

BHAGWANI
V.
THE STATE OF MADHYA PRADESH
(Criminal Appeal Nos. 101-102 02022)
JANUARY 18,2022

[L. NAGESWARA RAO, B. R. GAVAI AMASUNG
B. V. NAGARATHNA, JJ.]

Penal Code, 1860 — ss.363, 366A, 364, 346, 376D, 3764, 302 amasung 201 — Protection of Children from Sexual Offences Act, 2012 — s.5(g)(m) loinanana s.6 — chahi 11 gi nupimacha amabu faba, ijjat manghanaba amadi hatkhiba — mari leina ba praman — PW-2 (dasa tariba mioi asigi apokpa) loinana imung manunggi mioisingga loina ‘Am’ kouba mioi amgi yumda sandhya yachangba matam da thouram ama yaokhi — mahakki chahi 11 ta ngairiba machanupi adu thiba khangkhide aduga mathanggi numitki ayukta asiba hakchang oina fangkhi— Appellant ga loinana maral sirakkhiba leikhydraba ‘S’ makhoi animak maral leire haina rai takhi amadi sibagi cheirak pikhi — makhathang bagi yathang adubu kaknaba tharakkhiba darkhast aduda areppa pikhi: ana laiyenggi bidya gi oina piba praman singna utkhi madudi leikhibrabi adubu ijjat manghallaba matungda hatpani — Appellant amadi “S” animak yu thaktuna ‘AM’ gi yumda punna leiminnakhi- mathanggi numitta makhoi animak PW-9 gi nak ta chattuna haikhi madudi karigumba achouba asoiba ama toukhre/thokkre haina — makhoigi mit singdu ngangsang ngangkhi, masam mana ifa fai amasung yamna kiba/pakhatpa gi mawong oikhi— fongdokliba wafamgi matung inna Appellant ki mafi marol adu mahakki yumda leiba san sang dagi loukhatkhi —Article D oiriba Appellant ki khonggrao achonbi adugi DNA report na chingnaba mayam ama thoklakpa u- khi— articles Q, R amasung S gi DNA profiling toukhibasing adudi vaginal slide(thukhunga mari leinana changyeng tounaba likli machet ta loubu saruk kahra) , rectal slide (thigun ga meri leinana likli machet amada loubu changyeng tounaba potsak) amasung leikhydrabigi samda pakpa akangba ee aduda nupa amagi Y(male) STR yaowi haina utkhi — ‘S’ tagi loukhiba ee gi saruk khara aduga Q, R amasung S tagi fangkhiba wafamsing ga channakhi — Appellant na mahak atoppa mafam amada leikhi haibasi sathina utpa ngamkhide — mahakki masada tariba khot khiba mami sing adugi maramdasu karimata haiba ngamkhide— Appellant adu mangonda siriba maralsing adugi maral leire haina takhi —siriba maralsing adubu chummi haina pikhi, touwigumbasung mangonda piriba dandi adugi mahutta kaktahaba yadaba mawongda chahi 30 keisumdangda leiba

haibasid aoina onthakhi.

Code of Criminal Procedure, 1973 — s.235(2) — Constitution of India — Article 21 — trial court ki leiriba mihat mipun ga mari leinaba nupi amabu ijat manghallaga hatpa case sing bu hathu hathuna chattha heinabi/apamba —areppa pikhiba: maral siraba mioi amabu Article 21 gi makhada piriba maruoiba haksing gi matung inna fair trial(niyom chumna, leiriba chatna konglongi matungna chathaba wayel) ki hak adu fangfam thok-ee —CrPC gi 5.235 (2) gi pandam amadi maduna pigadouriba kanna adudi, maral siraba mioi adubu mahakki mathakta siriba maralsing adugi mayokta wakatpa natraga sengdoknabagi tanja ama suksoi soidana pigadabani —mioi adubu maral lei leite haina khannaba amasung maral gi matik chaba dandi piba gi khongthang hairiba anisi tokhai tokhaina toubana maral siriba mioi aduda mahakki oiba maram chaba wakat natrga sengdoknabagi damak matik chaba tanja ama piri-sibagi cheirak amgi mayokta praman sing pinabagidamak maral siriba mioi aduda hendokna tanja suksoi soidana Trial Court na pigani — mang da tariba Case(wakat)asi michang khaidaba wayel malhankhiba wayel ni maramdi Appellant oiriba mioi asibu mahak masana masabu ngakthokchanabagi tanja amata pikhide —judgment asi Tarik 03.11.2017 ta chinna haiduna ii-nanabagidamal laothokkhi amadi masimakki numit asida, Trial Court na sibagi cheirak pibagi Order ama pikhi-deprecation (yaningdaba utpagi thouwong).

Cheirak/Cheirak pibagi thouwong — sibagi dandi — fibam mata gi matung inna thokkhib thoudoksing/wamfamsing — Appellant adubu maral leire haina rai pikhi amasung chahi 11 ta nagiribi nupi macha amabu faba, ijat manghanba amasung hatpagi damak dandi pikhi — lepghi: aign thugaina chatkhiba thouwong adugidamak sibagi dandi piba matamda touwong adugi arum ayangbu munna khannaduna pikhi adubu fibam mata gi matunng inna thokkhiba thoudok/wafamsing amadi maral siraba mioi adubu chumthokchanba amadi hannagi punsida hanjilhanba yabagi oithokpa yai natraga yade haibasi khannakhide-Appellant asi na aign kaiba thouwong asi toukhiba matamda masagi chahi 25 sure amadi mahak masa ST Community dagini, hingnanabagidamak khut na suba yaba thabak suba mioini — mahak asi chumthoknaba amadi hannagi punsida hanjilhanba amadi sibagi dandi nattana atoppa cheirak ama leitre haibasi utnanaba praman amata leite — Appellant asigi mathak ta mamang thakta mihat mipun gi oiba thoudok amatada chennabagi wafam leite — keisumsangda leiba matamda mahakna nattaba thouwong chatkhibagi pao amata leite— sibagi dandi adubu mapunsi chuppa keisumsangda leibagi dandi da oina onthabagi darker lei-touwigumbadung nupi macha chahi 11 ta ngairibi amada chatthakhiba yamna chaokhattaba nungsi heitraba thouwong adugidamakta mahakpu kakthaba yadaba

dandi oina chahi 30 keisumsangda leibagi dandi pire.

Makhagi wayelsang na pikhiba wayel amabu kaknanaba tahrakpa wakat asibu machet oina ayaba piduna Courtna areppa pikhi

