

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

CRIMINAL APPEAL NO.237 OF 2020

Appellant	:	Asadullah son of Sherzada Jehangir through Mr. Umar Farooq, Advocate
Respondent	:	The State/ ANF through Mr. Habib Ahmed, Special Prosecutor, ANF
Date of Order	:	21.02.2022

J U D G M E N T

Mohammad Karim Khan Agha, J.- The Appellant Asadullah was convicted by the 1st Additional District & Sessions Judge/ Model Criminal Trial Court / Special Court (CNS) Central Karachi in Session Case No.201/2019 in connection with FIR No.139 of 2019 under Section 6/9-C CNS, Act 1997 registered at PS Paposh Nagar, Karachi and was sentenced vide impugned judgment dated 26.02.2020 to undergo R.I. for 04 years and 06 months and to pay fine of Rs.20,000/- (Rupees Twenty Thousand), in case of failure to pay the fine the accused shall undergo 04 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 the complainant ASI Soofi Khan of PS Paposh Nagar, Karachi has arrested the accused Asadullah and recovered Charas weighing 1080 grams and cash amount Rs.450/- only from inside graveyard Paposh Nagar, near grave of Amjad Sabri, Karachi on 01.07.2019 at 0615 hours, under memo and lodged such FIR u/s. 6,9 (c) CNS Act, 1997.

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.

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4. In order to prove its case prosecution examined 04 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. The appellant, present in Court on bail states that he would not contest his case on merit provided that his sentence[✓] is reduced to time already undergone and in this respect he put forward the following mitigating factors/ special features;

- a) That he had not been convicted in any narcotic case;
- b) That he had a large family to support;
- c) That by accepting his guilt he had showed genuine remorse.

8. Based on these mitigating factors learned Additional Prosecutor General Sindh had no objection to the reduction of sentence to some reasonable extent.

9. 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 1080 grams charas was recovered from his possession by the police. Arresting officials and Mashirs had no enmity with the appellant and had no reason to falsely implicate him in this case 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.

10. At the outset, we note that only 1080 grams charas was recovered from the appellant which lead to him being sentenced to 04 years and 06 months. If the amount recovered had been only 80 grams less he would have been sentence to 01 year and 09 months and this period he would have already served out in jail. Under these circumstances and keeping in view the numerous special features/mitigating factors put forward by the appellant which can justify a reduction in sentence and no objection certificate given by learned Addl. PG we hereby maintain the sentence of the appellant, however, we reduce the sentence to time already undergone in jail which shall include his fine.

11. The appellant is present on bail. His bail bonds stands discharged and he is free to go.

12. The instant Criminal Appeal stands disposed of in the above terms .

MAK/PS