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THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Appeal No.D-70 of 2016

**Present :**

**Muhammad Iqbal Kalhoro, J.**  
**Irshad Ali Shah, J.**

Appellant : Sunharo, who is present on bail, through  
Mr.Habibullah G. Ghouri, advocate.


Respondent : The State, through Mr. Khadim Hussain Khooharo  
Addl. Deputy Prosecutor General

Date of hearing: 13.03.2018.

**J U D G M E N T .**

**Muhammad Iqbal Kalhoro, J-** This Criminal Appeal is directed against the judgment, dated 26.10.2016, passed by the learned Sessions Judge Shikarpur/Judge Special Court for CNS, in Special Case No.510 of 2016, arising out of FIR No.92/2016, registered at Police Station New Foujdari, under section 9(c) of Control of Narcotic Substances Act, 1997, whereby the appellant was convicted and sentenced to suffer R.I for four years and six months and to pay fine of Rs.20,000/-, in case of default thereof, to undergo Simple Imprisonment for five months more with benefit of Section 382-B, Cr.P.C.

2. Appellant was arrested on 07.08.2016 at 1700 hours from main road leading towards Jacobabad near Momin Water Course in Beat No.3, Shikarpur by the police party headed by ASI Ali Goher and from him 2 Kgs of Charas in four pieces was recovered. Such memo of his arrest and recovery was prepared at the spot and he was brought at Police Station and was booked in the present case. Subsequent to usual investigation, the challan was submitted against the appellant and a formal charge at Ex-3 was framed against him, he however, did not plead guilty and claimed for trial.



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3. The prosecution in order to prove its case examined ASI Ali Gohar PW-1 at Ex-5, he has produced memo of arrest and recovery, a copy of FIR and copies of daily diaries. PW-2, namely, Abdullah has been examined at Ex-6, he has produced a copy of memo of place of incident. The Investigating Officer of the case, namely, Syed Hajan Shah has been examined as PW-7, who has produced copies of daily diary entries and a report of chemical examiner. After conclusion of prosecution evidence, statement of the appellant under section 342, Cr.P.C was recorded, in which he has denied the prosecution case and has pleaded his innocence. The trial Court after hearing the parties, however, has convicted the appellant as mentioned above. Being aggrieved by the same, the appellant has preferred this appeal.

4. Learned counsel for the appellant after arguing at some length has submitted that he would be satisfied and would not challenge the conviction of the appellant, if his sentence is modified and reduced to the period which he has already undergone. In support of his said contentions, he has submitted that the appellant is the first offender and has never been involved in any criminal case; that he is in advanced age and is repentant for the alleged crime and offence. He has further pointed out that there are a few contradictions in the evidence regarding distance described by the prosecution witnesses in their evidence between the Police Station and place of incident and the houses allegedly situated nearby the place of incident. Learned Addl. P. G. has not opposed the request of learned defense counsel for reduction of sentence.

5. We have considered submissions of the parties and perused the material available on record. The prosecution in all has examined three witnesses whose evidence show that they have supported each other on the material facts of the case. However, at the same time, we have been made conscious of the fact that the appellant is the first offender and has never been involved in any criminal case. This fact has

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not been controverted by the learned Addl. P. G. The appellant is present before us on bail and appears to be of advanced age. He has shown his remorse over his past life concerning the present offence and crime and has undertaken not to indulge in any criminal activity in future. The record reflects that the appellant was arrested on 07.08.2016 and continuously remained in jail till he was granted bail by this Court and was released on 02.02.2017, which period almost becomes six months. When the appellant is repentant and is the first offender, we do not see any legal embargo not to concede to the request of the learned defense counsel which has not been opposed by the learned Addl. P. G. In the circumstance, we dismiss this appeal on merits and maintain the conviction of the appellant. However, the sentence awarded to the appellant is modified and reduced to the period already undergone by him, which shall include the period of simple imprisonment that he otherwise was to suffer in default of payment of fine. The appellant is present on bail his bail bond stands cancelled and surety discharged. The appeal in above terms stands disposed of.

  
Judge

  
Judge

13/03/2018

Abant Judgment complied  
on Dated 17-04-2018  
  
Appellant