

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.422 of 2021.

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi*

Appellant	Rafiq Jan @ Rauf Lambo S/o Sakhi Jan through Mr. Ajab Khan Khattak, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Date of Hearing	31.08.2022
Date of Order	31.08.2022.

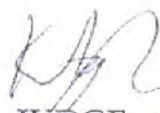
JUDGMENT


MOHAMMAD KARIM KHAN AGHA, J:- The appellant Rafiq Jan @ Rauf Lambo S/o Sakhi Jan was tried in the Court of Additional Sessions Judge-VII/MCTC-02, Karachi Central in Special Case No.162 of 2021 under FIR No.355/2020 U/s 6/9-C CNS Act, 1997 at PS F.B.I Area, Karachi and vide judgment dated 29.07.2021 he was convicted of the said offence and sentenced to suffer R.I. for six years and six months with direction to pay fine of Rs.30,000/- and in case of default, he shall serve S.I. for six months more. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that on 23.12.2020 at about 0550 hours accused Rafiq Jan alias Rauf Lambo was arrested from Charhai near Mashallah Agha Jan, Shafeeq Colony, Block-22 Federal B. Area, Karachi by police party led by complainant ASI Abdul Ghafoor, who recovered 3530 grams charas with selling amount of Rs.11,250/- and Realme Mobile Phone touch screen of blue colour from his possession in presence of police mashirs. Hence, the instant FIR was lodged.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.
4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.
5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.
6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 29.07.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the case on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating factors:-
 - i) That the appellant was a young man of 26 years of age.
 - ii) That the appellant was a first time offender and was capable of reformation.
 - iii) That the appellant had admitted his guilt and shown genuine remorse.
 - iv) That the appellant had a large family to support.
 - v) That the appellant had served out a major portion of his sentence.
8. When confronted these special features/mitigating circumstances, learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the appellant was arrested on the spot and recovered 3530 grams charas from his possession by the police party, who had no enmity with the appellant for falsely implicating him in this case, as such, we find their evidence to be reliable, trustworthy and confidence inspiring. Further, the charas recovered from the appellant was sent for chemical examination, which report received as positive, as such, the prosecution has proved its case against the appellant beyond any reasonable doubt.
10. Based on the sentencing guidelines as laid down in the case of *Ghulam Murtaza & others vs. The State (PLD 2009 Lahore 362)*, we find that the appellant has been sentenced in accordance with law based on the recovery made from him; however, in the case of *Ghulam Murtaza (Supra)* it was held that sentencing guideline can be modified at the discretion of the Court provided that there were some special features/mitigating factors.
11. Keeping in view the special features/mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a large part of his sentence, we hereby maintain the conviction of the appellant; however, reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.
12. The instant appeal stands disposed of in the above terms.


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