

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Irshad Ali Shah

Criminal Appeal No.418 of 2020

Appellant	:	Sanowar Abbas @ Munawar Abbas S/o Khan Shireen Through Mr. Fida Hussain Qureshi and Ms. Nasima, Advocates
Respondent	:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing	:	26.08.2021
Date of Order	:	26.08.2021

J U D G M E N T

The Appellant Sanowar Abbas @ Munawar Abbas was convicted in the Court of Session Judge, Karachi West in Sessions Case No.303 of 2020 in Crime No.256 of 2020 under Sections 6/9 (c) of CNS Act, 1997 registered at Police Station Docks, West vide Judgment dated 24.09.2020 and was sentenced to R.I. for 06 years and 06 months and to pay fine of Rs.30,000/- and in default of payment, the appellant was to undergo a further period of 06 months S.I. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 08.04.2020, the police were on patrol when they received spy information that there was a drug dealer at Ameer Hussain Cattle Farm Muhammadi Colony, Karachi. The police party proceeded to the pointed place where at 0100 hours they apprehended the appellant and caught him red-handed with amount of heroin which weighed 1.0151 kg thereafter, the appellant was arrested and the instant FIR was lodged.

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 various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. He did not give evidence on oath or call 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 and hence, the appellant has filed this appeal against his conviction and sentence.
6. After reading out the evidence, learned counsel for the appellant, under instructions, and in presence of appellant's mother, stated that she did not press this case on merit and that the appellant would accept his guilt provided that the sentence handed down to the appellant was reduced. When this proposal was put to learned APG, he had no objection to the reduction of sentence.
7. We have gone through the evidence and we find the evidence of three PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on spot red-handed with narcotics which led to a positive chemical report after being kept in safe custody, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.
8. Learned trial Court has passed down the proper sentence and conviction to the appellant in accordance with the sentencing guidelines laid down in the case of Ghulam Murtaza & others vs. the State [PLD 2009 Lahore 362] based on the fact that the recovery was more than 01 kg of heroin but was less than 02 kg. However, in the case of Ghulam Murtaza supra, it was pointed out that the sentencing guideline could be modified

at the discretion of the Court provided that there were some special features which warranted such reduction in sentence.

9. In this case, we find numerous special features/mitigating factors which can justify a reduction in sentence which are as follows:

- i) The amount of recovered heroin is 1.015 kg which is only marginally above the sentencing range.
- ii) That the appellant is a first time offender.
- iii) That the appellant is relatively young man and is capable of reformation.
- iv) That he is the sole breadwinner of his family, who relies on his income.
- iv) That the appellant has fully accepted his guilt and as such has shown genuine remorse.

10. Based on these special features/mitigating factors and the no objection of learned APG we hereby maintain the conviction of the appellant. However, we hereby reduce the appellant's sentence to three (03) years R.I. and three (03) months S.I. from the sentence awarded by the learned trial Court to the appellant i.e. six (06) years and six (06) month R.I. and also to pay fine of Rs.30,000/- and in case of default of payment the appellant shall suffer SI for three (03) months more. Thereafter, the appellant shall be released unless he is wanted in any other custody case. The appellant shall have the benefit of Section 382-B Cr.P.C.

11. The instant Criminal Appeal is dismissed except as modified in terms of sentencing as mentioned above.