

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 296 of 2002**

1. Sanjay @ Chula S/o Rama Caste Gond Aged about 21 years
2. Sodi Arjun S/o Hadma Aged about 30 years

Both R/o Patelpara Michwar Police Station Gadoras District Dantewada  
Chhattisgarh

---- Appellants

**Versus**

The State of Chhattisgarh through Police of Police Station Kookanar District  
Dantewada Chhattisgarh

---- Respondent

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|----------------------|---|--------------------------------|
| For Appellants       | : | Shri R.N. Jha, Advocate.       |
| For Respondent/State | : | Smt. Smita Ghai, Panel Lawyer. |

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**Hon'ble Shri Deepak Gupta, Chief Justice**  
**Hon'ble Shri Sanjay Agrawal, J.**

**Judgment on Board**

**Per Deepak Gupta, Chief Justice**

**30/11/2016**

1. This appeal by the accused is directed against the judgment dated 21.1.2002 passed by the learned Third Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.276 of 2001 whereby both the accused have been convicted under Sections 302/34 and 201 IPC for committing the murder of Podiyami Bhima and also for hiding the evidence of murder and have been sentenced as follows:-

| <u>Conviction</u> | <u>Sentence</u>                        |
|-------------------|----------------------------------------|
| U/s 302/34 IPC    | Life imprisonment.                     |
| U/s 201 IPC       | Rigorous imprisonment for three years. |

2. The prosecution story, briefly stated, is that on 29.5.2000, a marriage was taking place in village Fundivar. This village is in a tribal area of Dandewada District. It is also in evidence that at that time paddy had just been harvested. All the persons of the surrounding village had gone to attend the wedding. They were singing and dancing together. The deceased-Podiyami Bhima had also gone alongwith other villagers. After some time, two accused-Appellants alongwith one Madvi Nanda (absconding) took the deceased away from the village near a tamarind tree. There, all these three accused gave Axe (*Tangia*) blows to the deceased and committed his murder. Thereafter, to hide the evidence of murder, they threw the body of Podiyami Bhima into Phool river. The body was admittedly found after three days of the occurrence i.e. on 1.6.2000.

3. First report about the occurrence is in the form of a merg intimation, which was lodged with the police on 3.6.2000 at about 4.55 pm. Report has been lodged at the instance of Podiyami Deva (PW-2) and other co-villagers. In this merg intimation (Exhibit P/2), it is mentioned that on Monday i.e. 29.5.2000, there was a wedding in village Fundivar. Deceased-Podiyami Bhima alongwith his wife Podiyami Sukdi (PW-3) and may other villagers including Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8) went to village Fundivar. When the marriage was taking place, all of them consumed *Landa* (an alcoholic beverage). At about 6.00 pm, they all returned to village Garipal. However, deceased-Podiyami Bhima did not return and his mother asked his wife Podiyami Sukdi (PW-3) where her son was. She replied that she did not know where he was. Thereafter, some other persons gathered and searched for the deceased but he was not found there. Next day i.e. Tuesday on 30.5.2000, the parents of the deceased went to village Fundivar to find out their missing son but no information was received and they

came back home. Next day i.e. Wednesday on 31.5.2000, all the people including members of the family searched for the deceased but they could not find him. Next day i.e. Thursday on 1.6.2000, an information was received that two women of village Garipal had gone to Phool river where they saw a dead body lying in river and they came back and informed Nand Lal (PW-1) that this body may be of a person whom they were searching. The body was found to be of the deceased-Podiyami Bhima and was taken out from the river at 12.00 noon. Thereafter, some meeting was held in the village and a decision was taken to lodge a report with the police and finally report was lodged on 3.6.2000 at 4.55 pm. The police has recorded the FIR (Exhibit P/4) much late on 22.6.2000.

4. The conviction of the accused is based on the testimonies of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8). The only issue is whether we should believe the statements of these witnesses or not. Before dealing with the statements of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8), we would like to reiterate certain facts. It stands proved on record that a large number of people had gathered for attending the wedding at Fundivar. One witness has stated that thousands were present which may be an exaggeration but it is clear that there was a very big gathering. It has also come on record that the paddy had just been harvested at that time and the harvest was also being celebrated by the villagers with great gusto. We are of the view that it stands proved that the accused who are residents of village Michwar which is close to village Fundivar, had also gone to attend the said wedding ceremony and partaken in the same. Having held so, now we have to decide whether we should believe the version of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8) or not.

5. As far as Madkami Ayate (PW-4) is concerned, she clearly states that she had seen the deceased being taken to the forest by the two appellants and one absconding accused. She also states that the deceased was taken by the accused persons and they accompliced him to tamarind tree where they had given blows to the deceased with *Tangia*. Her further version is that she became scared and went home.

