

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

CRIMINAL APPEAL NO.552 OF 2021

Appellant : Aijaz Ali son of Ashique Ali Lashari
Through Mr. Zulfiqar Ali, Advocate

Respondent : The State through Mr. Muhammad
Iqbal Awan, Addl. P.G.

Date of Order : 18.02.2022

J U D G M E N T

Mohammad Karim Khan Agha, J.- The Appellant Aijaz Ali was convicted in the Model Criminal Trial Court / 1st Additional District & Sessions Judge Malir, Karachi in Session Case No.1142/2021 in connection with FIR No.117 of 2021 of PS Bin Qasim under Section 6/9-C CNS, Act 1997 and was sentenced by impugned judgment dated 08.10.2021 to undergo R.I. for 10 years and fine of Rs.5,00,000/- (Rupees Five Lac), in case of failure to pay the fine the accused shall undergo 06 months S.I. in addition to his main sentence. Benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. The brief facts of the case as narrated in the FIR are that on 23.03.2021 at about 11:00 p.m. at Pipri Naseerabad Road near Graveyard Bain Qasim Malir, Karachi a police party headed by S.I. Habibullah Shahani of PS Bin Qasim apprehended the accused namely Aijaz Ali and from his possession the police recovered charas weighing 2040 grams. Accused was arrested on the spot hence the aforesaid FIR was registered against him.

3. After usual investigation the case was challaned before the concerned trial Court where the appellant pleaded not guilty to the charge and claimed trial.

4. In order to prove its case prosecution examined 03 PWs and exhibited various documents and other items in support of its case. The appellant recorded his statement under Section 342 Cr.P.C. and denied all the allegations made against him and claimed false implication in this case at the hands of police. Accused did not examine himself on oath and did not produce any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier hence the appellant has filed this appeal against his conviction.

6. The facts and evidence of the case have been elaborately reproduced in the impugned judgment and as such there is no need to set them out here so as to avoid unnecessary repetition and duplication.

7. After reading out the evidence, learned counsel for the appellant, under instructions did not press this case on merit provided that this court made a reasonable reduction in his sentence based on the fact that he is a first time offender capable of reformation; that he had a large family to support and that by accepting his guilt he had showed genuine remorse. Learned Additional Prosecutor General Sindh had no objection to the reduction of sentence to some reasonable extent.

8. We have gone through the evidence and we find that the prosecution has proved its case against the appellant beyond any reasonable doubt as the appellant was arrested red handed on the spot and 2040 grams charas was recovered from his possession by the police whose evidence we find to be reliable, trustworthy and confidence inspiring and we believe the same. Prosecution has also proved safe custody of the narcotic from the time of its recovery until the time it was sent for chemical examination and such chemical report has been found positive.

9. At the outset, we noticed that the sentence handed down to the appellant as mentioned above is not in accordance with the sentencing guidelines laid down in the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362] and there was no reason to enhance the sentence

beyond the sentencing guidelines. According to the sentencing guidelines the appellant ought to have been sentenced to 05 years and 06 months along with fine of Rs.25000/-.

10. Keeping in view the numerous special features/mitigating factors mentioned by the learned counsel for the appellant which can justify a reduction in sentence and no objection certificate given by learned Addl. PG and the fact that the amount of recovery was on the lesser side and only exceeded the above mentioned sentencing range by 40 grams we hereby based on our discretion and special features and mitigating circumstances mentioned above reduce the appellant's sentence to four (04) years and six (06) months along with fine of Rs.25000/- and in case of default of payment of fine the appellant shall suffer SI for five (05) months more. The appellant shall have the benefit of Section 382-B Cr.P.C.

11. The instant Criminal Appeal is dismissed except as modified in terms of sentencing as mentioned above.

JUDGE

JUDGE

MAK/PS