

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 50 OF 2001@@
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S.K. Venkatesh Appellant(s)

VERSUS

State of Karnataka Respondent(s)

DATE : 17-7-2002: This matter was called on for hearing today.@@
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CORAM:
HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s): Mr. Ranbir Singh Yadav, Adv.

For Respondent(s): Mr. Sanjay R. Hegde, Adv.

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

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.SP2

Heard learned counsel for the parties from 11.40 a.m.
to 12.05 p.m.
The appeal is dismissed.

.SP1

(R.K. Dhawan) (Shelly Sen Gupta)
Court Master Court Master

(Signed order is placed on the file) ~

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 50 OF 2001@@
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S.K. Venkatesh Appellant(s)

versus

State of Karnataka Respondent(s)

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Fifteen persons were involved in an incident on 5th November, 1993, at about 10.30 p.m. wherein P.W.1 R.Nanjundappa was assaulted and his son-in-law Somasekharappa received fatal injuries apart from some others sustaining minor injuries. While put on trial, learned Sessions Judge, Chitradurga in S.C. Case No.17 of 1994 convicted the appellant u/s. 302 IPC and sentenced him to undergo life imprisonment and a fine of Rs.10,000/-; in default to undergo RI for one year.

Turning on the factual score, the prosecution case runs as below:

The complainant Nanjundappa lodged a complaint as regards the kidnapping of his son, by accused Nos. 1,2 9 and 11 who took his son to Shimoga and got married to the daughter to accused No.9 Shekharappa. It has been stated that the marriage was forcibly performed and the
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complainant had filed a police complaint in respect thereof. About four months later, the complainant got his son re-married to another girl and this incident gave rise to lot of hostility between the two groups even though they are related to each other. On the night of the incident, the accused persons, the prosecution case records, armed with clubs, knives, axes and other similar deadly weapons came to Nanjundappa's house at around 10.30 p.m. and had some oral altercation. Nanjundappa, however, was taken inside the house and the doors were closed when the accused persons are stated to have started breaking the doors and windows and also caused serious damage to the tractor parked closeby. The deceased Somasekharappa who happened to be the son-in-law came to the spot and raised objections thereto whereupon the accused No.1 who was armed with a Gandugodali or a large axe dealt a blow to the deceased which landed on his head and a second blow which landed on his shoulder. The deceased collapsed on the spot. In the course of the same incident, P.Ws.11 to 14 had sustained minor injuries also along with P.W.1: All the injured persons were taken to primary health centre for treatment. Somasekharappa, however, died few hours later. On the lodgment of the FIR, the investigation commenced.

Subsequently, as the records depict, all the 15 accused persons were charge sheeted for having committed
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offences for promotion of unlawful assembly, rioting, murder and causing simple hurt to the complainant and other prosecution witnesses. The learned Sessions Judge under Section 302 IPC awarded the sentence of RI for life with a fine of Rs.10 thousand against the appellant and also passed an order of acquittal as regards the other accused persons. It is against this finding, Crl.Appeal No.551/1995 was filed by accused No.1 before the High Court assailing the conviction and sentence and the State also challenged the order of acquittal of the other accused persons in Crl.Appeal No.722/1995. Both the

appeals were, however, heard together and the High Court in conclusion ordered that the death of the deceased shall have to be devolved only on accused No.1 despite the presence of as many as 15 persons and thus confirmed the sentence as against accused No.1 for the offence punishable under Section 302 IPC.

As far as other accused persons are concerned the High Court recorded that they were in fact members of an unlawful assembly armed with deadly weapons and consequently, they were liable for conviction for the offence punishable under Section 148 IPC. Having regard to the submissions made, the High Court, however, thought it prudent to observe that the imprisonment already undergone and the fine quantified in a sum of Rs.5000/- ...4/-

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each will subserve the ends of justice. Upon recording a finding to the effect as above, the High Court ordered that other accused persons are punishable under Section 148 read with Section 427 IPC and each of them were sentenced to suffer imprisonment for the period already undergone and to pay the fine quantified in a sum of Rs.10,000/.

While the other accused persons did accept the finding of the High Court, accused No.1 S.K. Venkatesh, however, did file a special leave petition before this Court and this Court granted special leave in the matter on 5th January, 2001.

The learned advocate appearing in support of the appeal submitted that considering the suddenness of the situation confirming sentence under Section 302 stand wholly unwarranted and as a matter of fact it has been contended that Section 304 Part II if at all ought to be taken recourse to. We are, however, unable to record our concurrence therewith. There has been a concurrent finding of both the courts as regards the involvement of Accused No.1 and the concept of suddenness of the situation in the contextual facts, however, does not hold good more so having regard to the fact that all the accused persons were armed with clubs, knives, axes and5/-

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other similar deadly weapons with them and assembled at Nanjundappa's house around 10.30 p.m. It is the aftermath of an incident which has resulted in this incident and there cannot possibly be any suddenness of the situation. We, however, feel it expedient to record our concurrence with the view expressed by the High Court and we are unable to concur with the submissions as advanced by the learned advocate in support of the appeal. The appeal therefore fails and is dismissed.

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.....J.
(U.C.BANERJEE)

.....J.
(B.N. AGRAWAL)

New Delhi,
July 17, 2002