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**(1961) 01 MP CK 0025**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Criminal Appeal No. 346 of 1960

Nanboo Kedar and Another

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Jan. 25, 1961

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 109, 111, 114, 304, 323

**Citation:** AIR 1962 MP 91 : (1962) JLJ 427

**Hon'ble Judges:** S.B. Sen, J

**Bench:** Single Bench

**Advocate:** S.L. Dubey, Dy. Govt. Advocate, for the Respondent

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**Judgement**

S.B. Sen, J.

The two appellants Nanboo and Kutar have been convicted u/s 304 (Part II) and 304 (Part II) read with Section 114. I. P. C. and have been sentenced to Rule 1 for 6 years and 4 years respectively.

2. On 14-3-1960 at about 9 a. m. there was a Puja known as "Badawat" in the house of one Lalsingh P.W. 1, where many persons assembled including the two appellants, as well as Gulabingh P.W. 2, Jayram P. W. 3, Dalsingh P.W. 4, Kadu P.W. 5 and Bhilu P.W. 12. They all belonged to the same village. The deceased Ratan-singh also came there and sat in the assembly. His presence was however objected to by appellant No. 2 Kutar on the ground that he had an illicit connection with the wife of his son Juwan-singh. Ratansingh's denial of the fact resulted in some quarrel at which Kutar asked his son Nanboo, appellant No. 1 to beat him. Nanboo accordingly took up a log of wood lying nearby and gave on the head of Ratan a heavy blow. Ratan fell down and the two appellants ran away. On receipt of this information the police arrived at the village at about 12 in the noon and inquired about the incident. On the next day Ratan was sent to the hospital of Jobat. On 19-3-1960 at 1 p.m. Ratan succumbed to the injuries. The two appellants thereupon were prosecuted

under Sections 302 and 302 read with Section 114, I. P. C. but ultimately have been convicted and sentenced as stated above.

3. Dr. Kaushik of the Jobat hospital examined Ratan at the time of his admission to the hospital and also performed the post mortem after his death at 4 p. m. He found lacerated wound 3" x 2" x 2"" behind the right ear. He also found a fracture of temporal bone which according to him was sufficient in the ordinary course of nature to cause death. The death was on account of the shock and haemorrhage as a result of the injury.

4. The appellants have simply denied the offence. They have taken up the plea of alibi but there is no evidence on record to support the same.

5. The eye-witnesses present On the spot have been examined. Their version is consistent that after the persons assembled there was a quarrel, and at the instigation of Kutar, Nanboo gave a blow. I need not repeat what they have stated as their stories are consistent. The First Information Report also supports their story. The learned Sessions Judge has considered the circumstances for striking down the offence from Section 302 to that u/s 304 (Part II), I. P. C. So far as appellant No. 1 Nanboo is concerned his conviction u/s 304 (Part II), I. P. C. is therefore quite in order.

6. The appellant No. 2 Kutar has been convicted u/s 304(2) read with Section 114, I. P. C., I do not think Section 114, I. P. C. is applicable to him. Section 114 reads as follows :

"Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence."

A reading of the section will show that it applies to cases where a person abets a commission of the offence some time at different place and also remains present at the time offence is committed. The words ""if absent would be liable to be punished as an abettor" would show that abetment has been made some time prior to the actual commission of the offence. But in the instant case the appellant No. 2 was present on the spot and it is at his instigation that the offence was committed. Therefore, the appropriate section would be 109 and not 114, I. P. C. The evidence of all the prosecution witnesses show that appellant No. 2 suggested to his son to give a beating.

The words used wen ^ekj bldks\*\* This does not indicate that the deceased should be done to death. Nor did Kutar help him in giving any lathi or any other weapon to assault the deceased.

Section 111, I. P. C lays down that when the act done was a probable consequence of the abetment and was committed under the influence of the instigation, or with

the aid or in pursuance of the conspiracy which constituted the abetment then alone the abettor would be liable for the act done. The dispute started when Ratan refused to depart in spite of Kutar's saying that he was a person not fit to sit in the assembly and On the insistance of the deceased to remain there, the appellant No. 2 Kutar suggested that he should be beaten. Appellant No. 1 however found a log of woo3 nearby and with that he gave a severe blow on the head of the deceased. Kutar never suggested that Ratan should be beaten with a lathi, nor was the appellant No. 1 armed with any lathi; he picked up a lathi from a place nearby.

In order to hold Kujtar guilty by application of Section III, the prosecution should not only establish that the act committed was done at the instigation of Kutar but also it was the probable consequence of the abetment. The act instigated was the beating at the time when Nanboo had no weapon in his hand but the latter proceeded further and took a stick and gave a very heavy blow. This can never be said to be a probable consequence of the abetment. Appellant No. 2 Kutar therefore cannot be convicted for abetment of an offence u/s 304 (Part II), I. P. C. At best his conviction can only be u/s 323 read with Section 109, I. P. C. The conviction of this appellant is therefore altered from Section 304 (Part II) read with Section 114, I. P. C. to that u/s 323 read with Section 109, I. P. C. He has already undergone a jail sentence for about 3 months and I consider that period is sufficient for the offence of which he is found guilty.

7. As regards the sentence passed against appellant No. 1 Namboo I find it a bit heavy. I therefore reduced the same to 4 years Rule 1

8. The result is that the conviction of the appellant Nanboo is maintained but his sentence is reduced) to 4 years Rule 1. The conviction of appel lant No. 2 Kutar is altered from Section 304(2) read with Section 114, I. P. C. to Section 323 read with Section 109, I. P. C. and his sentence is reduced to the period of sentence already undergone by him.