

[2019] 11 S.C.R. 14

ANAND RAMACHANDRA CHOUGULE

v.

SIDARAI LAXMAN CHOUGALA AND OTHERS

(Criminal Appeal No. 1006 of 2010)

AUGUST 06, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Penal Code, 1860:

Section 302/34 gi makha da fadok takhibadu Section 304 Part I/34 gi makhada onthokpa – nakal anigi marakta chinda paodanaramba dagi funarami– prosecution na maral sikhi madudi maral siraklaba meei singduna fuba na maram oiraga nakal atopagi meei adu sikhibani –Trial court na maral siraklaba meei marimak pu Section 302/34 IPC makhada da maral leiray haina laothokhi – High Court na haikhi madudi funa cheinabagi thoudok adu haana thousil thourangba yaodabida khudakta ta thokhibani amadi nakal animak ta asok apan yaokhi loinana Section.304 Part I gi makhada da fadok adu hongdokhi. Maral siraklaba meei ani di yaode haibagi chingnaba leibana maram oiraga maral leity haina thadoklammi – Appeal tourakpa matam haikhe: Nakal anigi marakta mari thoknei amadi moigi marakta lamgi chayetnaba leirami – chinda paodanaramba dagi khatna cheinaba thokhibani haibasi court animak na chap manana fangkhi –Maral siraklaba meei singnasu hairiba chap manaba thoudok asiga mari leinana FIR ama chankhi adubu thijinkhide - FIR asi karigi damak thijindabano haibagi maram police na piba nagmkhiday - Maral siraklaba sing adu su hairiba manaba thoudok aduda asok-apan nangkhibadu layegnaba haiduna layengsang da ming chankhi adubu hairiba sokpaga paodam adudi chejan da hapaktay - Hairiba wari sing asi prosecution na lotsinduna thamlami maram aduna chingnaba mayam pokhalami amadi prosecution na hiram adugi matangda paokhum piba ngamkhiday - Prosecution na mahaki wari adu chingnaba pumnamak kokanduna praman puthokpa ngamdragadi mahak ki wari aduda chingnafam thoke - High Court gi yaathang aduda khut thinjinbagi mathou taday.

Court na Appeal adu kakladuna,

WAREP TAKHI: 1. Chejan da leiramba machak mathum munna yenglubada, nakal animaki marakta mari leinei amadi makhoigi marak lamgi chayetnaba amaga mari leinana court ta civil gi wakat oina chathaduna leiri haibasi yetnaningai leitraba wafamsing ni. Chinda paodanaramba dagi nakal anigi marakta khatna-cheinaba thoktuna asok apan yaokhibani haibasi court animak na chap manana thigatpada fangba wafam ni. Maral siraklaba meei singna su hairiba chap manaba thoudok asiga mari leinana FIR ama chankhi haibasi PWs. 19 amadi 22 oiriba Investigating Officers singna respondents-maral sirakalaba meeoisingna BRPS su chankhi adumakpu makhoina thijinkhiday haina yajabadagi khanglakkhi. Chap manana PW 11 oiriba Police Constable na maral siraklaba meeoising dagi 2 di District Hospital da ming chalami haikhe aduga matam aduda mahak masamak yengsinbagi thabak tarami haikhi. Thoudok adu tarik 07.06.2002 gini amadi maral siraklaba meeoising, nos. 1 ga 2 na tarik 11.06.2002 da Hospital adu thadokhi. Makhoigi asok apangi paodam adu prosecution na chejanda puthoklamday loinana puthoktabagi maram su piramday.[Para 8] [19-A-C]

2. Chingnaba pumnamak kokhanduna siriba maralsingdu praman touduna utpa haibasi prosecution gi mathou oirame. Masigi pura ona-teinabada maral siraklaba meei di prosecution gi waridu chingnanigai lei haina semgatpa mathou tarame loinana mahak maral leity haina yetpa yaba sing semgatkadabni. Maral siraklaba meei ama di prosecution douna Chingnaba pumnamak kokhanduna praman touduna mahak maral leite haina utpagi mathou today. Karigumba maral siraklaba meei amana maral leite haina yetlaba, adum yetlakpaga oithokpa leirabani, yetliba wafam adu da sougatnaba machak-mathum leirabadi, maral siraklaba meei aduna makha tana karigumba amata praman toubagi darkar tadray. Prosecution na mahaki wari adu chingnaba pumnamak kokhanduna praman puthokpa ngamdragadi mahak ki wari aduda chingnafam thoke. [Para 9] [19-D-E]

