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**(2002) 11 SC CK 0018**  
**In the Supreme Court Of India**  
**Case No : Criminal Appeal No. 238 Of 1995**

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|---------------------------------|----|------------|
| Hanmantu Nagappa Joglekar       | Vs | APPELLANT  |
| State of Maharashtra and Others |    | RESPONDENT |

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**Date of Decision :** 12-11-2002

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 114, 302, 323, 324, 326

**Citation :** (2003) 2 ACR 1613 : (2002) 10 JT 268

**Hon'ble Judges :** S. Rajendra Babu, J;P. Venkatarama Reddi, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. Seven persons were charged-sheeted for offences punishable u/s 302 and Section 326 read with Section 34 of the IPC. However, the trial court after trial held that five of the accused were not guilty of the offences for which they were charged and acquitted them and convicted only accused No. 1 - Sangappa Berre and accused No. 2 - Hanmantu Nagappa Joglekar for the offence punishable u/s 302 read with Section 34 of the I PC and sentenced each of them to suffer life imprisonment with some amount of fine. Further they were found guilty for the commitment of the offence punishable u/s 326 read with Section 34 of the IPC and they were given different sentences.

2. In appeal, the High Court took the view that the conviction of accused No. 2 - Hanmantu Nagappa Joglekar, i.e. appellant herein (hereinafter referred to as the appellant) has to be changed from Section 302 read with Section 34 IPC to Section 302 read with Section 114 IPC and the High Court set aside the conviction u/s 326 read with Section 34 IPC and accordingly modified the sentences.

3. In this appeal by accused No. 2, it is urged that the evidence adduced before the court in so far as the role played by him was through the depositions of Ambadas (PW5), Shiv Raj (PW6), Janardhan (PW7) and Hanmayya (PW10).

Ambadas (PW5) stated that at about 3.45 to 4.00 p.m. on 5.8.1990, he and his maternal uncle, mother, grand father and grand mother were at their house. At that time Sangappa Berre, accused No. 1, Anand and Miland came there and started abusing them. Then his maternal uncle asked them not to abuse and at that stage the appellant came there and "instigated Sangappa Berre to beat them and said he would see if anything happens". Identical to that effect was a statement made by PW 6 and PW 7. But their version before the police did not contain the statement that the appellant had instigated accused No. 1 to beat them and that he would take care if anything happens. The learned counsel, therefore, characterized that part of the evidence as an improvement made in the course of evidence tendered by them before the court. He further submitted that only the person who stated that the appellant had instigated Sangappa Berre to beat them was Ambadas and none else. Further, summarising the evidence to which we have adverted to above the trial court noted as follows:

"This section embodies the principle of joint liability in doing of a criminal act and essence of that liability is the existence of common intention. If we consider the prosecution evidence, it will go to show from the conduct and the circumstances of the case, that the accused nos. 1 and 2 had common intention to commit the murder of Shantabai. Further the common intention also can be gathered from the circumstances of the prosecution case i.e. the weapon used by the accused. The part chosen by him for giving the blows and the consequential result of these two things is death. Therefore having regard to the injuries sustained by the deceased Shantabai, it makes clear that the accused nos. 1 and 2 had common intention to kill Shantabai."

and thus concluded that they had intention to cause injuries to deceased Shantabai with a common intention to kill her and proceeded to convict them as stated earlier. The High Court after adverting to the evidence noticed as follows:

"If the infliction of wounds by a deadly weapon on the person of these two persons is established, the offender would be guilty u/s 324 and not 326. Similarly, the instigator if this instigation be established would be guilty u/s 324 read with 114 of the IPC. The learned trial judge has wrongly applied Section 34 IPC which requires a participation by the offenders in an act which is done in furtherance of a common intention shared by all of them. Here accused No. 2 had merely given a word-of-mouth encouragement or instigation to accused No. 1 to do what he did vis-a-vis the victims. This would constitute abatement by an act of instigation as contemplated by Section 107 of the IPC."

and therefore, took the view that accused No. 2 would be guilty of offences u/s 302 read with 114 of the IPC and Section 324 read with Section 114 IPC.

4. The evidence tendered before the trial court through PWs 5, 6 and 7 is clearly to the effect that all that the appellant is stated to have instigated accused No. 1 Sangappa Berre was to give blows. He entered the scene some time after the quarrel had started and did not have the knowledge that Sangappa had knife

with him and all that he is stated to have instigated him was "to give blows and he would take care of the situation". This does not mean that he had an intention to cause the death of the deceased, particularly, when all of a sudden Sangappa Berre took out the knife from his pocket and attacked the deceased Shantabai. In the circumstances neither the trial court nor the High Court could come to the conclusion that he had intention common with accused No. 1 to do away with Shantabai and, therefore, could not have been convicted u/s 324 read with Section 114 IPC or Section 302 read with Section 34 IPC. The appropriate provision under which he could have been convicted is Section 323 read with Section 34 IPC or Section 114 IPC. He could have been convicted for a period not more than one year under the said provision. However, it is stated that he has already undergone more than three years of incarceration and there is no need to sentence him afresh. He is convicted under the said provisions accordingly and the said period of imprisonment already undergone is more than sufficient to cover the sentence imposed under that provision. He stands now released and bail bonds if any furnished shall stand cancelled.

5. The appeal is disposed of accordingly by setting aside the order of the High Court and modifying the conviction and sentence as stated above.