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**(1959) 12 MP CK 0006**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Cr.R. No. 54 of 1959

Kalkai

APPELLANT

Vs

Tula and others

RESPONDENT

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**Date of Decision:** Dec. 16, 1959

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 263, 263(h)
- Penal Code, 1860 (IPC) - Section 427

**Citation:** (1960) JLJ 256 : (1959) MPLJ 378

**Hon'ble Judges:** A.H. Khan, J

**Bench:** Single Bench

**Advocate:** Swami Saran, for the Appellant; K.L. Batham, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

A.H. Khan, J.

The facts giving rise to this revision in short are that the complainant filed a complaint in the Court of the Magistrate, First Class, Lahar, u/s 427 of the Indian Penal Code, alleging that the accused had cut the crop standing in his field and that they also let loose their cattle in the fields of the complainant, causing damage to the tune of Rs. 200. This case was tried by the learned Magistrate summarily. He recorded the statement of the complainant and one of his witnesses, and, also that of a defence witness, but without recording any finding acquitted the accused.

According to Section 263(h) of the Criminal Procedure Code, the Magistrate trying a case summarily must record a finding. But no finding has been recorded in this case. In Janki Rai and Anr. v. Emperor, 51 I. C. 207 the Patna High Court has observed that where there is no discussion and not even any mention of the evidence of prosecution witnesses, and the Magistrate merely wrote in one sentence that the accused were entitled to acquittal, it was not a judgment in the

eye of law and that the acquittal should be set aside.

It is true that in a summary case, the Magistrate need not write a lengthy judgment but it is indispensably necessary that he should record a finding. On perusal of the judgment under revision, it appears that although the word "finding" is written in the judgment, yet no finding of fact is given. In its place, only an order acquitting the accused is recorded. This is manifestly in contravention of the direction contained in Section 263 of the Criminal Procedure Code.

In result, I set aside the order of acquittal and send the case back to the learned trial Court with a direction to record a finding and to proceed according to law.