Held(lepkhi): 1.1 Chayetnaba leitraba wafamdi, Tarik 14.04.2017 gi sandhyagi matam da PW-2 oiriba mioi asina mahakki imung manung-gi mioi-singga loinana ‘AM’ hairiba mioi asigi yumda Chowk Barhon gi thouram yaokhi. Mahakki chahi 11 ta nagiribi machanupi adu mafam aduda thiba khangkhida aduga mathang numitki ayuk ta asiba hakchang oina fangkhi. Makhoina piba warol gi tung-inna Appellant amadi ‘S’ makhoi animak mathang gi numit ta fajinkhi amadi makhoi gi mafi marolsing adubusu loukhatkhi. Ana leyeng gi maikeidagi piba praman na utli madudi nupimahca adu ijjat manghallaba matungda hatkhibani. Ashangba machu gi check (karan karan) chatpa furit adugi mang da gi amuba machugi kudam ani yaodre/kaire amasung lengban gi saruk ta ee-teiraba furit adu Appellant ki yumda leiba sang-sang gi mathakta leiba leigi gamla amadagi fangkhi. Angangba machu gi amuba machuna maram maram chatpa, lengban gi sarukta segaiba ee teiraba moja furit amasu higok machugi jeans no. 28 ki lining oiba maningdana HARW haina thaba amaga loinana loukhatki. Higok machugi jeans adugi mamang gi sarukta amuba eegi dakfam amasu lei. State Forensic Science Laboratory, Civil Lines, Sagar na piba report/paodam gi matung inna ‘S’ ki DNA profile da yaoba nupagi DNA da yaoba alleles (mama mapa anidagi thorakpa maruga mari leinaba) pumnamak asiga leikhidrabi nupimacha adugi thukhun amadi thigunga mari leinana changyeng tounaba likli machet amamamda yaoraba potsang ta gi fangba ngamkhiba DNA profiling aduga chap manei. Nupigi oiba autosomal STR DNA profile adusu nupimacha amasung ‘S’ ki khudei/feijom amadi manung da setpa fi-rol da fangba nagmkhi. Article D, haibdi Appellant ki khongrao achon ba adubu yengba matamda fangliba DNA gi paodam gi matung inna ching naba yaba kaya uu-ba ngamkhi. PW 1, 3 amasung 5 na sakhi pikhiba wafamgi matung inna Appellant amasung ‘S’ , makhoi animak ‘AM’ gi yumda pangthokkhiba thouram aduda yaokhi. PW-4 na pikhiba sakhida mahak masa apikpa chana-thaknaba yonba dukan ama khul adumakta da hang-ee amasung leikhidrabi nupimacha asina mahakki hairiba dukan asida nungdanggi pung 9.00 taba matam da lacuna Kurkure leikhi. 15 minutes ki matung da, Appellant su dukan aduda namkeen leiba lakkhi. PW-9 na warol pikhi madudi Appellant amasung ‘S’ na mahakki yumda Tarik 15.04.2017 ta laklammi. Makhoi animakki mamit adu ngangsang ngang-ee, masam mana ifa fai amasung pakhatpa matou oikhi. Makhoina mangonda tamkhi madudi makhoina mina thina ngangnagadaba/ninda tougaba thabak ama toukhre. Matam adumaktada Appellant gi apokpi lakkhi amadi Appellant amadi ‘S’ animak mafam adudagi chatkhirammi.

Pungkhaimukki matungda, asiba hakchang ama fangbagi nil khongba/charangnaba thoklakkhi.

[Paras 8 amasung 9][12-E-H; 13-A-E]

1.2 Section 313, CrPC gi matung inna ‘S’ gi mathak ta thijinbagi thouwong chatthakhiba matamda mahak masana yajakhi madudi mahak tarik 14.04.2017 gi numit ta AM gi yumda mahak leikhi amasung 15.04.2017 gi aayukta PW 9 bu unabata chatkhi. Appellant nasu mahak 14.04.2017 gi numit asida AM gi yumda amasung 15.04.2017 da na PW 9 gi yumda lei haibasi masana yajakhi. Mahakki mathakta Section 313, CrPC gi matung ina thijinba matam da masagi warol pijakhi madudi mahakki mit ngang-khi, masam mana ifa fakhi amasung mahak masa amadi ‘S’ na PW 9 da yu piyu haikhi. Masida khangjingadaba mari leinaba wafamdi Appellant nasu pikhiba warol ni madudi mahak Sudgaon hairiba mafam asida ‘S’ ka loinana thabak kidamak 14.04.2017 gi ayuk pung 9.00 taba matamda chatkhi. Hallakpagi lambida, mahak ‘S’ ka loinana yu thakkkhirammi. Mahak na AM gi yumda ‘S’ ka loinana nungdangi gi pung 7.00 taba matamda yourammi. Makhoina hidak ngaobagi matou duda makhoibu hankhro haiduna hairammi. Madug matung tarakpa da Appellant na Chain Singh kouba mioi amagi dukanda chatkhi, mafam adudagi mahakpu mahakki apokpi mamana yumda puduna chatkhi. Mahakna mahakki yumthangnabagida tumkhi. Takthorakpa/fongdorakpa wafamgi tung-inna Appellant na setkhiba firol asu mahakki yumgi san-sang gi yumthakta leiba leigi gamla amadagi fangba ngamkhi/loukhatkhi. Article B hairiba potsak haibadi, chain/jip ki manak ta ee churaba khongrao achonbi asi gi FSL gi paodam da chingnaningai oiba wafam kaya utlakkhi/thoklakkhi. Appellant amasung ‘S’ na punna yu thakminnakhi amasung AM gi yumda punna lakkhi. Makhoina fibam tadaba thouwong utpadagi makhoibu mafam adudagi tanthorakkhi. Mathang numit ki ayukta, makhoi PW-9 gi nak ta chatkhi amasung hairammi madudi makhoina mathong chadaba achouba thouwong ama chatthakhre. Articles Q, R amasung S ki DNA profiling haibadi thukhun amadi thigunga mari leinana changyeng tounaba likli machet ta louraba potsak sing amasung kangsillaba ee paklaba leikhidrabi gi sam sing aduda nupagi oiba STR (Y-STR) yaowee. ‘S’ tagi loubata ee gi saruk khara aduda su Q, R, S ta fangliba aduga chap manana yaowee. Appellant na mahak na leikhiba atoppa mafam ama puthokpa sukngam ngamkhide, mahakki masada tariba khotkhibagi mami sing adugi matangdasu gyan tahanba ngamdre. Masigi wayel sang asina Appellant pu mahak masada siriba maral sing adugidamak maral leire haina fangliba wafamsing aduga chap mannaba mityeng thamduna mahakpu maral leire haina piriba wayel adu da asoiba yaokhide haina pikhi. Paras 10 amasung 12][13-D-F; 14-B-E]

2. Appellant bu mahak masabu ngakthokchanba tanja pikhidaba asimak achumba

wayel malhanba gi mawongni. Masi gi case asina takli madudi, Trial court na ijat manghallaba matung hattokpibagi oiba mihat mipungi casesing chatthaba matamda yamna hathu hathuna chatthei haibasini. Maral sirba mioi amabu Constitution of India gi Article 21 gi makhada suksoi soidana chap chaba wayel fangahangadabani. Maral leire haina wayel piba amadi numit adumaktada pikhiba dandi, CrPC gi Section 235 na pirib pandam amadi madugi matung inna chatthakhidaba chatna kanglon adudi-maral siraba mioi adubu mangonda pigadouriba dandi adugi mayokta wakat-pagi tanja pigadabani. Maral piba amasung dandi piba hairiba ani asi tongan tonganna toubana maral siriba mioi aduda Trial Court na sibagi dandi piba nattaga pidaba haiba wahang asi khannaba matamda maram chaba machak mathum puthokchanabagi matik chaba tanja pigadouribani. Judgement asi Tarik 03.11.2017 ta chinna haiduna iinanaba laothokkhi. Numit adumak tada Trial Court na Appellant amadi 'S' animak pu sibagi cheirak/dandi pibagi Order pikhi. [Paras 13 amasung 14][14-E-G; 15- C]

3. Trial Court amadi High Court na pikhiba Judgement sing asibu cheksinna yengba matamda siba gi dandi adu pikhiba matamda maral adu kayammuk chaobano haiba khannaduna pikhibani haibasi takli. Maral siraba mioi adubu semdokpa amasung hannagi punisida hanjilhanba gi oithokpasing amadi aign na yadaba thabak adu kari maramdagi ntraga kari fibam na oihankhibano haibanachingbasing khannakhide. Appellant adu na aign kaiba thouwong adu chatthakhiba matamduda mahak masagi chahi 25 sure amasung ST community dagisu oikhi, hingnabagidamak khut na suba yaba thabak suba mioini. Maral siraba mioi adu bu semdokpa nattaga hannagi punsida hanjilhanba yabagi oithokpa leite haibasi che oina chansinduna/pisinduna prosecution gi maikeidagi praman pikhiba leite amadi sibagi dandi nattaba atoppa cheirak piba yaba yadaba haibagi wahang adu khannakhide. Mahakna touruba aign kaiba thabak adugidamak maral leire haina rai piraba asifaogi mamang thakta Appellant asina aign gi wangma lanna thabak chatthakhibi pao leite. Mahakna keisumsangda leiba matamda mahakna nattaba thabak thouwong chatthakhibi pao leikhide. Maram aduna sibagi dandi asi punsi chuppa keisumsang da leiba haibasida oina onthokpagi tangaifadaba leire. Touwigumbasung Appellant na chatthakhiba mioibana chtheidraba tukatchanigai oiraba mawong da ijat manghallaba matung laibakthirabi chahi 11 ta ngairiba nupimacha amabu hattokpikhibagi thouwong adugi khallaga Appellant pu chahi 30 punsi chuppa keisumsang da leibagi dandi pire amadi masibu kakthaba gi ayaba piroi. Appellant asibu Section 363, 366A, 364, 346, 376D, 376A, 302, 201 of IPC amasung Section 5(g)(m) ga loinana POCSO Act ki Section 6 ki matung inna maral leire haina lepkhi. [Paras 17- 19][16-H; 17-A; 18-A-E]

