

State of M.P. Vs. Harnarayanan.

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Court : Madhya Pradesh Jabalpur

Decided On : Jun-25-2010

Judge : J.K.Maheshwari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973 \(Cr.P.C\)](#) - Section 378(3)(1) ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 409, 420 ;

Appeal No. : CRIMINAL APPEAL NO.920 OF 1995.

Appellant : State of M.P.

Respondent : Harnarayanan.

Advocate for Def. : Shri Mohd. Ali ; Subodh Kathar, Adv.

Advocate for Pet/Ap. : Smt. Sheetal Dubey, Adv.

Judgement :

1. This appeal has been filed under Section 378(3)(1) of the Code of Criminal Procedure, 1973 against the judgment dated 24th September, 1994 passed by Additional Chief Judicial Magistrate, Sausar, Distt. Chhindwara in Criminal Case No.342/82 whereby the respondent has been acquitted from the charge under Section 409 and in alternative under Section 420, IPC.
2. As per prosecution case, M.C.Tiwari, Ranger, Pandurana lodged the FIR (Ex.P/3) in Police Station Pandurana making allegation that 5 cubic metre Sagon (teak) wood was missing having cost approximately of Rs.7,000/-. It has been

further alleged that on 25/7/1978 at about 2.00 a.m. in the night Truck No.MHG 5024 had been loaded and unloaded at Gurunanak Saw Mill, Pandurana, however, by playing fraud with the State, the said Sagon wood has been sold. Offence was registered and the challan was filed after investigation.

3. The trial Court has taken cognizance and the charge under Section 409, in alternative under Section 420, IPC was framed. The accused abjured the guilt and put his defence that the disputed wood was not stored in the Londha Depot and no Carting challan was prepared and its period was already finished. He has been falsely implicated on account of enmity.

4. The trial Court after appreciating the evidence on record, recorded the finding that on the date on which the incident had taken place, the respondent was absent on duty, as already transferred. It has further been held that the prosecution is not able to prove the fact that the wood was stored in the Londha depot. The trial Court has also recorded the finding as per the evidence on record that the wood was stored in the field of Naththu Birkhade who was having Supurdagi of the wood in question. However, the prosecution is unable to establish its case as alleged and to prove the charges. The trial Court has also recorded the finding, that possession of the said wood was not found with the respondent, therefore, the ingredients of Section 409 and 420, IPC are conspicuously missing and the prosecution is unable to prove the charge as framed by the trial Court, accordingly, acquitted the respondent.

5. Smt. Sheetal Dubey, learned Govt. Advocate appearing on behalf of the appellant/State, has made an endeavour to satisfy this Court that the findings as recorded by the trial Court are unsustainable on facts but she is unable to point out that the said wood was stored in the Londha Depot from which it was loaded as per the prosecution case. The evidence which is available on record apparently indicate that the alleged wood was in Supurdagi of Naththu Birkhade and stored in his field. No evidence is available to demonstrate the fact that the wood in question was entrusted to the respondent. The finding of the trial Court regarding absent on duty, as stated by the prosecution witnesses, is just and proper. In the facts and circumstances, it cannot be presumed that the respondent was assigned

to the alleged wood and the possession thereof was found with the respondent. In such circumstances, the finding recorded by the trial Court in the impugned judgment to acquit the respondent is not found any fault, and liable to be upheld.

6. In view of the foregoing discussion, I do not find any substance in this appeal and accordingly, it is dismissed upholding the finding of the trial Court as recorded in the impugned judgment.

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