

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Arshad Hussain Khan.

CRIMINAL APPEAL NO.308 OF 2022.

Appellant	Muhammad Razzaq s/o. Muhammad Lal Bux through Mr. Khalid Hussain, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

CRIMINAL APPEAL NO.319 OF 2022.

Appellant	Muhammad Zahid s/o. Shafi Muhammad through Mr. Khalid Hussain, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

Date of Judgment.	19.12.2022
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JUDGMENT

Mohammad Karim Khan Agha, J:- Appellants Muhammad Razzaq and Muhammad Zahid were tried in the Court of Ist Additional District & Sessions Judge (Model Criminal Trial Court) Malir, Karachi in Sessions Case No.209/2022 arising out of Crime No.529/2021 u/s. 6/9-C of CNS Act, 1997 registered at P.S. Sharafi Goth, Karachi and vide impugned judgment dated 28.04.2022 convicted under section 9(c) of the Control of Narcotics Substances Act, 1997 and were sentenced to undergo R.I. for Ten (10) years along with fine of Rs.5,00,000/- each. In case of default in payment of fine, they were both ordered to suffer S.I. for five (05) months more. However, the benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. Brief facts of the prosecution case are that on 02.11.2021 at about 03:00 p.m. inside Street Sharafi Goth near Wall of Football ground Lanhdi Karachi a police party headed by SIP Umer Hayat of PS Sharafi Goth apprehended the accused Muhammad Zahid and recovered 1550 grams Charas while from accused Muhammad Razzak recovered 1230 grams of Charas, hence the FIR was lodged against them.

3. After usual investigation, the matter was challaned and the appellants were sent up to face their trial where they pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused persons were recorded under Section 342 Cr.P.C in which they claimed false implication however, neither they gave evidence on oath nor called any DW in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellants as set out earlier in this judgment; hence, the appellants have filed these appeals against their convictions. The facts and evidence are elaborately discussed by the trial court in the impugned judgment and there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

6. At the very outset, learned counsel for the appellants under instructions stated that the appellants did not contest their case on merits and accepted their guilt and only sought reduction in their sentence based on the following mitigating circumstances:-

- a) That both the appellants were first time offender and were capable for reformation.
- b) That both the appellants had a large family to support;
- c) That by accepting their guilt they have shown genuine remorse and saved the time of this Court;
- d) That the appellants have served out a major portion of their sentences.

7. Based on the aforesaid mitigating circumstances mentioned by the appellants learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

8. We have gone through the evidence on record and find that on 02.11.2021 at about 03:00 p.m. inside Street Sharafi Goth near Wall of Football ground Lanhdi Karachi the appellants were arrested on the spot by the police officials and 1550 gram charas and 1230 grams Charas was recovered from the possession of each of the appellants and the police officials had no enmity or ill will with the appellants and had no reason to implicate them in a false case and as such we believe their evidence which we find to be reliable, trustworthy and confidence inspiring. Narcotic recovered from the appellants sent for chemical analysis which produced a positive chemical report and as such we find that the prosecution has proved its case against the appellants beyond a reasonable doubt and uphold their convictions.

9. With regard to sentence we have been informed that although the trial Court handed down a sentence of 10 years each this was not the proper sentence according to the guideline provided in the case of **Ghulam Murtaza** (PLD 2009 364). Appellants ought to have been sentenced for 04 years and 06 months with fine of Rs.25000/- and in default thereof to undergo SI for further 05 months.

10. Thus keeping in view the fact that the appellants were awarded an incorrect excessive sentence in the first place; the mitigating circumstances raised by the appellants and no objection by the learned Additional Prosecutor General Sindh and in particular the fact that the appellants have served a major portion of their sentences, we hereby reduce the sentences of the appellants to the time they have already undergone in Jail and waive off any fine and as such the appellants shall be released unless they are wanted in any other custody case.

11. The appeals stand disposed of in the above terms.