

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

CRIMINAL APPEAL NO.306 OF 2021.

Appellant	Muhammad Hassan S/o Natha Khan through Syed Lal Hussain Shah, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Date of Judgment	09.09.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Muhammad Hassan S/o. Natha Khan was tried in the Court of Ist Additional Sessions Judge (Model Criminal Trial Court) Karachi South in Sessions Case No.1871 of 2020 in respect of FIR No.229 of 220 u/s. 6/9(c) of CNS Act, 1997 registered at PS Mahmoodabad, Karachi and vide judgment dated 24.05.2021 appellant was convicted and sentenced to undergo R.I. for 08 years and 06 months with fine of Rs.40,000/- and in case of default in payment of fine, he was ordered to suffer S.I. for 07 months more. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case are that on 19.07.2020 at about 1320 hours, he was arrested on a tip off outside House No.T-593, near Noorani Masjid, Chanesar Goth, Mahmoodabad, Karachi by the patrolling police party of PS Mahmoodabad, Karachi South headed by complainant/SIP Zahid Jadoon when he was found in possession of 5100 grams Chars which was taken into police custody in presence of the official witnesses.

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

4. The prosecution in order to prove its case examined 04 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. 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 24.05.2021 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, learned counsel for the appellant under instructions of the appellant stated that he did not press the appeal on merits provided that he was given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) That the appellant had no conviction in any narcotics case.
- b) That the appellant had a large family to support.
- c) By not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse.
- d) That the appellant had served out a major part of his sentence.

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

9. We have gone through the evidence on record and note that the appellant was arrested on the spot and caught red handed in possession of 5100 grams charas which when sent for chemical report produced a positive result.

10. The Police witnesses who arrested the appellant had no enmity with him and had no reason to falsely implicate the appellant in this case and as such we find the evidence trustworthy and confidence inspiring and believe the same and find that the prosecution has proved its case against the appellant beyond any shadow of doubt and maintain his conviction.

11. With regard to sentence awarded to the appellant, it is noted that the appellant has been sentenced in accordance with the guidelines laid down in the case of Ghulam Murtaza (PLD 2009 Lahore 362). However, in Ghulam Murtaza case (supra), this Court was given the discretion to alter the sentence, if some special features/mitigating circumstances existed which justifies the same. Based on the mitigating circumstances/special features raised by the appellant and noted above and the no objection given by the learned Additional Prosecutor General and in particular the fact that the appellant has served out a majority of his sentence as per Jail Roll , we hereby reduce the sentence of the appellant Muhammad Hassan S/o. Natha Khan to one already undergone in custody and waive his fine. The appellant shall be released unless he is wanted in any other custody case.

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

JUDGE

JUDGE