

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Omar Sial.*

CRIMINAL APPEAL NO.225 OF 2022.

Appellant	Mrs. Shamo W/o Waliya through M/s. Waqar Hussain Khoso and Mehmood Farooq Channa, Advocates.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Date of hearing	27.09.2022
Date of Judgment	27.09.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Shamo W/o. Waliya was tried in the Court of Additional Sessions Judge-VII/M.C.T.C-02, Karachi Central in Special Case No.549 of 2021 U/s. 6/9-C of CNS Act, 1997 registered at P.S. Liaquatabad, Karachi and vide judgment dated 10.03.2022 she was convicted and sentenced to suffer R.I. for 04 years and 06 months with direction to pay fine of Rs.20,000/-. In case of default in payment of fine, she was ordered to suffer S.I. for 05 months more. However, the benefit of section 382-B Cr.P.C. was given to the appellant/accused.

2. The brief facts of the prosecution case as narrated in the FIR are that on 05.06.2021 at about 1845 hours accused Shamo W/o. Waliya D/o. Dhaniya was arrested during patrolling of the area on spy information from Bank of Naddi, Opposite Karachi Complex, Liaquatabad Karachi by police party led by complainant SIP/Additional SHO Tahir Shaikh and recovered 1570 grams Charas (02 big pieces of Charas) with selling amount of Rs.2850/- from her possession in presence of police mashirs. Thereafter, FIR of this case was lodged accordingly.

3. After usual investigation, the case was challaned and the appellant pleaded not guilty to the charge and claimed trial.

4. In order to prove its case the prosecution examined 04 Prosecution Witnesses and exhibited numerous documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which she denied the allegations leveled against her. However, the appellant did not give evidence on oath nor produce any DWs in support of her defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced her as set out earlier in this judgment; hence, the appellant has filed this appeal against her 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 10.03.2022 passed by the trial court 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 of the appellant stated that he did not press the appeal on merits provided that the appellant was given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) That the appellant had a large and young family to support.
- b) That the appellant has not been convicted in any other narcotics case.
- c) That by accepting her guilt the appellant has shown genuine remorse.
- d) That the appellant had served out a major portion of her sentence.

8. Based on these mitigating factors mentioned by the appellant, learned Additional Prosecutor General had no

objection to the reduction in sentence of the appellant to some reasonable extent.

9. We have gone through the evidence on record and note that the appellant was arrested on the spot and caught red handed in possession of 1570 grams charas which when sent for chemical report produced a positive result.

10. The Police witnesses who arrested the appellant had no enmity or ill-will against the appellant and had no reason to falsely implicate her in this case and as such we find their evidence trustworthy and confidence inspiring and believe the same and find that the prosecution has proved the safe custody of the narcotics which produced a positive report after chemical examination as such the prosecution has proved its case against the appellant beyond any shadow of doubt and we hereby maintain her conviction.

11. With regard to sentence awarded to the appellant, it is noted that the appellant has been sentenced in accordance with the guidelines laid down in the case of Ghulam Murtaza (PLD 2009 Lahore 362). However, in Ghulam Murtaza case (supra), this Court was given the discretion to alter the sentence, if some special features/mitigating circumstances existed which justifies the same. Based on the mitigating circumstances/special features raised by the appellant and noted above and the no objection given by the learned Additional Prosecutor General and in particular the fact that the appellant has served out a major portion of her sentence, we hereby reduce the sentence of the appellant Shamo W/o. Waliya to that already undergone in custody and waive her fine. The appellant shall be released unless wanted in any other custody case.

12. The appeal stands disposed of in the above terms.

JUDGE

JUDGE