6. As far as Kartami Bhima (PW-7) is concerned, he has supported the prosecution version only partially. According to him, he saw the accused taking the deceased towards the tamarind tree but he saw nothing more. He further states that the accused and the deceased had gone to the forest for consuming liquor.

7. As far as Podiyami Kosa (PW-8) is concerned, he states that accused Chula asked Podiyami Bhima to accompany him and then he alongwith co-accused Sodi Arjun and absconding accused took Podiyami Bhima under the tamarind tree and beat him there. He saw that there they were beating Podiyami Bhima using a *Tangia*. On seeing this, the witness fled from the place of occurrence. He also states that according to him, the said occurrence was also witnessed by Kartami Bhima (PW-7).

8. If we believe the statements of these witnesses as has been done by the learned trial Court then there would be no problem in upholding the conviction and sentence of the Appellants and dismissing the appeal.

9. However, Shri Jha has raised pertinent issues and submits that the statements of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8) cannot be believed. Madkami Ayate (PW-4) in cross-examination, has stated that on next morning after the day of the wedding i.e.

30.5.2000, the wife of the deceased had asked her whether she had seen Podiyami Bhima. This witness did not tell the wife of the deceased that he had been beaten by the accused. Similarly Kartami Bhima (PW-7) had not told anybody about the occurrence. Podiyami Kosa (PW-8) has stated in cross-examination that he told the villagers that he had seen the accused beating the deceased but none of the villagers have been produced. As held by us earlier, thousands of people had gathered in village Fundivar for the marriage ceremony. They were all singing, dancing and consuming liquor. If the occurrence had been witnessed by three co-villagers who were not alone but were accompanied by many villagers, they would have tried to intervene in the matter and save their co-villager. They would have at least informed the wife of the deceased i.e. Podiyami Sukdi who was accompanying them that her husband was beaten by some persons belonging to another village but there is nothing on record to show that this was done. In fact, till the report was lodged on 3.6.2000, nobody stated that the deceased had been beaten up by the accused.

10. All these people live in villages close to each other. They were all celebrating the marriage ceremony together. One of the person i.e. deceased was missing. For the next three days, search was going on and all the people in the surrounding areas would have gone with the villagers of village Garipal searching for Podiyami Bhima. In fact, both Kartami Bhima (PW-7) and Podiyami Kosa (PW-8) in their cross-examination have stated that they also accompanied the search party which went to search Podiyami Bhima. Had they actually seen Podiyami Bhima being beaten up by the accused, natural human conduct would have been that they would have informed people of their village that some persons of village Michwar had beaten Podiyami Bhima.

11. This Court can always take judicial notice of the natural course of events. On an occasion of marriage, especially in a tribal community where consuming of liquor is common, there is always a possibility of some altercation taking place. It would be important to note that in case a co-villager was being beaten up by some boys of another village then all the co-villagers would either come to rescue of their own co-villager or in fact fight with the persons of the other village. The silence of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8) for more than four days is totally unexplained. There is no reason why they have kept silent. The accused are not some big dons or naxallites of whom the other villagers are scared of. Therefore, it is difficult to believe the testimonies of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8).

12. Another reason to disbelieve their testimonies is that there is no explanation for the delay in lodging the report from 12.00 noon of 1.6.2000 when the body was recovered till 4.55 pm of 3.6.2000 when the merger intimation was lodged. The FIR has in fact been recorded on 22.6.2000 at about 7.20 pm. The FIR does show that the place of occurrence is 25 Kms. away from the police station. Even then the report should have been lodged by 1.6.2000 or early morning of 2.6.2000. It was lodged much later. This may have given a chance to the villagers also to confer and decide who has to be implicated in the crime. The possibility of the accused having been wrongly roped in cannot be totally excluded. There is no doubt that the deceased had been murdered but if the murder or the beating had been witnessed by Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8), there was no reason why they should have kept quiet for four days. This creates great doubt on the veracity of these witnesses. If we discard the testimonies of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami

Kosa (PW-8), there is nothing against the accused-Appellants to convict them for commission of the aforesaid offences.

13. We therefore of the considered view that the Learned Trial Court erred in relying the testimonies of Madkami Ayate (PW-4), Kartami Bhima (PW-7) and Podiyami Kosa (PW-8) while convicting the accused. The appeal is allowed and the judgment passed by the Learned trial Court is set aside. The accused-Appellants are acquitted of the charges.

14. The Appellants are on bail. Their bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A CrPC.

Sd/-  
(Deepak Gupta)  
**CHIEF JUSTICE**

Sd/-  
(Sanjay Agrawal)  
**JUDGE**