

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.199 of 2020

Appellant : Jamil @ Jhelo S/o Azeem Moosa
 Through Mr. Nazakat Ali Mirani,
 Advocate

Respondent : The State through Mr. Muhammad
 Iqbal Awan, Additional Prosecutor
 General, Sindh.

Date of Hearing : 09.05.2022

Date of Order : 09.05.2022

J U D G M E N T

The Appellant Jamil @ Jhelo was tried in the 1st Additional Sessions Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS), Karachi Central in Special Case No.31/2020 in respect of FIR No.299/2019 registered under Sections 6, 9(c) of CNS Act, 1997 at PS Hyderi Market and vide judgment dated 21.02.2020, he was convicted of the aforesaid offences and sentenced to RI for four years and six months and to pay fine of Rs.20,000/- and in default thereof, he shall undergo SI for six months more. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case are that complainant ASI Muhammad Safdar of PS Hyderi Market, Karachi has arrested accused Jameel on 11.12.2019 in between 1110 to 1145 hours at under memo from inside street Babar Dairy Farm, Kausar Niazi Colony, Block H, North Nazimabad, Karachi and recovered white colour shopping bag wherein 26 Purries Chars and pieces of Charas in yellow colour shopper total weighing about 1120grams and cash amount Rs.690/- only and lodged the instant FIR.,

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty of the offence and claimed trial.
4. In order to prove its case, the prosecution examined three PWs and exhibited numerous items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. However, he did not give evidence on oath or call any witness in support of his defence case.
5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.
6. The facts of the case and evidence produced before the trial Court have been set out in the impugned judgment and as such there is no need to reproduce the same so as to avoid any unnecessary repetition and duplication.
7. After arguing the case at length, learned counsel for the appellant, under instructions of the appellant, who is present in Court on bail, stated that he would not press this appeal on merit and would be satisfied if he is given a reduction in sentence to some reasonable extent based on various special features/mitigating circumstances. In respect of some special features/mitigating circumstances, learned counsel stated;
 - a) That the appellant is a young man and is capable of reformation.
 - b) That the appellant has a large family to support, who is relying on his income and are suffering due to his continuous confinement.
 - c) That the appellant is a first time offender.
 - d) That since the appellant had accepted his guilt he has shown genuine remorse.

As such, he is entitled to reasonable reduction in the sentence.

8. When confronted with special features/mitigating circumstances, learned Addl. P.G. had no objection to the sentence of the appellant being reduced to some reasonable extent.

9. We have gone through the record and found that the appellant was arrested on the spot and caught red-handed by police official who recovered 1120 grams charras from his possession. The arresting police official and mashir had no enmity or ill-will in order to implicate the appellant in a false case and as such, we find their evidence to be reliable, trustworthy and confidence inspiring and believe the same. We also find that the prosecution has proved safe custody of the narcotic from the time it was recovered from the appellant until the time it was sent to chemical laboratory for chemical test which produced a positive chemical report. As such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and maintain the conviction of the appellant.

10. We note that the sentence handed down to the appellant is fully in conformity with the guidelines laid down in the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362]; however, we also note that but for the extra for 107 grams charras recovered from the appellant, appropriate sentence as per guideline laid down in the **Ghulam Murtaza** (Supra) would have been one year and nine months alongwith fine of Rs.13,000/- and in default thereof, further SI for four months and 15 days. Keeping in view this fact and the special features/mitigating circumstances put forward by learned counsel for the appellant and no objection certificate by learned Addl. P.G., we hereby maintain the conviction of the appellant but reduce his sentence to one year and nine months alongwith fine of Rs.13,000/- and in default thereof to suffer SI for four

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months and 15 days more. The appellant present on bail shall be taken into custody to serve out remainder of his sentence as modified by this judgment. However, he shall have benefit of Section 382-B Cr.P.C. and any other remissions applicable to him under the law.

11. The appeal is disposed of in the above terms.

Kamran-