

# 1998 S C M R 2146

[Supreme Court of Pakistan]

**Present: Nasir Aslam Zahid, Munawar Ahmad Mina and Abdur Rehman Khan, JJ**

**MUHAMMAD ARSHAD and others---Appellants**

**versus**

**THE STATE---Respondent**

Criminal Appeals Nos. 87 and 89 of 1995, decided on 29th June, 1998.

(On appeal from the judgment, dated 13th February, 1998, passed by the Lahore High Court, Multan Bench, in Criminal Appeal No. 175 of 1991 and Murder Reference No.307 of 1991).

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

---S. 302---Constitution of Pakistan (1973), Art. 185(3)---Dispute over possession of land---Contentions were that possession was with the accused but its benefit had been wrongly given to the complainant; that accused had no motive for the occurrence, that eye-witnesses being related to the deceased were interested witnesses and that case of accused had not been at all considered by the High Court---Leave to appeal was granted to accused by Supreme Court to consider the said contentions.

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

---S. 302---Constitution of Pakistan (1973), Art. 185(3)---Leave to appeal was granted by Supreme Court to consider whether the accused were entitled to exercise right of self-defence and if so, was it exercised according to law.

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

---5. 302---Constitution of Pakistan (1973), Art. 185---Appraisal of evidence--Testimony of eye-witnesses on salient features of incident was consistent who not only had materially corroborated each other but were also supported by medical evidence---Mere relationship of eye-witnesses with the deceased, by itself, did not affect their credibility when statements had inspired confidence---Conviction and sentence of accused were upheld in circumstances. -[Witness].

Manzoor v. State '1992 SCMR 2037; Hakim Ali v. State 1977 SCMR 432; Shahzado v. State PLD 1977 SC 413; Liaqat Shah v. State 1985 SCMR 1415; Abdul Subhan v. Raheem Bakhsh PLD 1994 SC 178; Irshad Ahmad iv. State PLD 1996 SC 138; Muhammad Ahmad v. State 1997 SCMR 89; Niaz v. State PLD 1960 SC 387; Ghuncha Gul v. State 1971 SCMR 368 and Khadim Hussain v. Javed Sarwar PLD 1996 SC 122 ref.

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

---S. 34---Common intention---Proof---Strict proof of common intention of concerned persons is normally not possible, but the same can be conveniently gathered from set of circumstances brought forth in every case.

Khadim Hussain v. Javed Sarwar PLD 1996 SC 122 ref.

Malik Saeed Hassan, Senior Advocate Supreme Court instructed by Ch. Mehdi Khan Mehtab, Advocate-on-Record (absent) for Appellant (in Cr. A. No.87 of 1995).

Sh. Khyzir Hayat, Advocate Supreme Court instructed by S. Abul Aasim Jafri, Advocate-on-Record for Appellants (in Cr.A. No. 89 of 1995).

M. Zaman Bhatti, Advocate Supreme Court for the State.

Date of hearing: 18th June, 1998.