Dalbir Kaur v. State of Punjab (1976) 4 SCC 158 : [1977] 1 SCR

280; Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : [2009] 9 SCR 90; Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460 : [2018] 14 SCR 585; Mofil Khan and Another v. The State of Jharkhand RP (Crl.) No.641 of 2015 in Crl. A. 1795 of 2009; (Rajendra) Pralhadrao Wasnik v. State of Maharashtra (2019) 12 SCC 460 : [2018] 14 SCR 585 — relied on (hairibasing asi yetnaba matamda sinjinnakhi/mateng loukhi).

Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : [1985] 1 SCR 88; Bachan Singh v. State of Punjab (1980) 2 SCC 684; Machhi Singh v. State of Punjab (1983) 3 SCC 470 : [1983] 3 SCR 413; Mohd. Mannan @ Abdul Mannan v. State of Bihar (2019) 16 SCC 584 : [2019] 8 SCR 266 — referred to (hairibasing asida yengduna Court na khannakhi/mat loukhiba).

Case Law Reference

[2019] 8 SCR 266	referred to	Para 4
[1985] 1 SCR 88	referred to	Para 7
[1977] 1 SCR 280	relied on	Para 13
[2009] 9 SCR 90	relied on	Para 13
[2018] 14 SCR 585	relied on	Para 15

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos.
101-102 of 2022.

High Court of Madhya Pradesh ki, Jabalpur Bench na Criminal Appeal No. 5446 of 2017 amasung Criminal Confirmation Case No. 5 of 2017 ta pikhiba 09.05.2018 ki Judgement and Order dagi lakpa.

Shri Singh, Amartya Kanjilal, Ms. Sayali Kadu, Ms. Adeeba Mujahid, Advs. singna Appellant gi maikeida.

Ms. Ankita Chaudhary, Dy. AG, Gopal Jha, Ms. Rashmi Singhania, Ms. Himanshi Shakya, Kumar Prashant, Nishant Verma, Shreyash Bhardwaj, Advs. singna Respondent gi maikeida.

Court asigi Judgment asi Justice L. NAGESWARA RAO, na

pathokkhi/pikhi.

Appeal asibu tabagi ayaba pikhi.

1. Masigi Appeal sing asi da Appellant oiriba mioi asibu Trial Court na Indian Penal Code , 1860 (“IPC”) ki Sections 363, 360A, 364, 346, 376D, 376A,302,201 amasung The Protection of Children from Sexual Offences Act, 2012 (asambida “the POCSO Act”) gi Section 5(g)(m) ga loinana Act asimakki Section 6 ki matung inna pikhiba maral amadi dandi adubu chummi haina ayaba pikhi.

2. Brijlal Yadav (PW-2) na mahakki nupi (PW-1) ga loinana machanupa ani amsung machanupiga punna tarik 14.04.2017 ki numit asigi numidang pung 9.00 taba matamda Anil Maravi kouba mioi amagi yumda Chowk Barhon (maming thonbagi thouram) ki thouram yaoba chatkhi. Makhoina numidang gi pung 11.00 taba aduwaida halakpada machanupi adu yaoraktre haiba khanglakki. Makhoina machanupibu thiba houkhi amasung mathang numit ki ayuk pung 5.00 taba matamda PW-1 na mahakki machanupi adu hand pump (khut na namduna ising chingkhataba khutlai) gi manakta gyan mangna taduna leiramba thengnakhi. PW-1 na koilao laoba houkhi, madu tabada PW-2 amadi ateisingsu mafm aduda yourakkhi amasung police pu laknaba haikhi. Madhya Pradesh ki Dindori District ki District Scientific Officer, Scene of Crime Unit, na mafam adubu chekninna yengsinkhi. Yengsinkhiba adugi matung inna piba report/paodam da, leikhidrabigi hakchang adu thabak longna leirammi, leikhidrabigi hakchanggi maning thangda sarukta kangsillaba apikpa likli machet mayam ama amadi Gokhru(Caltrop) (gokhru/caltrop-ayurbeda gi oiba mana masing makhal ama) hariba potsak asi samnada naptuna leiramkhi. Drumstick hairiba oo makhal asigi maku su sam gi manungda yaoramba thengnakhi. Mamit animak khumjilli. Naton da konggol thok pa uuba fangkhi, amasung khadang gi yet-oi da ichao chaodana unsa manungda sokpa, apik apikpa asokpa gi mami sing uuba fangkhi. Ngaksam gi yet oidasu apik apikpas asokpa gi dakfamsing lei. Hakchang haibadi angang pokfam gi saruktasu ee thokpa/teiba ukhi. Khongkha dasu ee teiramkhi. Yet thangba khong gi khongmit tasu ee teiramkhi. Thabak ki oithang ba sarukta khotkhibagi dakfamsing lei amasung atoppa khotkhibagi dakfam su thabak ki hek makha sarukta lei. Feigal gi saruktagi hakchangi angang pokfam sarukfao ba ee teiba gi mafamsing lei. Feigal gi maning amadi thigun gi manak ta ee teiba thengnakhi. Khwang ama di hangchang gi maning thangba saruk apumbada asokpa macha macha kaya ama thengnakhi. Mafam aduda uu-ba fangliba potlamsing adu cheksinna yomsillaga thamnaba amadi hakchang adubu post-mortem(siraba matung, asiba adu kari kamdouna oibano haiba khangdoknaba toubu thabak) gidamak tharaknaba Invetigating officer(thijin humjin toubu angamba/karmachari) da yathang pikhi. Makha tana leikhidrbi aduna setkhiba mafi marol singbu loukhatuna yengsinnaba

yathang su pikhi. Post-mortem adu Tarik 15.04.2017 ki numidangwai gi pung 4.00 taba matamda PW-6 oiriba Dr. Sajjan Kumar Uikey na pangthokkhi, mahakna makhada piriba asokpasing asi leiba thengnagkhi

“ khong khut ki makha thangba amadi mathak thangba aduwaidasu sarusing ting ba thengnakhi. Mit khumjillami, ya khumjillami, khut tangkhai hanglammi, Cornea (mitki mapan thangba amuba saruk) congested, pupil (mitki manung thangba amuba saruk) dilated, maigi saruk amadi chinbal adu ee-da oxygen watpadagi higok machu oiramkhi, khut amadi khutsasing ee da oxygen watpagi higok machu oiramkhi. Ee ga yansinnaraba konggol na naton makhul anida leiramkhi. Ee ga yansinnaraba til/tin na yagi mathak tagi cheirung gi kha thangba sarufaoba thengnakhi. Ngaksamgi oithangba saruka muna khamdekpagi dakfam mari, medial aspect of neck (ngaksam bu anithokna kahiriba saruk). Mu na khamdekpagi mami ahum thokna ngaksamgi mayai, khamdekpagi sieze ahumdu gi mami 1cm x 1 cm. 1 cm x 1 cm chaona khamdekpagi mamina khajai anida, 1 cm x 1 cm chaoba oithangba infraorbital (pisumgi makha) ta. 1 1/2 cm chaoba khamdekpagi mamina oithangba xiphisternum (thabak ani/saru polang anigi karak/marak) ta. Intrascapular da khamdekpagi mami ama 1 Y, cm two 1/2 cm xv, oithangba thun da cm ama chaoba khamdekpagi mami. Famjillaba ee na lei machugi oiba akangba famjillana ee yaoba perineal gi sarukta makhathangba mayaigi ahumsuba faigal animak thigun gi akoiba jagasingda. Ee na thukhungi machin da 3 cm. hakchang gi mamang amadi maning da hakchang tongsa amadi unsasinga du thrangkhi. Kansillaba famjillaba ee na thigungi machin amadi thigun gi manung gi sarukta. Machin hangdokfam adu khutsa ani thingjina chanba mawong da laoramkhi. Asokpa khudingmak sidringei matamda thokkhiba gi mawong ngaktani.”