3. Maral siraklaba meei amana maral leite haina Section 313, Cr.P.C. gi makhada yetlaktaba yarabasu, prosecution budi magi wari adu chingnaba pumnamak kokhanduna praman touduna uthandaba

yaday. Prosecution na hiram kharada paokhum piba ngamdaba matamda, yetliba kangu adugisu yetpada da asonba leiraba, leiriba maong aduda prosecution na karigumba amata praman toubagi darkar oidray haiba yaday. [Para 10] [19-F]

4. Maral siraklaba meeoisingna na chap manaba thoudok aduga mari leinana FIR chankhiba amadi police na hairiba FIR asibu thijinkhidabagi maram piba ngamdaba ga loinana chap manaba thoudok aduda maral siraklaba meei singsu soktuna hospital da layengkhi adubu makhoi su sokkhi haibagi paodam amata chejan da pandaba amadi prosecution na wafam shi lotsinduna thambana chingnaba yamna pokhalay loinana prosecution na masigi matangda paokhum piba ngamdray. [Para 11] [20-A-B]

Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422 : [2013] 5 SCR 924 – mateng loukhiba.

State of Uttar Pradesh v. Faqirey (2019) 5 SCC 605; *Pulicherla Nagaraju v. State of A.P.*, (2006) 11 SCC 444 : [2006] 4 Suppl. SCR 633 ; *State of Rajasthan thr. the Secretary v. Kanhaiya Lal*, (2019) 5 SCC 639; *Vijay Ramkrishan Gaikwad v. State of Maharashtra and another*, (2012) 11 SCC 592 ; *Raj Kumar v. State of Maharashtra*, (2009) 15 SCC 292 : [2009] 11 SCR 49; *Dayal Singh and others v. State of Uttaranchal*, (2012) 8 SCC 263 : [2012] 10 SCR 157 ; *Gajoo v. State of Uttarakhand*, (2012) 9 SCC 532 : [2012] 7 SCR 1033; *Manoj Kumar v. State of Himachal Pradesh* (2018) 7 SCC 327 : [2018] 5 SCR 361; *Partap v. State of U.P.*, (1976) 2 SCC 798 : [1976] 1 SCR 757 – neinakhiba.

Neinakhiba wathok sing

(2019) 5 SCC 605	neinakhiba	Para 3
[2006] 4 Suppl. SCR 633	neinakhiba	Para 4
(2019) 5 SCC 639	neinakhiba	Para 4
(2012) 11 SCC 592	neinakhiba	Para 4
[2009] 11 SCR 49	neinakhiba	Para 5
[2012] 10 SCR 157	neinakhiba	Para 6
[2012] 7 SCR 1033	neinakhiba	Para 6
[2018] 5 SCR 361	neinakhiba	Para 7
[2013] 5 SCR 924	neinakhiba	Para10
[1976] 1 SCR 757	neinakhiba	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1006 of 2010.

High Court of Karnataka at Bangalore gi Division Bench na Criminal Appeal No. 22/2005 gi tarikh 30.11.2007 da takhiba Wayelgi warep amadi amdi yaathang dagi

Loinana

Criminal Appeal No. 1007 of 2010.

Joseph Aristotle S., Mrs. Priya Aristotle, Rijuk Sarkar, Mrs. Farah Hashmi, Shanthakumar Mahale, Rajesh Mahale, Appellant gi wakil sing.

Anil V. Katarki, Anil C. Nishani, Madhan Kanur, Ms. E. R. Sumathy, Respondents gi wakil sing.

Court gi Judgment pikhiba judge

NAVIN SINHA, J.

1. Houjik ki appeal ani asi wakatliba meei amadi State na mthangsitna tharakhiani. Singnarakliba wafam ashi asi High Court ki order amada respondents nos.3 and 4 bu maral leity haina laothokhiba amadi respondents nos.1 ga 2 na Indian Penal Code,1860 (matung tarakpada IPC haina sijinagane) gi Section 302/34 gi makhada mapunsi chupa keisum sangda leinaba fadok takhiba adu Section 304 Part I/34 da oina maral lei haina hongladuna chahi 7 keishumshang da thamnaba fadok pikhibabuni.

