

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.147 OF 2023.

Appellants	1. Muhammad Aslam Gulzan s/o Gulzara Ahmed 2. Muhammad Salahuddin Mughal present in person on bail.
Respondent	The State through M/s. Muhammad Iqbal Awan and Siraj Ali Chandio, Additional Prosecutors General Sindh.
Date of Judgment	06.11.2024

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellants were tried in the Court of District & Sessions Judge Karachi South in Sessions Case No.2163 of 2021 in respect of Complaint under Section 19 of SBCO, 1979 registered at PS Garden, Karachi and vide judgment dated 11.03.2023 appellants were convicted under Section 265-H(ii) Cr.P.C. for the offence under Section 19 of Sindh Building Control Ordinance and sentenced to undergo R.I. for **01** year with fine of Rs.50,000/- and in case of default in payment of fine, they were ordered to suffer S.I. for one month more. However, the benefit of section 382-B Cr.P.C. was extended to the appellants.

2. The brief facts of the prosecution case are that during construction period of building at Plot No.51/6, GRW Quarters Saddar accused Muhammad Aslam Gulzar and Muhammad Salahuddin Mughal (Appellants herein) being owner/attorney of said premises violated the building plan as approved by SBCA with full violation of COS and without provision of building plan as approved to them by Sindh Building Control Authority & contravened the provisions 6(3) of SBCO, 1979 which is punishable under section 19 of SBCO 1979 thus the complainant lodged the aforesaid complaint.

3. After usual investigation, the challan was submitted against the appellants accused to which the appellants pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 01 Prosecution Witnesses namely Ali Mehdi and exhibited various documents and other items. The statement of accused persons were recorded under Section 342 Cr.P.C in which they denied the allegations levelled against them. However, the appellants did not give evidence on oath nor produce any DWs in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed this appeal against their convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 11.03.2023 passed by the trial court therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, both appellants, present in person, stated that they did not press their appeal on merits provided that they were given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) Appellants are first time offender hence capable for reformation;
- b) Appellants had large family to support.
- c) By not contesting the case on merits the appellants have admitted their guilt and shown genuine remorse.

8. Based on these mitigating factors mentioned by the appellants, learned Additional Prosecutor General had no objection to the reduction in sentence to some reasonable extent.

9. I have gone through the evidence on record and find that the prosecution has proved its case against the appellants beyond any shadow of doubt and maintain their conviction.

10. With regard to sentence awarded to the appellants mitigating circumstances and the no objection given by the learned Additional Prosecutor General and in particular the fact that the appellants awarded only one year sentence I hereby reduce the sentence of the appellants Muhammad Aslam Gulzan s/o. Gulzar Ahmed and Muhammad Salahuddin Mughal to one already undergone in custody and waive their fine. The appellants, who are present on bail, shall be free to go.

11. This appeal stands disposed of in the above terms.

JUDGE

Muhammad Arif