

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-36 of 2023.

PRESENT

Mr. Justice Muhammad Saleem Jessar,  
Mr. Justice Jawad Akbar Sarwana,

Appellant : Bharat Lal Marwai, through Mr. Muhammad Afzal Jagirani, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,  
Additional Prosecutor General, Sindh.

Date of hearing : 02.04.2024.  
Date of Judgment : 02.04.2024.

JUDGMENT.

Muhammad Saleem Jessar, J.- Through this criminal appeal, appellant Bharat Lal son of Ropp Chand Marwai hindu has challenged the judgment dated 29.04.2023, passed by learned 1<sup>st</sup> Additional Sessions Judge/MCTC/ Special Judge for CNS Cases, Kandhkot, in Special CNS Case No.18 of 2023 re-The State v. Bharat Lal, whereby the appellant having been found guilty of the charge was convicted for offence under Section 9(c), Control of Narcotic Substances Act, 1997 and sentenced to suffer rigorous imprisonment for 14 years and to pay fine of Rs.400,000/- (Rupees four hundred thousand only), in case of default in payment of fine to undergo simple imprisonment for 03 years more, with benefit of Section 382-B, Cr.P.C.

2 Briefly, the facts of the prosecution case are that on 03.02.2023, SiP Janib Dahani of PS B-Section, Kandhkot, during patrolling apprehended the appellant/accused Bharat Lal Marwai at 1700 hours, ~~near~~ near Allah Wala Chowk of Kandhkot town and recovered from his possession charas weighing 1050 grams lying in a black colour shopper. After completing requisite formalities at the spot, the appellant and recovered charas were taken to police station, where FIR was registered.

3. The appellant pleaded 'not guilty' to the charge and claimed to be tried and the prosecution examined PW-1 IO SIP Khawand Bux, PW-2 complainant SIP Janib Dahani, PW-3 mashir PC Lehaque Gujrani, PW-4 PC Muharam Ali, PW-5 WPC Akbar Ali and PW-6 PC Abdul Qayoom. They produced the relevant documents. The trial Court, on the basis of evidence of these witnesses held the appellant guilty of the charge and sentenced him, as stated above.

4. Learned Counsel for the appellant submitted that though the mashir of recovery, namely, PC Lehaque Gujrani, who is eye-witness of alleged recovery, was declared hostile by the learned Prosecutor and cross-examined, but inspite of that the learned trial Court convicted the appellant and awarded him maximum punishment. He, therefore, submits that by taking such discrepancy in the prosecution case as a mitigating circumstance, if the sentence awarded to the appellant is reduced to the period which he has already undergone, he would not press instant appeal on merits. He further submitted that the appellant is a person of advance age of 41 years and there is no other male member in his family to look after and feed them, hence he may be given a chance in his life to rehabilitate himself.

5. Learned Additional Prosecutor General raised no objection to the request made by learned Counsel for the appellant for reduction of the sentence.

6. From perusal of the record, we find that the contention advanced by learned Counsel for the appellant is correct that the mashir of recovery was declared hostile and was cross-examined by the prosecutor, but inspite of that the learned trial Court convicted the appellant and awarded him maximum punishment of 14 years R.I., which appears to be harsh one. Therefore, by treating such discrepancy in the prosecution case as a mitigating circumstances, we hold that the request made on behalf of the appellant for

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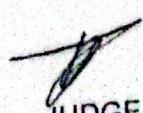
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reduction of sentence is reasonable. Moreover, the appellant is in his advanced age and is said to be alone breadwinner of his family.

7. In the case of *Niaz-ud-Din v. The State* (2007 SCMR 206), the Hon'ble Supreme Court was pleased to reduce the sentence of imprisonment for ten years awarded for possessing five kilograms of heroin to imprisonment for six years. It may be observed here that there is lot of difference between charas and heroin with reference to their injurious effect on health and monetary benefit to the persons trafficking in the business.

8. In our opinion, the appellant has sufficiently been punished and no other case of like nature is shown to be pending against him. Therefore, in order to give a chance to the appellant in his life to rehabilitate himself so also following the dictum laid down in the cases of *Gul Naseeb v. The State* (2008 SCMR 670) and *Niaz-ud-Din v. The State* (2007 SCMR 206), instant appeal is dismissed as not pressed and the impugned judgment to the extent of conviction of the appellant is maintained; however, the sentence awarded to him by the trial Court vide impugned judgment dated 29.04.2023 is reduced to the imprisonment which he has already undergone in incarceration. The sentence of fine is also remitted in the circumstances. Appellant Bharat Lal son of Roop Chand Marwai hindu shall be released forthwith, if he is not required to be detained in any other case.

9. With the above modification in the sentence, this appeal is disposed of.

  
JUDGE

  
JUDGE