2. Wakatliba meei amadi accused anigi marak ta mari thoknei. Makhoigi marak ta lam gi chayetnaba leirami. Civil gi wathok amasu court ta loisindana leirami. Tarikh 07.06.2002 da leikhidraba meei asi atoppa meei kharaga mahaki khungang da halaklami. Makhoi mayam na Yeellappa Patil kouba amagi mayum manakta yourakpa matam da maral siraklaba meei singna makhoibu fu cheiba tourakpana maram oiraga meeoidu sibani haina maral siri. Trial court na maral siraklaba meei 4 mak bu maral lei haina laothokhi. High Court na appeal tourakpa matam da leiramliba machak sing yengbada funa-cheinaba adu mangjounana khusil thourang yaodabida khudakta thokhibani amadi maikei animak gi marakta asok-apan yaokhibana maram oiraga fadok adu Section 304 Part I, IPC gi makhada oina oigadabani haina onthokhi. Maral sirakliba meei sing gi

maraktagi 2 amadi funa-cheinaba aduda yaoe haibagi chingnaba leibadagi maral leity haina thadokhi.

3. Apellant sing gi khang-heiraba wakil na haikhi madudi High Court na Section 304 Part I, IPC da oina maral lei haina onthokhibadu asoibane. Funa-cheinaba adu mangjounana khusil thourang touraga thokhibani. Maral siraklaba meei sing adu singjang, thangol amadi wa gi chei paiduna leirami. PWs. 2 and 3 asok apan yaokhiba sakhising ni. Masa ngakthokchabani natraga thoudok adu khanghoudna thokhibani hairiba adu sougatnaba karigumba machak amata leiramday. Section 313, Cr.P.C. gi makha da maral leirabasingna asumhaina yetkhiba su leite. PWs. 4 amadi 5 ani su mitna uhouba sakhising ni. Prosecution gi sakhisingi marakta chandaba macha-masu khara leiba amadi khetnaba khara leiba khak na prosecution gi wari da chingnaba thamba di maram chady. ***State of Uttar Pradesh vs. Faqirey***, (2019) 5 SCC 605 mateng louraduna, Section 302, IPC gi makhada da maral piramba aduda oina hanjilhanfam thoke haikhi.

4. ***Pulicherla Nagaraju vs. State of A.P.***, (2006) 11 SCC 444, amadi ***State of Rajasthan thr. the Secretary vs. Kanhaiya Lal***, (2019) 5 SCC 639 gi mateng louraga haikhi madudi kaihouba yaodana khudakta thokpa funa-cheinaba amada kok ta amukhaktang fubana mee adu sirabadi Section 302, IPC gi makhada da maral lei haiba yai. Makha tana ***Vijay Ramkrishan Gaikwad vs. State of Maharashtra and another***, (2012) 11 SCC 592, mateng louraduna haikhi madudi karigumba court na Section 304 Part I, IPC gi makhada maral lei hairiba adu chumi hairaba faoda, fadok adudi chahi 10 da hingatfam thoke.

5. ***Raj Kumar vs. State of Maharashtra***, (2009) 15 SCC 292, gi mateng louraduna haikhi madudi karigumba maral siraklaba meei sing na masa ngakthokchanaba hotnabada thokhibani haijaba tarabadi, Indian Evidence Act, 1872 gi Section 105 gi makha da hairiba mishak aduna court gi mang da mahak ki thouwong adu IPC gi General Exception manung da challi haina utpa darkar oi.

6. Prosecution na thoudok adugi matang da maral siraklaba singna na toukhiba First Information Report adu utlamdaba thoklabasu amasung layengbagi amadi asok-apan nangbagi paodam sakhi oinaba thamdrbasu, ***Dayal Singh and others vs. State of Uttaranchal***, (2012) 8 SCC 263 amadi ***Gajoo vs. State of Uttarakhand***, (2012) 9 SCC 532 gi mateng louraduna haikhi madudi wathok ashi thinjinbada asoiba leiba ama oigani amadi

maduna maram oiraga prosecution na thamliba haibadi manaba wakhallon ga loinana mangjounana khushil-thourang touduna shinaba fubani haibasi thajabada di amakpa leiroidabani.

7. Respondents-maral siraklaba meeoisingi khang heiraba wakil singna haikhi madudi mangjounana khushil-thourang touraga funa cheinaba du thokhiba naty. Nakal anigi marakta mari thoknaba amadi makhoigi marakta lamgi chayetnaba leibana, Yellappa Patil gi yum manak yourakpa matam da chinda-paodanarambadagi funa-cheinabada naakal animakta asok-apan yaokhi. Respondent na thakhiba FIR, layengsangda makhoigi asokpa layengkhibagi paodam sing adu prosecution na lotsinduna thamkhi. Section 313, Cr.P.C. gi makhada maral leity haina yetlamdaba yai hairiba wafam adu maru oide maram di siriba maral adu chingnaba pumnamak kokhanduna praman touduna utpa haibasi prosecution gi mathou ni. ***Manoj Kumar vs. State of Himachal Pradesh***, (2018) 7 SCC 327, gi mateng louraduna haikhi madudi hana khut-thabagi thourang leitana amadi nakal ani gi marak ta waroisin puraktriba chayetnaba ama leibana khanghoudana thokhiba funa-cheinaba ama oibana High Court ki order da khut thinjinbagi mathou tade.