Siribadugi maram sing asi sor funbdagi, neurogenic shock (hakchang da yaoriba spinal cord ta sokpadagi ee gi khongjelda akaiba pirakpagi oiba fibam), ngak li chappa, henna sathiba asokpasing amadi namduna ijjat manghannaba hotnaba vagina (thukhun) amadi anal opening (thigun gi mapan) da ee thokkhiba sing asinani haina pikhi.

3. Chingnaba leibadagi Appellant amsung Jehar Singh Dhoomketi gi machanupa Satish Pu Tarik 16.04.2017 ta fakhi. Satish ki warolsing adu record touraba matung madu gi matung inna leikhidrabi gi feijup amadi inna fi amasung mahakna setkhi fi adu loukhatkhi. Chap manaba fibamda Appellant na san sangda lottuna thamba mahakna setkhiba fi adusu mahakna piba warolgi matunng inna loukhatkhi. Wahang paohanggi thabak loisillakpada aroiba paodam adu Tarik 27.06.2017 da pisinkhi. Sections 363, 366-A, 364, 346, 376D, 376A natraga POCSO Act ki

Sections 302, 201 IPC amasung Section 5(g)(m) loinana Section 6 ki makhada Satish amasung Appellant ki mathakta charge (hairibasing asigi makha da makhoi maral leire haina court ta puthokkadouriba) toukhi. Sakhi (thoudok amabu uhoubu natraga khanghouba mioi) 12 pu Prosecution na wahang paohang chatthakhi. Dindori gi Sessions Judge na Appellant amasung Satish pu makhoi gi mathak siriba maralsing adugidamak sibagi dandi pikhi. High Court na paokhum oina Appellant amasung Satish ki mathakta maral leire haina Trial Court na pikhiba dandi adubu chummi haina pikhi. Maduda pendaduna Appellant amasung Satish na masigi Court asida lakhibani. Appeal asigi aroiba youdringeida Satish leikhidre maram aduna Appeal asi khannakhidre.

4. Chahi 11 ta nagiriba nupimacha amabu faba, ijat manghallaba matung hattokpikhiba adugi matik chaba praman leitaba maramna ate mari leina oithokpa yaba paramansingbu yengki/khannakhi. *Sharad Birdhichand Sarda v. State of Maharashtra*¹ ki case asida Court asina thamkhiba maru oina chatkadaba niyomsing ni thamkhiba wafam singbu mang da thamduna Trial Court na thamjillaba/pisillakhibaba pramansing adubu kupna yengsinkhi. Anil Maravi gi yumda pangthokkhiba Chowk Barhon gi thouram da Appellant amasung Satish na yaokhi ba amasung asiba hakchang adu fanglaba matung makhoi ani scarce (thiba khangkhidba)/ asi PW-1 na pikhiba warolsing adusu khannakhi. PW-4 oiriba chana thaknaba dukan macha ama toujaba Chain Singh hariba nupa asina chin hai oina pikhiba warol adubu su khannakhi. Mahak na sakhi touduna pikhiba wafamda sikhriba nupimacha adu Tarik 14.04.2017 gi numidang gi pung 9 da mahakki dukanda laktuna Kurkure leikhi, mahakki masada blanket/feijup (tumbada isa supnaba sijinnaba fi) amadi innafi ama loinarakkhi. Minute 15 gi matung da, Appellant nasu mahakki dukan da namkeen leiba lakkhi. Trial Court na maral sirba mioi asina piriba warolsing amadi fangliba leikhidrabi nupimacha adugi innafi amadi feijup amasung Satish amadi Appellant ki mafi marol sing bu consider (lousinba/khannabada sijinna ba) toukhi. Thoudok thokfamdagi fangkhiba feijup amadi kudam adu Satish ki furit tagini haina puthokkhi. Satish amasung Appellant bu kupna yengsinkhiba Dr. Vijay Paigwar (PW-11) na piba praman bu trial Court na khannakhi. Appellant ki masada inchi 1 muk chaoba khotkhibagi mami ama oi-thangba lengban gi mathak thangba sarukta loinakhi, oi-thangba lengban gi makha thangba saruk ta 0.5 inchi muk chaogadaba khotkhiba gi mami, nanggal gi makha-thangba saruk ta 0.5 inchi muk chaogadaba khotkhibagi mami, yet thangba khut ta 2 inch muk chaogadaba khotkhibagi mami amasung khajaida 1 cm muk chaogadaba khebatkhibagi mami amadi 4 inches muk oigadaba khebatkhibagi mami hakchang polang-gi sarukta takhi. Code of Criminal Procedure, 1973 (“samlapna CrPC”) gi Section 313 gi matung inna Satish amadi Appellant na

¹ 1(1984)4 SCC 116

pikhiba paokhum adubusu Trial Courtna kupna yengsinkhi. Mahak Satish ka loinana thoudok thokkhiba numit adugi sandhyawaida Satish ka laina na yu thakkhi amasung makhoi ani punna Jaipal Singh (PW-9) gi manak ta chattuna mathang numit ki ayukta yu piyu haikhi haina Appellant asina masana yana piriba warol adu trial Court na i-duna thamjinkhi. Appellant masana haijariba wari haibadi tarik 14.04.2017 gi numidang da mahakki apokpi laktuna yumda pukhiba, mahak pu chei-thangkhiba, yumthangnaba oiriba Deepa gi yumda chatkhiba haibasing asi Trial Court na mahakki mama nattrgasu Deepa bu wahang paohang chatthakhidabana maram oiraga chummi/yare haina haikhide. Appellant na sagatliba wari amadi thokkhiba thoudok adugi warising aduga channarae haina louduna Trial Court na makhoida siriba maralsing adugidamak maral leire haina rai pikhi. Appellant amadi Satish ki warisu taraduna Trial Court na Appellant amasung Satish pu ijjat manghallaba matung hattokpikhiba tamthiraba lichat adugidamak maral leire haiduna sibagi dandi pikhi. Pukhatlakkhiba wafam da su High Court na thamjinduna leiraba wanfamsing adubu amuk hanna thajab thamduna maral leire haina Trial Court na pikhiba dandi adu chummi haina pikhi.

