

## [Supreme Court of Pakistan]

**Present: Asif Saeed Khan Khosa, C.J., Ijaz ul Ahsan and Syed Mansoor Ali Shah, JJ****GHULAM NABI---Appellant****Versus****IKRAM alias KAMA and others---Respondents**

Criminal Appeal No. 175-L of 2011, decided on 16th August, 2019.

(Against the judgment dated 19.05.2009 passed by the Lahore High Court, Lahore in Criminal Appeals Nos. 1097 and 1094 of 2004, Criminal Revision No. 709 of 2004 and Capital Sentence Reference No. 305 of 2004)

**Penal Code (XLV of 1860)---**

---Ss. 302, 148 & 149---Qatl-i-amd, rioting armed with deadly weapons, unlawful assembly---Appeal against acquittal---Reappraisal of evidence---Prosecution had completely suppressed the fact that the deceased had also resorted to firing at the place of occurrence---Motive set up by the prosecution regarding damaging of a drain of waste water by the accused party at the spot had remained far from being established and the site-plan of the place of occurrence did not show any drain having been damaged---High Court had rightly concluded that some material facts had been suppressed by the complainant party and it was not clear how and why the occurrence had taken place---In such circumstances, the High Court had decided to extend the benefit of doubt to the accused persons and acquitted them of the charge---Furthermore, the acquittal of accused persons had come about 10 years ago and the present criminal case had originated about 19 years ago---Appeal against acquittal was dismissed in circumstances.

Malik Amjad Pervaiz, Advocate Supreme Court for Appellant.

Naveed A. Khawaja Advocate Supreme Court for Respondents Nos. 1 - 5 and Respondent No. 3 in person

Mazhar Sher Awan, Additional Prosecutor-General Punjab for the State.

Date of hearing: 16th August, 2019.

**JUDGMENT**

**ASIF SAEED KHAN KHOSA, C.J.**---Respondents Nos. 1 to 5 had been convicted by the trial court on two counts of an offence under section 302, P.P.C. read with sections 148 and 149, P.P.C. and were variously sentenced but on appeal their convictions and sentences recorded by the trial court were set aside and they were acquitted of the charge by the High Court. Hence, the present appeal by leave of this Court granted on 13.12.2011.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. The record of the case shows that five crime-empties had been recovered from the place where the dead bodies of Manzoor and Noor Hussain were present at the spot and it had completely been suppressed by the prosecution that the deceased had also resorted to firing at the place of occurrence. The motive set up by the prosecution regarding damaging of a drain of waste water by the accused party at the spot had remained far from being established and the site-plan of the place of occurrence did not show any drain having been damaged. After an elaborate reappraisal of the evidence available on the record the High Court had concluded that some material facts had been suppressed by the complainant party and it was not clear how and why the occurrence had taken place. In these circumstances the High Court had decided to extend the benefit of doubt to respondents Nos. 1 to 5 and had acquitted them of the charge. The respondents' acquittal had come about in the year 2009, i.e. about 10 years ago and the criminal case in hand had originated about 19 years ago. The reasons recorded by the High Court for recording acquittal of respondents Nos. 1 to 5 have been found by us to be cogent and valid. No jurisdictional infirmity, illegality of approach, irregularity of procedure or

perversity of reasoning on the part of High Court has been highlighted before us so as to warrant interference in the impugned judgment of acquittal passed by the High Court. This appeal is, therefore, dismissed. The bail bonds and sureties of respondents Nos. 1 to 5, if any, shall stand discharged.

MWA/G-2/SC Appeal dismissed.