8. Nakal animaki marakta mari leinei amadi makhoigi marak lamgi chayetnaba amaga mari leinana court ta civil gi wakat oina chathaduna leiri haibasi yetnaningai oidraba wafamsing ni. Chinda-paodanaramba dagi nakal anigi marakta khatna-cheinaba thoktuna asok apan yaokhibane haibasi court animak na chap manana thigatpada fangba wafam ni. Maral siraklaba meeo singna su hairiba chap manaba thoudok asiga mari leinana FIR ama chankhe haibasi PWs. 19 amadi 22 oiriba Investigating Officers singna respondents-maral sirakalaba meeoisingna BRPS Cr. No. 79/02-Exhibit D-10 haina hakhiba, su chankhi adumakpu makhoina thijinkhiday haina yajabadagi khanglakkhi. Chap manana PW 11 oiriba Police Constable na maral siraklaba meeoising dagi 2 di District Hospital, Belgaum da ming chalami haikhe aduga matam aduda mahak masamak yengsinbagi thabak tarami haikhi. Thoudok adu tarik 07.06.2002 gini amadi respondents-maral siraklaba meeoising, nos. 1 ga 2 na tarik 11.06.2002 da Hospital adu thadokhi. Makhoigi asok apangi paodam adu prosecution na chejanda puthoklamday loinana puthoktabagi maram su piramday.

9. Chingnaba pumnamak kokhanduna siriba maralsingdu praman touduna utpa haibasi prosecution gi mathou oirame. Masigi pura ona-

teinabada maral siraklaba meei di prosecution gi waridu chingnanigai lei haina khak semgatpa mathou tarame loinana mahak maral leity haina yetpa yaba sing semgatkadabni. Maral siraklaba meei di prosecution douna Chingnaba pumnamak kokhanduna praman touduna mahak maral leite haina utpagi mathou today. Karigumba maral siraklaba meei amana maral leite haina yetlaba, adum yetlakpagi oithokpa leirabani, yetliba wafam adu da sougatnaba machak-mathum leirabadi, maral siraklaba meei aduna makha tana karigumba amata praman toubagi darkar tadray. Prosecution na mahaki wari adu chingnaba pumnamak kokhanduna praman touduna utpa ngamdragadi mahak ki wari aduda chingnafam thoke.

10. Maral siraklaba meei amana maral leite haina Section 313, Cr.P.C. gi makhada yetlaktaba yarabasu, prosecution budi magi wari adu chingnaba pumnamak kokhanduna praman touduna uthandaba yaday. Prosecution na hiram kharada paokhum piba ngamdaba matamda, yetliba kangu adugisu yetpada da asonba leiraba, leiriba maong aduda prosecution na karigumba amata praman toubagi darkar oidray haiba yaday. ***Sunil Kundu v. State of Jharkhand***, (2013) 4 SCC 422, da court asina na haikhi:

“28...Prosecution na karigumba mahak ki wafam adu chingnaba pumnamak kokhanduna praman touduna utpa ngamdaba taragadi, maral siraklaba meei na su mahak maral leite haina fajana yetpa ngamjadaba gi khudong chaba loubu yade. Prosecution masa mathanta maromdom lepchagadabani haibasi yanaraba wafam amani. Masagi wari adu chingnaba pumnamak kokhanduna praman toubu ngamdraga, maral siraklaba meei gi wari da leiba asoibagi mateng loubu yade”

11. Maral siraklabba meeoisingna na chap manaba thoudok aduga mari leinana FIR chankhiba amadi police na hairiba FIR asibu thijinkhidabagi maram piba ngamdaba ga loinana chap manaba thoudok aduda maral siraklaba meei singsu soktuna hospital da layengkhi adubu makhoi su sokkhi haibagi paodam amata chejan da pandaba amadi prosecution na wafam shi lotsinduna thambana chingnaba yamna pokhalay loinana prosecution na masigi matangda paokhum piba ngamdray.