5. Appellant ki maikeida lepkhi ba Shri Singh hairiba wakil asina na thamkhi madudi fangliba praman amadi loukhatkhiba sing amatana Appellant asi yaowi haiba utte. Mahak na yetkhi madudi, Satish ki fondokkadaba warol adu Tarik 16.04.2017 pung 1340 ta record toukhi amadi Appellant kina pung amaga makhai gi matung da toukhi. Makhoi animakki warol sing adu PW-10 na record toukhi. Mahakna thamkhi madudi Appellant ki warol adubu khannba matamda makha thangbagi Court na aranba toukhre. Mahakna makha tana haikhi madudi thoudok thokfamni hairiba mafam adudagi fangkhiba potlam amataga Appellant ka karigumba mari amata leinade. Mahakki matung inna dukandagi leikhiba Kurkure gi chekhao adu PW-4 na Court ta karamba dukandagi lekhibano haibadu masak takkhide. Thoudok thokfamdagi fangba amuba machugi kudam adu Satish ki furit tagini haibasi Appellant ka mari leinaba wafam nattee. Loukhatkhiba furit, angangba machugi moja furit amadi jeans sing asigi matangda palladuna mahak na haikhi madudi fi-rol sing aduda fangliba ee adu mioi ba gini haibasi utnanaba serological testing toukhide. Appellant ki masada tariba asokpasing adu Appellant na sinmi (hanchang sijinnaduna thbak suba mioi) oiba maramna toudok asiga mari leinaba wafamni haina khannafam thokte haiduna pikhi. Mahakna 'injury marks' haina tahriba jaga adu ihang-hangee haiduna thinduna thakkhi. Makha thangbagi Court na maral siraba mioi adu ga leikhidrabi aduga iroi loiba oina punna leiminnaba ukhi haibagi praman asi khannakhide haina Appellant ki maikeida lepkhiba khang heiraba wakil aduna thamkhi. Mahakna Bhagat Singh (PW-5) na pikhiba wafam haibadi Appellant adu mahak masagi yumdagi fabani amasung fadanaba hotnaduna michen oiribadi Satish khaktani haina pikhiba praman sing

adubu chingsinduna khannakhi. Section 313 CrPC gi makhada wahang paohang toubu matamda Appellant na pikhiba warolsing adubusu niyom chumna khannakhide haina mahakn yetkhi. Section 313 CrPC gi makhada loubu warolsing asina lengdraba praman ni haina loubu yaro haina Appellant ki maikei da lepkhiba khang heiraba wakil aduna thinduna haikhi. Mahakki matung inna mari leinaba thoudok wathoksing asi mapung fade amadi Appellant asi lalle haina praman piriba sagatliba wafam adukhaktamakka channei. Masigi waheisida Appellant ki maikei da lepkhiba khang heiraba wakilna thamkhi madudi Constitution of India gi Article 21 gi matung inna suksoi soidana fangfam thokpani haina piriba niyom kanglon asi niyom chumna tougabani haibasi tungoinaduna aign gi oiba mateng adu houjik ki case asida chatthakhi. Court na happa wakil aduda sakhi singbu wahang paohang touna ba tanja adu matik chana pikhide amasung Appellant adubu dandi pidringei gi mang-oinana mari leinaba machaksing/potlamsing pikhatnanaba matam pikhide. Mari leinaba wari kaya amasu khannakhide. Appellant asibu semdokpa yabagi oithokpa amadi mahakpu punsi chuppa keisumsangda tamba yabagi oithokpasing adu wahangfam thamdana khannakhidaba/loisinkhiba adu makha thang ba Court na khannaba toukhide. Appellant ki maikei da lepkhiba khang heiraba wakil na makha tana yetkhi madudi Appellant asi IPC gi Section 376A gi matung inna maral pifam thokkhide. 2013 ga semdokkhrabagi matung inna IPC gi Section 376 (1) amasung (2) gi matung inna mioi anidagi henba na pullaga ijjat manghanba gi thouwong asi Section adugi manung chandre. Appellant amadi Satish anina punna IPC section 376D na piriba Aign kaiba thabak asi punna wakhallon amatada pangthokminnasi haiba apunba apamba wakhallon lei haibasi praman piduna utkhiba leite. Mioi anidagi henbana punna ijjat manghanbada saruk yabagi dandi asi mapunsi chuppa keisumsang da leibani. Maram aduna sibagi dandi asi channafam leite.

6. Madhya Pradesh State asigi khang heiraba Deputy Advocate General na Trial Court amadi High Court na pikhi ba Judgement sing adubu ngakthokladuna thamkhi madudi thokhriba thoudok sing aduda samnadaba/channadaba wafam leite. Mahakki matung inna-prosecution na praman pikhi madudi, Anil Maravi gi yumda Chowk Barhon gi thouram pangthokpa, leikhidribi adubu Chain Singh (PW-4) gi dukanda uu ba amasung ikan kannadana Appellant na mahakki dukanda lakpa amadi PW-5 na leikhidrabi aduna Satish ki yumda changkhiba uhouwi haiba adu Satish na CrPC gi Section 313 gi matung inna leikhidrabi aduna mahakki yumda amuba machu gi innafi tamba lakkhi haina masa yana pikhiba warolna sougatkhi haiba asini. Leikhidrabi adu madugi matung tarakpada thiba khangkhidre amasung mathang numit ki ayukta mahakki hakchang oina fangkhi. Ana layeng gi maikeida gi piba pramanna utkhi madudi leikhidrabi adu ijjat manghallaba matung da hatpani. Satish na aign na yadaba ijjat manghanbagi thouwong chatthakhi haibasi Bigyan gi oiba praman dasu mayek sengna utli. Tarik

14.04.2017 gi numidang waida Satish amasung Appellant punminnakhi haina ukhiba amasung PW-9 gi dukanda mathng numitki ayukta punna chatminnakhiba. Masam mana ifa fana yu piyu haiduna PW-9 da haijakhi. Adugi tungda Satish thiba khangkhidre aduga numit yungba matung mahakpu fakhi. Fongdokkhiba warolgi matung inna Appellant mafi marol adu mahakki san-sangdagi loukhatkhi. State ki meikeida lepkhiba khang heiraba wakil na Appellant na gyan tanaba haikhidraba mahak ki masada tariba asokpagi dakfam/mami sing adugi matanda pukning chingsinduna khannakhi. Mahakna Forensic Science Laboratory (FSL), Sagar na semba DNA report pusu thajaba thamduna khannakhi. Yamna maru oina Article D oiriba chain/zip mayada ee teiraba Appellant ki khongrao achonbi asigi matangdasu pukning chingsinduna khannakhi. Article D da DNA gi trait amadagi henna yaowi haina utliba asina chingnainingai oiba wafam kaya ama thokhallak-ee haina Ms. Chaudhary na yetkhi. State ki maikeida khang heiraba wakilna thamkhi madudi Appellant na mahak numit aduda thoudok thokfamdu nattaba atoppa mafam amata lei haina praman toubu ngamkhide. Appellant na mahakki apokpi amasung Tarik 14.04.2017 gi ahingda mahakna tumkhiba yumthangnariba yumgi mapu Deepa gi matangda examine(yengsinba/khannaba ngamkhide). Section 313, CrPC gi matung inna Appellant na mangonda hangkhiba wahangsing adugi matangda State ki maikeida lepkhiba khang heirab wakilna Court asina aign/niyom amani haina mamang thakta thamkhrabasing bu thjaba thamduna thamkhi madudi icham chamna yaningde/lalli haiba asina maram oiraga thokhriba thoudok wathoksing adu chummi haina praman toubu/piba ngamlabadi thokhriba thokheidaba thoudok aduga anouba/ahenba mari leinhanba yai. Section 313 CrPC gi matung inna piraba warolsing khaktamak yengduna maral leire haina piba yadrabasu hairibasing adu budi Prosecution gi case adubu mathou hapnabagidamak sijinna ba yai. Karisu toubu ngamjakhidrabi chahi nouribi nupimahca adubu ijat manghallaba matung khudum chanduna mafam marang khangda na hattokpikhiba adugidamak Appellant adu bu thoujal amafao utpifam thokte. State na yetkhiba wafamdi Trial Court na Appellllant adubu mahak na thoukhiba yamna tukatcharaba thouwong adugidamak siba gi dandi piba matamda karigumba asoiba aranba amata toukhide haibasini.

