

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD  
Criminal Appeal No.S- 76 of 2014**

**Appellant:** Ashraf alias Ashru son of Urs Khaskheli,  
Through Mr. Mian Taj Muhammad Keerio,  
Advocate

**State:** Ms. Rameshan Oad, A.P.G

**Date of hearing:** 25.10.2019

**Date of decision:** 25.10.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The appellant by way of instant appeal has impugned judgment dated 27.05.2014, passed by learned Additional Sessions Judge, Umerkot, whereby the appellant for an offence punishable U/S 394 PPC has been convicted and sentence to undergo Rigorous Imprisonment of 10 years with fine of Rs.100,000/- payable to injured PW Ghoram as compensation and in case of his failure to make payment of fine to undergo Simple Imprisonment for one years with benefit of section 382-B Cr.P.C.

2. It is the case of the prosecution that the appellant with rest of the culprits while attempting to commit robbery of motorcycle from complainant Muhammad Siddique voluntarily caused hatchet blow (hurt) to PW Ghoram for that he was booked and reported upon.

3. At trial, the appellant did not plead guilty to the charge and prosecution to prove it examined complainant Muhammad Siddique and his witnesses and then closed the side.

4. The appellant in his statement recorded U/S 342 Cr.P.C denied the prosecution allegations by pleading innocence he did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

5. On evaluation of evidence so produced by the prosecution, learned trial court convicted and sentenced the appellant as is detailed above.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party; it was the night time incident, therefore the identity of the appellant under the light of motorcycle is appearing to be a weak piece of evidence; the FIR has been lodged with delay of about one day; 161 Cr.P.C statements of the PWs have also been recorded with further delay to the FIR; the evidence of the prosecution has been believed by learned trial Court without assigning cogent reason and the appellant is in custody for about 07 years . By contending so, he sought for acquittal of the appellant.

7. Learned A.P.G for the State has sought for dismissal of the instant appeal by supporting the impugned judgment.

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

9. The FIR of the incident has been lodged with delay of about one day, such delay could not be lost sight of. The FIR as per ASI Ali Nawaz was recorded by Munshi Umed Ali at his dictation, but it does

not contain such note. The place of incident has been visited by the police on the next date of FIR without explaining such delay, which appears to be significant. 161 Cr.P.C statement of PW Mashooque Ali was recorded on second day of FIR while 161 Cr.P.C statement of PW Ghoram was recorded on 11<sup>th</sup> day of FIR. Such delay could not be overlooked. It was the night time of incident, therefore, the identity of the appellant under the light of motorcycle obviously is appearing to be a weak piece of evidence. Such motorcycle even otherwise has never been produced at trial by the prosecution. Nothing has been secured from appellant even on his arrest. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

10. In case of **Muhammad Asif vs the State (2008 SCMR 1001)**, it has been held by Hon'ble apex Court that;

*“Delay of about two hours in lodging FIR had not been explained—FIRs which were not recorded at the Police Station, suffered from the inherent presumption that same were recorded after due deliberation.”*

11. In case of **Abdul Khaliq vs. the State (1996 SCMR 1553)**, it was observed by Hon'ble Court that;

*“----S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”*

12. In case of **Tariq Pervaiz vs the State (1995 SCMR 1345)**.

It has been held by the Hon'ble Supreme Court that:-

*“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”*

13. In view of the facts and reason discussed above, the conviction and sentence recorded against the appellant together with the impugned judgment could not be sustained, those are set-aside. Consequently, appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. Appellant is in jail. He shall be released forthwith if not required in any other custody case.

14. The instant appeal is disposed of.

**J U D G E**