

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Criminal Appeal No.300 of 2021

Appellant : Abdul Ghaffar @ Iqbal S/o. Allah
Dino Through Mr. Tahir-ur-Rehman,
Advocate.

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

Date of Hearing : 19.08.2022.
Date of Order : 19.08.2022.

J U D G M E N T

Mohammad Karim Khan Agha-J. The Appellant Abdul Ghaffar @ Iqbal S/o. Allah Dino was tried in the Court of Additional Sessions Judge-VII/M.C.T.C-02, Karachi, in Special Case No.568 of 2020, in respect of FIR No.426 of 2020, PS N.K.I.A. Karachi under section 6/9-C of CNS Act, 1997 and vide Judgment dated 28.04.2021 the appellant was convicted and sentenced as under:-

"Accused Abdul Ghaffar @ Iqbal S/o. Allah Dino was sentenced under section 9(c) of CNS Act, 1997 to suffer R.I. for 06 years with direction to pay fine of Rs.30,000/- (Rupees Thirty Thousand only). Benefit of section 382-B Cr.P.C. was also extended to the accused".

2. The brief facts of the prosecution case as narrated in the FIR are that on 16.08.2020 at about 2215 hours accused Abdul Ghaffar @ Iqbal S/o. Allah Dino was arrested from inside double PMT Street, Khamisa Goth, Sector 5/F, New Karachi by police party led by complainant ASI Mazhar Hussain and recovered 1050 grams Heroin from his possession with selling amount of Rs.6030/- in presence of police mashirs. Thereafter, FIR of this case was lodged accordingly.

3. After usual investigation the matter the challan was submitted and the appellant was sent up to face the trial. He claimed trial and pleaded not guilty to the charge.

4. In order to prove its case, the prosecution examined three PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. and denied all the allegations against him. He did not give evidence on oath or call any DWs in support of his defence.

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 as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 28.04.2021 passed by the trial court and, as such there is no need to reproduce the same in order to avoid duplication and unnecessary repetition.

7. At the very outset learned counsel for the appellant under instructions of the appellant did not press the case on merits and stated that he would be satisfied with a reduction in sentence to some reasonable extent based on the following mitigating circumstances:-

- i) That the appellant is a first time offender and has not been convicted in any narcotics case before, therefore, is capable of reformation.
- ii) That the appellant has a large family to support of which he is the sole bread winner.
- iii) That by accepting his guilt the appellant has shown genuine remorse.

8. Learned Additional Prosecutor General based on the following mitigating circumstances has no objection to some reasonable reduction in sentence.

9. After reassessment of the evidence we find that the appellant was caught red handed at the spot by the police who recovered 1050 grams heroin from him and no enmity has been raised against any of the police officers whose evidence we find to be reliable, trustworthy and confidence inspiring who arrested the appellant red-handed on spot with narcotics which led to a positive chemical report, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

10. With regard to the sentence, we note that the appellant has been handed down a sentence in accordance with the sentencing guidelines laid down in the case of Ghulam Murtaza & others vs. the State [PLD 2009 Lahore 362]. However, we note that the sentence of 06 years imposed on the appellant is in accordance with the guidelines on account of the recovery being only 014 grams over the guidelines. This is a very minor amount and if the appellant's case would have fallen into the next ^{lower} fresh hold for sentencing, he would have been sentenced according to the guidelines of Ghulam Murtaza case (supra) for 01 year and 10 months, which period the appellant has already served out.

11. According to the case of Ghulam Murtaza (supra), this Court has the discretion to reduce the sentence provided in the guidelines provided that special features/mitigating circumstances are in existence. Based on the mitigating circumstances/special features mentioned earlier in this order and the no objection by the learned Additional Prosecutor General and considering the fact that the amount of recovery was only slightly above the guidelines for sentencing of 06 years, we hereby reduce the sentence of the appellant to 01 year and 09 months and waive any applicable fine.

12. The instant Criminal Appeal is disposed of in the above terms.

Muhammad Arif