

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.130 of 2021.

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi*

Appellant	Zahid S/o Taj Muhammad through Mr. Mousa Bux Bhutto, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing	10.10.2022
Date of Order	10.10.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Zahid S/o Taj Muhammad was tried in the Court of IV-Additional Sessions Judge Model Criminal Trial Court - Extension, Karachi (South) in Special Case No.2150/2020 under FIR No.270/2020 U/s 6/9-C CNS Act, 1997 at PS Baghdadi, Karachi and vide judgment dated 20.02.2020 he was convicted of the said offence and sentenced to suffer R.L. for 07 years with direction to pay fine of Rs.100,000/- and in case of default, he shall serve S.L. for 03 months more. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that on 16.09.2020 SIP Zareen Khan of PS Baghdadi alongwith subordinate staff left the PS in Police Mobile-III bearing registration number SPL 185 for patrolling in the area and when they reached at Ahmed Shah Bukhari Road near UC Office, Baghdadi Lyari, at about 1730 hours, saw a suspected man walking through the corner of the road and apprehended him, who on inquiry disclosed his name as Zahid S/o Taj Muhammad. It is alleged in the FIR that due to non-cooperation of the private persons,

SIP Zareen Khan deputed mashirs from his own staff PC Shakeel Ahmed and PC Mir Muhammad and recovered one blue colour plastic shopper from his hand which contained a packet of heroin and cash amount of Rs.800/-. It is further alleged in the FIR that SIP Zareen Khan had weighed the recovered heroin via digital weighing scale which became 1165 grams, which he sealed at spot and arrested the accused and prepared such memo of arrest and recovery with the signatures of above named mashirs. Hence, the instant FIR was registered.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 20.02.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the case on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating factors:-

- i) That the appellant was a young man with a large family to support.
- ii) That the appellant was a first time offender and was capable of reformation.
- iii) That the appellant had admitted his guilt and shown genuine remorse.

- iv) That the appellant had served out a major portion of his sentence.

8. When confronted these special features/mitigating circumstances, learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the appellant was arrested on the spot and recovered 1165 grams heroin from his possession by the police party, who had no enmity with the appellant for falsely implicating him in this case, as such, we find their evidence to be reliable, trustworthy and confidence inspiring. Further, the safe custody of the recovered narcotic has also been proved which led to a positive chemical report, as such, the prosecution has proved its case against the appellant beyond any reasonable doubt.

10. With regard to sentencing taking into account the special features/mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a large part of his sentence, we hereby maintain the conviction of the appellant; however, reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

11. The instant appeal stands disposed of in the above terms.