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**(2011) 07 JH CK 0067**

**Jharkhand High Court**

**Case No:** Criminal (Jail) Appeal (DB) No. 572 of 2003

Etwa Hapadgara

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision:** July 6, 2011

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 304

**Citation:** (2011) 4 JCR 133

**Hon'ble Judges:** R.K. Merathia, J; Dhruv Narayan Upadhyay, J

**Bench:** Division Bench

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

1. By the Court.--Seen the report of I.G. Prisons, dated 29.6.2011, in which it is said that the recommendation for release of the appellant Etwa Hapadgara, S/o Lodro Hapadgara, has already been sent by the State Sentence Review Board to the Government for approval on 27/05/2011.

Nobody appears on behalf of the appellant.

Mr. A.B. Mahato, learned panel counsel is hereby appointed as Amicus Curiae in this appeal to assist this Court in the second half and Mr. S.N. Rajgarhia, learned APP is directed to appear on behalf of the State, for final hearing.

Lateron:--

Heard Mr. AB. Mahato, learned Amicus Curiae for the appellant and Mr. Rajgarhia, learned APP for the State finally on the merit of the appeal.

2. This appeal is directed against the judgment of conviction and sentence passed on 10th March. 2003 by Sri Raghubar Dayal, Additional Sessions Judge, F.T.C. No.-II, Chaibasa in Sessions Trial No. 09 of 1996, whereby the sole appellant has been

found guilty for committing the offence u/s 302 of the Indian Penal Code and, thereby, he has been sentenced to undergo R.I. for life.

3. The prosecution case, in short, is that on 31 /07/1995, at about 8 p.m., when the informant and his family members, including the deceased Champa Lugun, were taking their meal inside the house, Champa Lugun came out of the house of the informant. The appellant-Etwa Hapadgara, who was standing there from before, assaulted Champa Lugun by means of lathi due to which he sustained injuries on his head, temporal region, nose, abdomen and other parts of the body and he fell down. The informant and other tried to save him. The appellant fled away towards his house. It was found that Champa Lugun was dead. The reason behind the occurrence was that Champa Lugun (the deceased) had hot talk with Etwa Hapadgara when he asked the appellant as to why he met with his daughter Purungi Lugun.

4. The Doctor found the following injuries :--

Frontal bone of left side was fractured and old clotted blood with brain matter was present on fractured portion.

As per the Doctor, the injury was caused by hard and blunt substance like lathi and it was sufficient to cause death in ordinary course of nature.

5. Mr. A.B. Mahato, learned Amicus Curiae appearing on behalf of the appellant submitted that though he is not in a position to dispute the manner of occurrence proved by the prosecution but the appellant at best, could have been convicted u/s 304 Part-II of the Indian Penal Code and not u/s 302 of the Indian Penal Code.

6. Mr. S.N. Rajgarhia, learned APP, on the other hand supported the impugned judgment.

7. We find force in the submissions of Mr. Mahato that in the facts and circumstances of this case, it is difficult to hold that the appellant had intention to kill the deceased. It appears that there was dispute between the deceased and the appellant as the appellant used to meet with his daughter and due to such dispute, the appellant inflicted lathi blow on the head of the deceased when he came out of the house of the informant. Though, as per the eye-witnesses, there was repetition of blow but the Doctor has found only one injury on the head of the deceased. It will not be safe and proper to hold that the appellant had intention to kill the deceased.

8. In the circumstances, we are inclined to convert the conviction u/s 302, IPC to Section 304, Part-II of the Indian Penal Code. Accordingly, the conviction passed by the trial Court u/s 302, IPC against the appellant is hereby set aside and the appellant is held guilty for committing the offence u/s 304, Part-II of the Indian Penal Code.

9. So far as sentence is concerned, it appears that the appellant has remained in jail custody for about 16 years by now. He is sentenced to undergo R.I. for the period already undergone by him. The appellant is directed to be released forthwith if not wanted in any other case.

With this alteration in conviction and modification in sentence, this appeal is partly allowed.