

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Appeal No.S-70 of 2013**

Appellant: Zahoor Ahmed son of Muhammad Rahim,
through Mr. Ghulamullah Chang, Advocate.

Respondent: The State, through Ms. Sana Memon, APG.

Date of hearing: 24-02-2021.

Date of decision: 24-02-2021.

JUDGMENT

IRSHAD ALI SHAH, J: The facts in brief necessary for disposal of instant appeal are that that the appellant with rest of the culprits by making trespass into shop of Khadim Hussain by night caused injuries to his brother Wali Muhammad, for that the present case was registered. On conclusion of trial, the appellant for an offence punishable u/s 458 PPC was convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs.10,000/-and in case of default to undergo Simple Imprisonment for Six month by learned Additional Sessions Judge, Matirari vide his judgment dated 27.06.2013, which is impugned by the appellant before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant; the FIR is lodged with delay of about three days and no effective role in commission of incident even otherwise is

attributed to the appellant, therefore, the appellant is liable to his acquittal on benefit of doubt.

3. Learned A.PG for the State has sought for dismissal of the instant Appeal by contending that it is the case of conjoint liability.

4. I have considered the above arguments and perused the record.

5. The FIR of the incident has been lodged with delay of about three days; such delay having not been explained plausibly could not be overlooked. Complainant Khadim Hussain, PWs Mehar and Mushtaque Ahmed are not eye witness of the incident, therefore, their evidence could hardly lend support to the case of prosecution. As per PW Wali Muhammad he was caused lathi blows by co-accused Mehram. The role attributed by him to the appellant in commission of incident was only to the extent that he pointed his pistol on his (Wali Muhammad) head. The role attributed to the appellant in commission of incident by PW Wali Muhammad makes his involvement in this case to be doubtful one. It was night time incident; therefore, the identity of the appellant too was doubtful. The medical officer, who examined the victim and the investigating officer, who conducted the investigation of the case have not been examined by the prosecution for no obvious reason. By this omission, the appellant have been prejudiced in his defence seriously. In that situation, the involvement of the appellant in commission of the incident

obviously is appearing to be doubtful to such benefit he is found to be entitled.

6. In case of *Faheem Ahmed Farooqui vs. The State (2008 SCMR-1572)*, it is held by Hon'ble apex Court that;

“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

7. Having discussed above, the conviction and sentenced recorded against the appellant by way of impugned judgment are set-aside, consequently the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court, he is present in Court on bail, his bail bond is cancelled and surety is discharged.

8. The instant appeal is disposed of accordingly.

JUDGE