

## IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.131 of 2022

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Zulfiqar Ali Sangi*

|                        |   |
|------------------------|---|
| <b>Appellant</b>       | <b>Koro Khan son of Pholan Khan<br/>through Mr. Nusrat Ali Shar,<br/>Advocate.</b>              |
| <b>Respondent</b>      | <b>The State<br/>through Mr. Abrar Ali Khichi,<br/>Additional Prosecutor General<br/>Sindh.</b> |
| <b>Date of Hearing</b> | <b>28.09.2022</b>   |
| <b>Date of Order</b>   | <b>28.09.2022.</b>  |

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Koro Khan son of Pholan Khan was tried in the Court of Model Criminal Trial Court/1<sup>st</sup> Additional District & Sessions Judge, Malir Karachi in Sessions Case No.1171/2021 under FIR No.105/2021 U/s 6/9-C CNS Act at PS Bin Qasim and vide judgment dated 21.02.2022 he was convicted of the said offence and sentenced to suffer R.I. for ten years and fine of Rs.200,000/- and in case of default, he shall undergo six months S.I. in addition to main sentence. 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 16.03.2021 at about 11:00 A.M. at Indigo Road inside Steel Mill Bridge Bin Qasim Malir Karachi a police party headed by SIP Habibullah Shahani of P.S. Bin Qasim Malir apprehended the present accused and recovered 2050 grams of charas in presence of mashir, hence the instant FIR was registered.

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. 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 21.02.2022 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, who had a large family to support.
- 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 served out a major portion of his sentence.

8. Based on the above special features/mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence on record and found that the appellant was arrested on the spot and recovered from his possession 2050 grams charas by the police officials, who had no enmity with the appellant for falsely implicate him in this case, as such, we find their evidence to be reliable trustworthy and confidence inspiring. The prosecution has also proved safe transmission of recovered narcotic from the place it was recovered to chemical analyst which report received as positive, as such, we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and his conviction is maintained.

10. With regard to sentencing based on 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, in particular, the fact that the appellant has completed a substantial 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.

11. The instant appeal stands disposed of in the above terms.

**JUDGE**

**JUDGE**