7. Masigi Court asina Dalbir Kaur v. State of Punjab² ta marik chumna mihat mipunga mari leinana thanggatlakkhiba darkhast amasu thoidokna ayaba pibagi matangda chatnagaba sing adu makha gi asumna thamkhi: -

“(1) madudi paraman oina piraba sing aduda mityengt hamduna khannaraba matung manana takhraba rai amabu karigumba

² 2(1976) 4 SCC 158

pramansing adu yengba/khannaba matamda tongan tonganba wakhallon leiba tarabsu masigi Court asina khut thingjilloi;

(2) karigumba High Court chatthakhiba karaifao ba chummi natraga lalli haibna chatthakhiba param aduda karigumba aranba ama aign gi mityengda natraga chatfam thokpa niyom natraga eeduna/thmjina duna leiraba sing aduda, praman sing adu lanna paba/Artha hanba, houjik makki oina, mitmang da leiriba praman sing adu ana-laeyng na piba praman ga channaba oikhide haibanachingba asigi maramsing asigi nattana masigi Court asina mayamga mannana piraba pramansing adubu amuk hanna khannaba/neinaba natraga nouhounana pukning thougatloi,

(3) High Court na masagi oiba pukning gi wafam sing adubu mahut sinjinnabagidamak praman sing adubu karaifaoba thajaba yaba haibasi gi matangda Court asina changsillaroi;

(4) High Court na aign gi chathafam thokpa niyom bu natheiduna karigumba wafam ama chumme haina pikhiba tarabadi fibam aduda di Court asina khut thingjingani, masana fangfam thokpa achum arangi wayel natraga niyom chumna chatthaba wayel natraga suksoi soidana toufadraba achum arangi arangi wayekl pathap singbu tung-oinana chattuna maral siriba mioi adugi mathakta aign kaina sathina achum arangi mahei adu fanghandabani;

(5) chumme haina praman piduna leiraba wafamasing adubu aign gi mityeng na lanna Artha hankhiba natraga khannakhiba Taraba natraga High Court na pikhibi waroisin adu praman piduna leiribasing adu amata khannadana onna teina ba mawong da pikhiba oirabadi Court asin khut thingjinba yagani;

Court asina maikei animak ki maikei da lepkhiba wakil sing bu makhoina yetnagadouriba adu matam mangdanaba amadi heisingba amasung thouna panggalbu lemna mangdanaba mathak ta palliba chatnagadaba niyom sing asigi kachin marigi manungda khannaba taksinkhi.

8. Chayetnaba leitraba wari wakhongsing adudi, PW-2 na mahakki imung manung gi mioisingga louna Anil Maravi hairiba mioi asiigi yumda Tarik 14.04.2017 gi numidang waida Chowk Barhon gi thouram yaoba chatkhi. Mahakki chahi 11 ta ngairibi mahcanupi adu thiba khangkhida amasung mathang numit kia ayukta asiba

hakchang oina fangkhi. Makhoina piba warolgi matung inna Appellant amasung Satish pu fajinkhi, makhoigi mafi marolsu loukhatkhi. Ana leyng gi oiba praman na utli madudi nupimacha adu ijat manghallaba matung da hattokpani. Ee teiraba lengban gi maya da segairaba mamang thangba saruk ta teklaba kudam ani yaodraba asangba machugi karan-karan chatpa furit ama Appellant asigi sangsanggi yumthak ta leiba leigi gamla amadagi loukhatkhi. Ee teiraba Lengban gi sarukta segairaba amuba machuna maram maram chatpa angangba machugi moja furit amaga loinana maning thangba saruk ta yetlom oina HARW haina thaba higok machugi no. 28 ki jeans amagasu loukhatkhi. Atiya machugi jeans ki khongrao adugi mamang romda ee teibagi musinna Taraba dakfam amasu lei. State ki Forensic Science Laboratory, Civil Lines, Sagar na utkhi madudi mi-oibaga mari leinaba maramsing Santosh ki DNA profiling toubada fangliba aduga leikhidrabi adugi thukhun amadi thigun manaktagi changyeng tounaba loukhiba likli machet (slide) aduda yaoroba DNA profile aduga chap manei. Chap manaba nupi gi oiba STR DNA profile ama leikhidrabi adudagi amasung Satish ki feijom/khudei amdi manung da setpa fi-rol dagi fangba ngamkhi. Article D oiriba Khongrao achonbi oiriba asi yengba matamda chingnaningai oiba wafam kayagi likhun thoklakkhi.

9. PW-1, 3 amasung 5 oiribasing asina sakhi piduna haikhibagi matung inna Appellant amasung Satish makhoi animak Anil Maravi gi yumda pangthokpa thouram aduda yaokhi. PW-4 na sakhi pikhi madudi mahak acha athak ki dukan macha ama toubani amasung leikhidrabi aduna mahakki dukanda laktun numidanggi pung 9.00 taba matamda Kurkeure ama leikhi. Minute 15 gi matung da Appellant na magi dukan dagi namkeen leiba lakkhi. Jaipal (PW-9) na warol pikhi madudi tarik 15.04.2017 da Appellant amasung Satish na mahakki yumda laklammi. Mkhoigi mamit singdu nagngsang ngang-ee, masam mana ifa fai, makhoi akiba gi saktam/sakfamda da lakkhi/oikhi. Makhoina mangonda paodamkhi madudi makhoina karigumba achouba asoiba ama toukhre. Matam aduda Appellant ki apokpi Munni Bai lakkhi, amasung Satish amadi Appellant animak mafam adudagi chatkhi. Pungkhaimukki matungda khul aduda leikhidrabi adugi hakchang fangbagi koilao laoba nil khongba hourakkhi.

10. Satish pu Section 313, CrPC gi matung inna wahang paohang chatthaba matamda Tarik 14.04.2017 ta mahak Anil Maravi yumda lei amsung Tarik 15.04.2017 gi ayuk ta mahakna PW-9 bu unaba chatkhi haibasi mahak masan yajana jaban pikhi. Appellant na su mahak Tarik 14.04.2017 da Anil Maravi gi yumda leiba amsu Tarik 15.04.2017 gi ayukta PW-9 gi yumda chatkhi haibasi masana yajakhi. Mahakna makha tana Section 313, CrPC gi matung inna warol pikhi madudi, mahakki mamit ngangsang ngangkhi, masam mana ifa fakhi amadi mahak amasung Satish na PW-9 dagi yu piyu haikhi haibasini. Appellant na warol

piduna mahak Satish ka lina na Sudgaon da thabakkidamak Tarik 14.04.2017 ki ayuk pung 9.00 taba matamda chatkhi haibadu iisinduna thamba darkar oi. Halakpigi lambida Satish ka lina yu thakminakkhi. Mahakna numidang gi pung 7.00 taba matamda Anil Maravi gi yumda Satish ka lina chatkhi. Makhoigi yu ngaobagi fibamduda makhoi mafam adudagi chatkhinaba hairami. Adugi tung da Appellant na Chain Singh gi dukanda chatkhi, mafam adudagi mahakki apokpi mamana puduna yumda chatkhirammi. Mahak mahakki yumthangnabi Deepa gi yumda tumkhi.

11. Dr. Vijay Pegwar (PW-11) na Appellant adubu tarik 17.04.2017 ta kupna yengduna makhada piriba asokpasing adu mahhaki masada fangba khudamsingni haina pikhi:

i) lengban gi saruk inch 1 muk chaogadaba khotkhibagi mami,

ii) oithnagba lengbangi makha thangba sarukta 0.5 inch ki khotkhibagi mami,

iii) hankchanggi maning thnagba sarukki makha thangba sarukta 0.5 inch ki khotpigi mami,

iv) yetthangba khutta 2 inche ki khotkhibagi mami.

v) khajai gi sarukta unsa taknaba natraga khebatkhibagi 1 cm gi jaga, amasung

vi) yetthangba sarukki saru polang gi makha thangba saruk ta unsa taknabagi/khebatkhibagi 4 inche muk chaoba mami. Khotkhibagi mamising Satish ki h akchang da uuba fangkhihakchang Dr. Vijay Pegwar na kupna yengsinkhi.