12. Prosecution na maral siraklaba meeoisingna chap manaba thoudok aduga mari leinana chanba F.I.R. adu thijinba ngamdaba natraga chejanda makhoigi asok-apan hapa ngamdaba adubu echam-chamna thijinbada soibani haina appeallants sing gi maikaidagi thamlakhiba wafam

adu eikhoina yaba ngamde. Eikhoigi mot ta di proscution na thabak toudaba aduga thoudok aduga mari leinaba machak khudingmak court ki mamangda thamduna achumba amadi michang-mikhai naidaba warep ama court ta louhanba ngamjadaba aduna makhoida yamna thina asokpa-amangba oihalay. Wayel houdringei mamanggi tangkak ta chathaba thijinbagi thabak adu chumna toubu, prosecution na court ta karigumba amata lotaba amadi toufam thokpa mathou khuding ain gi matung inna michang-mikhai naidana pangthoktuna court na chap chaba amadi maram chaba warep ama achumba wayel fangnaba amadi maram chaba dandi pinabagidamak court ki mateng pangnaba chathaba adugumba wayel aduda achumba amadi michang-mikhai naidaba criminal gi wayel na koisilaga lei. **Dayal Singh** (Supra) gi wathokta loukhi ba warep sing adu makhagi maong ashida mari leinei:

“22. Houjik ki wathok asisu deita leitana thijin humjinba amagi masak thokpa khudam amani. Masida thijin humjinbagi thabak pu aranba lambi da natheiduna punaba amadi sakhi oiba yaba machaaksing bu court tagi lotsinduna thamnaba touge-yaona amadi mangnaba toubu thabak yamna yaori. Masi ain na yaba maongda toukhiba natraga khandana touhoudaba natraga toukhiba ama di natay. Masi thijin-humjinbada icham-chamna soiba ama di natay adubu oihaningba maram amana machu sanglaba-semdok sadoklaba amadi chenariba meei adubu dandi fanghandana nanthokhinaba maong da chathakhiba thijin-humjinba amani...”

13. Section 105, Indian Evidence Act, 1872 gi makhada maral leity haina yetpagi matang da defence ta leiba praman pibagi potlumgi matangdi **Partap vs. State of U.P.**, (1976) 2 SCC 798 da loukhiba warepna yamna fajaba maongda paokhum pirae:

“14. eikhoina makhagi court singgi warepsing munna yengsilae. Eikhoi gi motta, court sing asina masa ngakthoknabani haiba wafam gi matangda neinabadagi fangkhiba wafam adu aranbani. Masa ngakthokthanaba ni haibagi wafam sagatnaba Evidence Act ki Section 105 ki makhada maral siraklaba meei da leiriba praman pibagi potlum gi maong aduga prosecution da leiba masagi wari adu chumi utnaba praman pibagi potlum gi maong anigi marakta leiba khetnaba adu makhoina uba ngamkhidaba mali. Masidi yanaraba wafam amani madudi maral siraklaba meei aduda leiba potlum adudi prosecution da leiba potlum adumuk lumde. Prosecution di magi wari du chingnaba khudingmak kokhanduna chummi haina utkadabani adubu maral siraklaba meei adudi supnatang gi

oithokpa yaba pot amagi ayamba saruk ama khak sagatlaga potlum adu thangthaba yai”

14. **Dayal Singh** (supra) gi wathok asidi masa mathanta tongali maramdi masidi wayel manungda maral siraklaba meei ga mari leinaba sakhi oiba yaba machaksing lotsinbaga mari leinaday amadi thijinba ngamdabaga su mari leinaday. Thijinba da asoiba leibadi, sungthi thijindaba amadi chap manaba thoudok ka mari leinaba atopa F.I.R. da yaoba asok-apan gi paodam lotsinba anigi apunbadagi tongangani.

15. **Gazoo** (supra) gi wathok su wari tongalli maramdi masida di wathok ashidadi supnatang gi ee amadi hakchang gi atei mahi neinaba beigyanik na piba paodam louhoudaba khak tani.

16. P.W. 5 ka P.Ws. 2 and 3 gi sakhi neinaraba matungda maral siraklaba meei nos. 3 amadi 4 gi michangda chingnaba pokhalakpigi kanaba adu makhoida piraduna makhoibu High Court na maral leitay haina thadokhiba gi warep aduda su eikhoina aramba uday.

17. Maram aduna, eikhoina High Court order da khut thinjinbagi maram fangday. Appealsing adu kaklae.

Ankit Gyan

Appeals kaklae.