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IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan

Criminal Appeal No.78 of 2021

Appellant	:	Abdul Lateef son of Ghulam Hussain Through Mr. Maqbool-ur-Rehman Advocate
Respondent	:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing	:	06.05.2022
Date of Order	:	06.05.2022

J U D G M E N T

The Appellant Abdul Lateef was tried in the Model Criminal Trial Court/1st Additional District & Sessions Judge, Malir, Karachi in Sessions Case No.1551/2020 arising out of the FIR No.268/2020 registered at PS Memon Goth under Sections 6/9-C, CNS Act, 1997 and vide impugned judgment dated 26.12.2020 convicted and sentenced to undergo 10 years R.I. and fine of Rs.200,000/- and in case of failure, the appellant shall undergo S.I. for two years more. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case are that on 16.09.2020 at about 0725 hours at main road Kathore Stop Memon Goth Malir Karachi, a police party headed by SIP Jan Muhammad of PS Memon Goth apprehended the accused and recovered Cannabis of 1695 grams from the possession of the accused and arrested him on the spot and took him to the police station along with the recovered narcotics where the FIR was lodged against him.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined three PWs and exhibited numerous items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. However, he did not give evidence on oath or call any witness in support of his defence case.

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

6. The facts of the case and evidence produced before the trial Court have been set out in the impugned judgment and as such there is no need to reproduce the same so as to avoid any unnecessary repetition and duplication.

7. At the very outset, learned counsel for the appellant, under instructions of the appellant, stated that he would not argue the case on merit provided that his sentence was reduced to that of already undergone based on the following special features/mitigating circumstances:

i). That the appellant is a first time offender and is capable of reformation.

ii). That the appellant has a large family to support, who is relying on his income and are suffering due to his continuous confinement.

iii). That the appellant is a heart patient and his conduct in jail has been good and by deciding not to contest the appeal, he has shown genuine remorse.

8. On the basis of these special features/mitigating circumstances, learned Addl. Prosecutor General has no objection to the reduction in sentence of the appellant to some reasonable extent.

9. We have gone through the record and found the evidence of three PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant red-handed with 1695 grams of charas in his possession by police officials, who had no enmity or ill-will towards the appellant and as such had no reason to falsely implicated him in this case, as such, we believe their evidence. The prosecution has also proved safe custody of the narcotic from the time it was recovered from the appellant until the time it was sent to chemical laboratory for chemical test which produced a positive chemical report. As such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

10. With regard to sentencing, we note that in the case of **Ghulam Murtaza & others vs. the State** [PLD 2009 Lahore 362] certain sentencing guidelines based on the amount of recovery which was made from the accused/appellant were set out. As per these guidelines, since 1695 grams of charas were recovered from the appellant the appropriate sentence was R.I. for 4 years and 06 month and fine of Rs.20,000/- and in default 5 months S.I. instead the appellant was erroneously handed down 10 years RI by the trial Court in the impugned judgment. As such at first instance we reduce the sentence to handed down to the appellant to the appropriate one under the law being four years and six months alongwith fine as mentioned above which was the correct sentence which should have been handed down by the learned trial Court in the first place.

11. In the case of **Ghulam Murtaza** (Supra), it was also noted that the sentencing guidelines were not absolute and that there was some flexibility in the same if some special features/mitigating circumstances could be made out by the appellant. Keeping in view the special features/mitigating circumstances mentioned above by learned counsel for the appellant and learned Addl. P.G. no objection certificate and the fact that the appellant has undergone a substantial portion of his now reduced sentenced of four years and six months imprisonment, we hereby by exercising our discretion as per **Ghulam Murtaza case** (Supra) reduce the sentence of the appellant to the time which he has already undergone in jail and waive off his fine resultantly, the appellant shall be released until he is wanted in any other custody case.

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

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