

NARINDRA KUMAR JAIN  
v.  
THE STATE OF MADHYA PRADESH

MAY 10, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Indian Penal Code, 1860 :*

*S.409—Accused posted as Manager of rice mills—1500 quintals of paddy found short in the stock—Accused prosecuted under ss.409 and 420—Acquittal by trial Court—High Court recording conviction u/s. 409 and imposing sentence to undergo imprisonment till the rising of the Court—Held the evidence clearly established that accused has failed to account for 1500 quintals of paddy entrusted to him—Conviction u/s.409 is well justified—Though sentence imposed by High Court was inadequate, but at this distance of time it will not be necessary to give notice for enhancement of sentence.*

CRIMINAL APPELLATE JURISDICTION Criminal Appeal No.  
678 of 1996.

From the Judgment and Order dated 14/15-10-86 of the Madhya Pradesh High Court in CrI. A. No. 1394/93.

S.S. Khanduja, B.K. Satija and Y.P. Dhingra, for the Appellants.

K.N. Shukla, Amitabh Verma and Uma Nath for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the judgment of the Division Bench of the Madhya Pradesh High Court made in Criminal Appeal No. 1394 on October 15, 1986. The Magistrate has acquitted the appellant of the charges under Sections 420 and 409 IPC and other offences but on appeal the High Court convicted the appellant for an offence under Section 409 IPC and sentenced him to undergo imprisonment till the rising of the Court, and a fine of Rs. 500. In default of the payment of the fine, he was

A directed to undergo six months' rigorous imprisonment. Since the learned counsel for the appellant had raised a question whether the deficiency is within 5% of the total quantity and since the Court had not gone into that question, we directed the State to produce the entire record. Pursuant thereto, the evidence has been made part of the record and we have carefully scanned the evidence.

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The charge against the appellant is that he was posted as Manager of Kisan Rice Mills, Sarngarth between January 29, 1968 to October 30, 1973. During the said period, while he was in custody and management of the huge stocks of paddy entrusted to him, it was found that 1,500 quintals C paddy was unaccounted for. Consequently, the charge came to be framed against him in the Court of the Chief Judicial Magistrate for the aforesaid offences. As stated earlier, the Magistrate acquitted him of the charges but the High Court convicted him for the offences under Section 409 IPC. After elaborate consideration of the evidence, the High Court has recorded as under :

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"In our opinion the evidence discussed above clearly establishes that 1,500 qtls. of paddy was found short in the stock which was verified in the presence of the accused. It is true that only 5% of bags were weighed out of the total quantity present. That, however, E has been the matter employed and the accused never raised any objection to it. In any case, the accused has admitted the shortage vide Ex.p-13 and his explanation have been that it was due to the fact of the paddy drying. The documents proved and the oral evidence discloses that he had made false entries and showed a false transfer of this quantity of paddy to Baramkela society. In F our opinion, the evidence establishes beyond doubt that the accused had misappropriated 1500 quintals of paddy entrusted to him."

This finding of the High Court gets amply support from the evidence G of the witnesses. We are totally in agreement with the said finding. The witnesses are disinterested official witnesses. They have no axe to grind against the appellant. Pw-1 has explained that he had physically got the stock verified every year and noted the deficiency. He also stated that it was done in the presence of the appellant-accused. PW-2 also has spoken H with reference to the record of the maintenance and he was in custody of

the record thereof. Under these circumstances, the evidence clearly establishes that the appellant has failed to account for 1,500 quintals of paddy entrusted to him. Therefore, the conviction of the appellant under Section 409 is well justified. Though we find that the sentence imposed by the High Court was inadequate but at this distance of time, it will not be necessary to give any notice for the enhancement of the sentence.

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The appeal is accordingly dismissed.

R.P.

Appeal dismissed.