

## IN THE SUPREME COURT OF INDIA

## CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 110 OF 2010

VINOD

... APPELLANT

VERSUS

STATE OF M.P. &amp; ORS.

...RESPONDENTS

## O R D E R

Appellant, aggrieved by his conviction under Section 148, 302/149 and 307/149 of the Indian Penal Code ("IPC" for short) as also under Section 25(1B)(b) of the Arms Act, has preferred this appeal with the leave of the Court.

According to the prosecution, on 17.11.1995 at about 5.45 p.m. PW-1 -Rajnish Srivastava went to a tailor shop named Delight Tailor to pick up the trousers which he had given for alteration. Raja Bhoj, the deceased, was standing outside the said shop. It is alleged that all the accused persons came on motor-cycles and bicycles at the said shop and encircled the deceased and gave knife blows to him. According to the prosecution, on seeing the incident, PW-1 -Rajnish Srivastava rushed to save him but he was also assaulted by the accused persons by knives.

After investigation, the Police submitted chargesheet against altogether 20 persons. The trial court on analysis of the evidence convicted the appellant herein but acquitted altogether 12 persons. An appeal preferred by the convicted persons has also been dismissed by the High Court.

It is relevant here to state that PW-1 - Rajnish Srivastava, who sustained serious injuries was admitted in the Hospital and his statement was recorded like a dying declaration by Naib Tehsildar. The trial court and the High Court mainly relying on the evidence of PW-1 -Rajnish Srivastava, PW-2 -Pankaj Bhoj and PW-4 -Krihna @ Karna held the appellant guilty.

Mr. Ajay Veer Singh, learned counsel appearing on behalf of the appellant, while assailing appellant's conviction under Section 302/149 of the IPC submits that there is vital contradiction in the evidence of PW-1 on the one hand and the evidence of PW-2 and PW-4 on the other hand. He further points out that, in the earlier statement of PW-1 -Rajnish Srivastava, which was recorded as the dying declaration, no role has been attributed to the appellant to show that he had shared common object with that of the other accused in causing the death of Raja Bhoj.

On the other hand, Mr. Naveen Sharma, learned counsel appearing on behalf of the respondent-State, however, submits that the very presence of this appellant at the time of the occurrence itself shows that he shared the common object and, therefore, rightly convicted under Section 302/149 of the IPC.

We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Singh. In the earlier statement, PW-1 -Rajnish Srivastava has stated that deceased was assaulted by a large number of persons but nothing has been said so far as this appellant is concerned. According to the earlier statement, this appellant came thereafter and participated in the assault of PW-1 -Rajnish Srivastava.

In the light of the facts stated above, we are of the opinion that it shall not be safe to sustain the conviction of the appellant under Section 302 with the aid of Section 149 of the IPC.

So far as the conviction of the appellant under Section 307/149 of the IPC is concerned, there is consistent evidence that he participated in assaulting PW-1 -Rajnish Srivastava. There is also an overwhelming evidence of recovery of knife from the appellant. In that view of the matter, we maintain the appellant's conviction and sentence under Section 148, 307/149 of the IPC and under Section 25(1B)(b) of the Arms Act. However, we direct that the sentences would run concurrently.

In the result, we partly allow this appeal and while maintaining the conviction and sentence of the appellant under Section 148, 307/149 of the IPC and under Section 25(1B)(b) of the Arms Act, his conviction and sentence under Section 302/149 of the IPC is set aside. The sentence awarded shall run concurrently.

.....J.  
(CHANDRAMAULI KR. PRASAD)

.....J.  
(PINAKI CHANDRA GHOSE)

New Delhi;  
February 6, 2014

ITEM NO.101(PH) COURT NO.9 SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 110 OF 2010

VINOD Appellant (s)

VERSUS

STATE OF M.P & ORS. Respondent(s)

(With appln(s) for bail and office report)

Date: 06/02/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD  
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s)            Mr. Ajay Veer Singh, Adv.  
                                 Mr. R.K. Verma, Adv.  
                                 Mr. Atul Agrawal, Adv.  
                                 Mr. U.R. Bokadia, Adv.  
                                 Ms. Divya Garg, Adv.  
                                 Mr. Mohd. Irshad Hanif, Adv.

For Respondent(s)         Mr. Naveen Sharma, Adv.  
                                 Ms. Swati B. Sharma, Adv.  
                                 for Mr. Mishra Saurabh, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is partly allowed in terms of the signed order.

| (S.K. Rakheja)  
| Court Master

| |(Indu Satija)  
| |Assistant Registrar

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(Signed order is placed on the file)