sent up to face trial. They pleaded not guilty to the charge and claimed trial.

4. In order to prove its case, the prosecution examined 03 PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were innocent and falsely implicated in this case. They did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced both the appellants as set out earlier and hence, the appellants have filed these appeals against their conviction.

6. The facts and evidence produced before the trial court have been mentioned in detail in the impugned judgment and as such there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

7. Whilst learned counsel for the appellants was reading out the evidence, learned counsel for each of the appellants, under instructions stated that they would not press this case on merit and accept their guilt provided that they were given a reduction in their sentences based on various special features/mitigating circumstances. When this proposal was put to learned APG, he had no objection to a reasonable reduction of sentence keeping in view the mitigating circumstances / special features raised by the learned counsel for the appellants.

8. We have gone through the evidence and found the evidence of three PWs to be reliable, trustworthy and confidence inspiring who arrested the appellants Muhammad Waseem and Muhammad Mohsin on the spot red-handed and recovered from their possession 1450 and 2000 grams of charas respectively which led to a positive chemical report after being kept in safe custody, as such, we find that the prosecution has proved its case against the appellants beyond a reasonable doubt and their convictions are maintained.

9. In this case as raised by learned counsel for the appellants, we find numerous special features/mitigating circumstances factors which can justify a reduction in sentence which are as follows:

- i) That the appellants are first time offenders.
- ii) That the appellants are relatively young men and are capable of reformation.
- iii) That they are the sole breadwinners of their families, who rely on their income.
- iv) That the appellants have shown genuine remorse by accepting their guilt.
- v) That the appellants have already undergone a considerable part of their sentences.

10. According to the learned Additional Prosecutor General Sindh both the appellants have been handed down lawful sentences in accordance with the sentencing guidelines laid down in the case of Ghulam Murtaza & others vs. The State [PLD 2009 Lahore 362]. However, in the case of Ghulam Murtaza supra, it was observed that the sentencing guidelines could be modified at the discretion of the Court provided that there were some special features which warranted such reduction in sentence.

11. Based on the special features/mitigating factors mentioned above and the no objection of learned APG we hereby reduce the sentences of both the appellants to that of already undergone which shall also include their respective fines. Thereafter, the appellants shall be released unless they are wanted in any other custody case.

12. As such both criminal appeals are dismissed except as modified in terms of sentencing as mentioned above.