

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.414 of 2010**

- State Of Chhattisgarh, Through Station House Officer, Police Station Lal Bagh, Distt. Rajnandgaon (CG)

---- Appellant**Versus**

1. Anup Yadav, S/o. Radhelal Yadav, Aged about 32 years, R/o. Ward No.38, PS Basantpur, Distt. Rajnandgaon (CG)
2. Rambrij Yadav, S/o. Ramsajan Yadav, aged about 27 years, R/o. Mohrara Ward No.41, PS Basantpur, Distt. Rajnandgaon (CG)

---- Respondents

For Appellant/State	: Shri Bhaskar Payashi, Panel Lawyer
For respondents	: Shri Shobhit Koshta, Advocate

DB: Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****Per Ram Prasanna Sharma, J.****17.4.2018.**

1. During the pendency of this appeal, respondent No.2 Rambrij Yadav, S/o. Ramsajan Yadav has died, therefore, appeal filed against Rambrij Yadav has abated. The acquittal appeal is considered for respondent No.1 Anup Yadav only.

2. This acquittal appeal arises out of judgment dated 24.3.2003 passed by Special Judge under the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989, (for short 'the Act') Rajnandgaon in Special Case No.55/2002 wherein the said Court acquitted both the respondents for commission of offence under Sections 302 and 201 IPC and Section 3(2)(v) of the Act for committing murder of one Itwari, on 14.01.2002 at Village

Bharegaon; for causing disappearance of the evidence of said offence and committing murder of Itwari on the basis of his caste as he was a member of Scheduled Caste.

3. As per the version of the prosecution, the deceased was last seen with respondent Anup Yadav on 13.01.2002 at about 8.30 pm and thereafter he was found dead. It is alleged that both the respondents threw the deceased into a well, thereby committed his murder.

4. To substantiate the charges, the prosecution has examined as many as 16 witnesses. Respondent Rambrij was examined as approver.

5. Kamta (PW-7) deposed that on 3.01.2002 he met the deceased in the evening. He further deposed that he enquired about the deceased as his presence was required for *chouser* competition but he was not present at the time of competition. Shatrughan (PW-8) deposed that the deceased was playing *chouser*, but after sometime when they called him, he was found absent. Nirbhay (PW-9) deposed that he was not aware with whom the deceased left the place of competition. Jugal Kishore (PW-11) deposed in the same line and as per the version of this witness, the deceased left the place of competition and thereafter he did not return. Kunj Bihari (PW-12) also deposed on the same line.

6. Respondent Rambrij Yadav, who died during the pendency of the appeal, was made approver in the present case. He

deposed in his examination-in-chief that he saw one person throwing another person into a well and after sometime the said person rushed towards him with a knife and that was respondent Anup Yadav. But in his cross-examination he deposed that he did not see the respondent throwing the deceased into the well. Though he has been made approver, but his versions were not stable regarding the incident. He made different version during examination-in-chief and during cross-examination and therefore, looking to the quality of evidence, he is not a reliable witness.

7. On overall assessment of the evidence, it is not established that respondent Anup Yadav was the author of the crime and even it is not established that he took part in commission of offence by throwing the deceased into well causing disappearance of evidence and commission of offence on the basis of caste is also established. The finding arrived at by the trial Court is based on relevant facts of the case and it cannot be said that conclusion of the trial Court is based on any irrelevant facts and extraneous matters. The finding arrived at by the trial Court is not required to be interfered with invoking the jurisdiction of the appeal.

8. Accordingly, the appeal is dismissed.

SD/-

Judge

(Prashant Kumar Mishra)

SD/-

Judge

(Ram Prasanna Sharma)