12. Appellant na fongdiktuna pikhiba warolgi tung-inna mahakna setkhiba fi-rol adu mahakki yumda leiba sanggon gi yumthakta leiba leigi gamla amadagi loukhtpa ngamkhi. Appellant gi chain/zip mayada ee teiraba khonggrao achonbi oiriba Article B gi matangda FSL na piba paodamda chingnanaingai oiba wafam kaya lei haibasini. Appellant amadi Satish na yu thakkhi amasing makhoi ani punna Anil Maravi gi yum da chatkhi. Makhoi gi mawong chadraba matou aduda makhoibu mafam adudagi tanthorakkhi. Mathang numit ki ayukta makhoi PW-9 gi dukanda chattuna haikhi madudi makhoi na karigum achouba asoiba ama toukhre. Article Q, R, amasung S oiriba vaginal slide (thukhun dagi loukhiba changyeng

tounaba likli machet amada loubas sample), rectal slide (thigunda gi loubas sample) amasung leikhidrabigi samnada pakpa kangsillaba ee sing gi DNA profiling aduda nupa gi oiba Y (male) STR yaoba thengnakhi. Satish tagi changyeng tounaba loukhiba ee gi saruk khara aduga Article P, Q amasung R tagi fangkhiba wafamduga chap manakhi. Appellant na mahak numit aduda thoudok thokfamdu nattaba atoppa mafam amada leikhi haiba asi yamna sathina utpa ngamkhida. Maru oina mahakki masada tariba khotkhibagi dakfamsing adu gi maramda karisu haiba ngamkhida. Appellant adubu mahakki mathakta siriba maralsing adugidamak maral leire haina mannana pikhraba waroisin aduda eikhoigisu ayaba piri.

13. Appellant pu niyom gi tung inna mahak masa ngakthokchanaba/mangonda siriba maralsing adu lalli haina haijanaba tanja amata pikhidaba haibasi achum arangi wayel bu natheibani. Ijrat manghallaba matung hattokpibagumba mihat mipungi wayel ama chatthaba matamda Trial Court singna hathu hathu na achum aran gi wayel chatthabagi heinabi oi haibasigi mayek laraba khudam adu masigi case asina oire. Maral siraba mioi amabu Constitution of India gi Article 21 gi tung inna achumba wayel ama suksoi soidna pigadabani haibasi mayam na ikhan khangnarana aign/niyom amani. Numit adumak tada maral leire haiduna amadi dandi piba gi Order pikhiba adugi matangda khannabada, CrPC gi Section 235 (2) gi pandam amadi madugi matung inna tougadaba thouwong sing adudi maral siriba mioi adubu mahak masada piriba dandi adugi mayokta wakatchanaba tanja piba aduni. Maral leire heina khannaba amasung dandi piba haiba anisi amamamta oina tongan tonganna toubas/khannaba tarabadi maral siriba mioi adubu matik chaba tanja ama piba ngamgani³. Sibagi dandiga mari leinana darkar oiba potlamsing adu puthokchanabagi chap chaba tanja adu Trial Court na suksoi soidana pigadabani⁴.

14. Legal aid (aign gi oiba mateng pinaba leiba mafam) na hapkhiba Advocate, K.G. Sahu na Sessions Court na Tarik 04.07.2017 da Tarik 25.07.2017 ta Appellant ki mathakta kerikari maral sigadage khannabagidamak matam lepkihabyeithokkhi ba matam da Appellant ki maikaida Sessions Court ki mamangda lepki.. Tarik 25.07.2017 da Advocate MLK. Kannaujiya na mahak Court ki mangda thokkani haibagi che pisinkhi. Numit asimaktada, trial Court na sigadaba maralsing adugi matang da yetnaribasing adu takhi. Sigadaba maral sing adu sagatkhi amasung wafam adu karamna khannagani haiba pikhi/thamkhi. Tarik 02.08.2017 ta sakhi 9 bu wahang paohang chatthagani haina lepki amsung Tarik 03.08.2017 atei lemhouriba sakhi sing adubu wahang paohang chatthagani. Tarik

³ Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498

⁴ Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460

02.08.2017 da Advocate Kannaujiya na Court ta mahak maral siraba mioi adugi maikeida leppa ngamalaroi haiduna thanggatkhi. Advocate, Satyendra Yadav pu maral sirba mioi adugi mahut sinduna lepnaba hapkhi. Numit adumaktada PW-1, 2 amasung 3 busu wahang paohang chatthakhi amadi mathng gi numit tana PWs-4 amasung 5 bu wahang paohang chatthakhi. Yetnaribasing adu aroiba oina Tarik 26.10.2017 da takhi amasung judgement adu iinanabagidamak chinhai oina Tarik 03.11.2017 ta laothokkhi. Numit adumakta da Trial Court na Appellant amasung Satish anibi sibagi dandi piba Order ama laothokkhi.

15. Masi gi Court asina Bachan Singh v. State of Punjab⁵, Machhi Singh v. State of Punjab⁶, Mohd. Mannan @Abdul Mannan v. State of Bihar⁷ hairba Judgement sing asi piba matamda makha gi asigumna wafam kayamarum thamkhi:-

“Mathakta palliba judgement sing asibu kupna yengba/khannaba matamda thoklak liba aign gi oiba wafamdi, siba gi dandi haibasi pangna/tangna thokpa thokpa case makhal amada nattana pifam thokte haibasini, karigumba piba tarabadi piriba adugi top-toppa maramsing adu Criminal Procedure Code ki 354(3) na yathang oina piriba chatna kanglongi tung inna ii duna thamjingani. Karigumba case amabu pangna/tang na thokpa thoudok ama oi natraga oide haina khannaba matamda, aign na yadaba thabak adu kayam sathina, kayam tukatchaningai oi natraga kayam thina laibak thihankhibagi haibadu khaktamak asina amata ngairaba niyom oiroi. Court na aign kaiba thouwong adukhaktamak yengba nattadba, thouwong adu chatthakhriba misak, mahakki wakhal khanba ngambagi sakti/wakhal asu karamba fiabam da leibano, mahak samaj asida hingba matamda enl thum gi oiba karamba fibam da lei haiba adusu khannagani. Punsu chuppa keisumsang da leiba gi dandi asina niyom ni aduga sibagi dandi piba asina niyom nattana tangaifadaba fibam da pigani.

16. Mofil Khan and Another v. The State of Jharkhand⁸ hairiba case asida masigi Court asina makha gi asumna thmkhi: -

“8. Maral siraba mioi adubu semdokpa natraga hannagi punsida hanjilhanba yabagi oithokpa lei natraga leite hainbagi Matanga da khannaba haibasi aduga mari leinaba wafam amani. Maral siraba mioi adubu semdokpa natraga hannadagi punsida hanjilhan bagi oithokpa leite haiabgi praman khomjin ba haibasi State ama gi toufam thokpa

⁵ (1980)2 SCC 684

⁶ (1983)3 SCC 470

⁷ (2019) 16 SCC 584

⁸ RP (Crl.) No.641 of 2015 in Crl. A. 1795 of 2009

thoudangni. Siba dandi asi yaribamakhei piroidabani karigumba tangna/panna thokpa case takhak nattana madusu apik pa dandi piba gi oithokpa gi khannafam leitraba matamda(masida yengu: Bachan Singh v. State of Punjab 9). Hannagi punsida hanjilhanba gi maikeida rai pidabigi heinabi, punsi chuppa kesumsang da leibagi dandi asina matik chadrae haiba mram asini haina pelhannabagidamak Court asina leiriba Praman sing bum asak taktuna maral leiraba mioi adu karigumba makhal amatada semdokpa nattraga hannagi punsida hanjilhanabagi leiriba thousil/thourang asigidamak matik chade haibasi utkadabani. Masigi analysis (macha khaina kupna khannaba/neinaba) asi Court asina cheksinna/hakchinna mihat mipun ga mari leinaba thabak chatthariba mioi aduga mari leinaba wafam amadi atei thoudok wathok/wafam sing ga loinana yengsillaba khaktada ngamgani (masida yengu: Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra 10). Rajendra Pralhadrao Wasnik v. State of Maharashtra 11, 9 (1980) 2 SCC 684 10 (2009) 6 SCC 498 11 (2019) 12 SCC 460 11 | P a g e, hairiba case asida masigi Court asina Court asimakki Judgement amabu hanna yengduna sibagi dandi pikhraba amabu yere/chumle haina pikhibaga loina makhagi asigumna thamkhi:

45. Masigi Court asina pikhiba makhal kayagi rai/areppa singgi matung inna thamkharab aign singna mayek sengna handokpa yadana piri madudi oithokpa yaba (oithokpa yaba nattaba nattraga oiraroidaba natrtraga oithokpa suya yararoidaba)madudi maral leiraba mioi amabu semdoka nattaraga hannagi punsida hanjilhanduna samaj asida hingba ngamhanba yai haibasi yamna hakchinna amadi thawai yaona Court singna sibagi dandi pidrinegida khannagadabani. Hairiba asi Section 354(3) CrPC na piriba darker oibasing adugi manung channa toufam thokpa thourang aduni amadi masibu tayang na loufam thokte maramdi masina mioiba amagi punsi loubagi wafam oibanani. Masigi tangaifaba touwong asibu oihannabagidamak, maral leiraba mioi adu semdokpa nattarga hannagi punsida hanjilhanba yabagi oithokpa leite haina Court asida leiriba praman sing adugi mateng loudana utpa haibasi Prosecution gi mathou ni. Hariba pandam asi Mahakna keisum sang da leiringeida thoukhiba thabak/chatthakhiba thouwong sing gi matang, karigumba jamin da thoktuna keisum gi mapal da leiba tarabadi madudi matamda chatthaba thbak thouramsing, mahakki pukning wakhal gi oiriba fibam gi matangda ana leynggi oina praman, mahakki imung manung ga pao faonaba/leinaba mari amadi atei atei gi matangda praman kaya Court ta record oina thamlaba khak tada fangba nagmagani. Asigumna maral leiraba mioi aduna masi gi matang da mahakki oiba praman piba/puthokpa yai.

17. Trial Court amadi High Court na pikhiba Judgement sing adu kupna yengba matamda makhoiba fongdokliba wafam di sibagi dandi piba matamda thokhriba mihat mipungi thabak adu kayammuk sathibano haibasi khannagani. Semdokpa natraga hannagi punsida hanjilhanba yabgi oithoka natraga oithoktaba haibaga mari leinaba wafam asi maral siriba mioi adugi matangda khaannakhida. Court asina *Rajendra Pralhadrao Wasnik v. State of Maharashtra*⁹ hairiba case asida thamkhiba wafamsing adu yamna channana yengsinba darkar oi:

“47. Semdok pa, hannagi gi punsida hanjiba amsung nouna amuk nouna samaj tot na tinnhanba gi matangda henna lumna/hakchinna khannaba yaroi. Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] gi mamangdadi Court sing na toufam thokpani haiduna chatthakhirba aign na yadaba mihat mipungi thouwong adukhaktamak, madu kayam mawong tadana/sathiba mawongda chatthakhi amasung maduna kayam sathina/luna chatthakhibano haiba asikhatmak lumna/hakchinna loukhi. Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] na dandi pibagi mawong/lambel adu uilladuna/yengsilladuna nouna houdoktuna maral leiraba mioi amabu semdokpa nattarga hannagi punsida hanjilhanab haibasigi darker oibadu thamkhi. Constitution Bench na fongdokkhiba mityeng asi leidunasu, thoudok kayamarum leikhre, Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] amasung Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] hairiba case sing asida thokkhiriba aign na yadaba mihat mipungi thouwong dukhak tamak lumna/hakchinna khannakhiba amadi maral leiraba mioi adubu na laina khannaba bu case sing asida thinduna takkhi. Sangeet [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] asida thamkhibagi matung inna, “dandi pibagi mawong/thouwong da, animak haibadi aign n ayadaba mihagt mipungi thokkhirba thoudok amadi thoudok aduda chennarib mioi animak chap manana maru oi.” Maram aduna eikhoina kaoroidaba adudi, eign kaiba mihat mipungi thoudokta chennariba mioi, mahak na kayammuk sathidunasu, mahak mioi ba ama oiba maramna mahak mahakna pangthokhriba thabak adu khannadunasu ijjat leina hingba gi adikar lei haibaduni. Maram aduna pangthokhriba aignna yadaba mihat mipungi thabak adu oidunasu, semdokpa natraga hannagi punsida hajilhanba yai natraga yade haina puthokpa haibasi Prosecution amadi

⁹ (2019) 12 SCC 460

Court ki mathou ni. Masigi matangda ii-pao khomba/louba amadi madubu kupna yengduna khandok-khotthok touba haibasi araiba thabak amadi natteadbu tangaifadana souksoi soidana tougadabani. Hannagi punsida hanjilhanbagi thourang asi maral leiraba mioi adubu nouhounana samaj ga totna tinnahanba gi darker oiba maramna icham chamba thabak amadi oide. Achumbamak ni. Leiriba ii-pao amadi akhang aheising na madubu kupna neinabaga konnana record ta leiriba praman sing asi leidunasu maral leiraba mioi amabu samaj asida nouna hanjinduna totna tinnaduna leibagi oithokpa leitabagi fibam su leirakpa yai. Madu thokpa tarabadi, matam sang nagi oina keisumsang da leibagi apamba adu ayaba piba yai.”

18. Aign kaiba thouwong adu chatthakhiba matam aduda Appellant adu masagi chahi 25 sure amadi mhak ST community da gini, khut na suba thabak suduna hingnabagidamak hotnaba mioini. Prosecution na praman oina Appellant adubu hannagi punsida hanjilhanba natraga semdokpa yabagi oithokpa leite haiba si utkhide amsung sibagi dandi nattaba nattaba atoppa pambei leibra haiba wahang asi khannkhidre. Mahak na chatthakhriba aign na yadaba thouwong adugi damak maral leire haina maral siriba thowoung adu pangthoktringei gi mamangthak ta mahak na mihat mipun ga mari leinaba thoudok amatada chennakhibagi wari leite. Mahakna keisumsang da leiba matamda mahakki mathakta nattaba/fattaba thouwong chatthakhibagi paodam amata leikhide. Maram aduna sibagi dandi adu punsi chuppa keisumsang da leiba da oina onthabagi darker oire. Touwigumbadung Appellant na chahi 11 ta nagiribi laibak thirabi nupimacha adugi mathakta chatthakhiba mioibana chatheidraba tukatchaningai oirba mawongda ijat manghallaba matung da hattokpikhiba, hairbasing asibu chingsilladuna Appellant bu kakthaba yadraba mwongda chahi 30 punsi chuppa keisumsang da leibagi dandi pikhi.

19. Appeal sing asi machet oina ayaba pikhi. Appellant adubu Indian Penal Code, 1860 (“IPC”) gi Sections 363, 366A, 364, 346, 376D, 376A, 302, 201 amasung Protection of Children from Sexual Offences Act, 2012 ki Section 5(g)(m) ga loinana Section 6 ki makhada maral leire haina pikhriba adu chummi haina lepkhi amasung mangonda piriba sibagi dandi adu kakthaba gi ayaba piba yadana chahi 30 punsi chuppa keisumsangda leiba da onthakhi.

Divya Pandey Appeal sing adubu machet oina ayaba pikhi.
(mateng pikhiba : Deepak Panwar, LCRA)