

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1799 OF 2010**

SHYAM SHARMA

... APPELLANT

VERSUS

STATE OF MADHYA PRADESH AND ANR. ...RESPONDENTS

J U D G M E N T

S. ABDUL NAZEER, J.

1. The appellant-Shyam Sharma has called in question the legality and correctness of the judgment in Criminal Appeal No.190 of 1999, dated 19th January, 2007 passed by the High Court of Judicature at Madhya Pradesh, Jabalpur Bench at Gwalior

whereby the judgment dated 31.3.1999 passed by the Sessions Judge, Gwalior, in Sessions Trial No. 379/1996 has been affirmed.

2. The Appellant-Shyam Sharma was convicted by the Sessions Judge, under Section 307 IPC and was sentenced to undergo three years rigorous imprisonment along with a fine of Rs.1,000/- and in the event of default in payment of fine, he was directed to further undergo additional imprisonment of five months.

3. The contention of Mr. V. Giri, learned senior counsel, appearing for the appellant, is that the independent witnesses Anoop Bhargava (PW-1) and Ramprakash (PW-4) did not support the prosecution case. Manjeet Singh (PW-3) is an interested witness. The appellant is a computer engineer and has no criminal background. At the most, the appellant can be convicted under Section 324 of the IPC. On the other hand, learned counsel appearing for the respondents has supported the judgment of the High Court.

4. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. As rightly submitted by the learned counsel for the

appellant, both Anoop Bhargava (PW-1) and Ramprakash (PW-4) have turned hostile. It was established that Manjeet Singh has sustained gunshot injury. Dr. Vikram Singh Tomar (PW-2), on examination, found two entry wounds over the lateral aspect of left shoulder and interior aspect of upper part of left scapula region of Manjeet Singh. However, firearm injury suffered by Manjeet Singh (PW-3) could not be impeached in their cross-examination. It is also evident that the accused fired at Manjeet Singh without any pre-meditation. The injury suffered by Manjeet Singh was not on the vital part of his body. In our view, the prosecution has failed to prove that accused intended to cause the death of the deceased. Therefore, the appellant can only be convicted under Section 324 of the IPC and not under Section 307 of the IPC. Therefore, the appellant is convicted under Section 324 of the IPC instead of Section 307 of the IPC.

5. The appellant has already been imprisoned for about four months. Having regard to the facts and circumstances of the case, it is just and proper to reduce the sentence to the period

already undergone by the appellant-Shyam Sharma. Ordered accordingly.

6. The appeal is allowed in the aforesaid terms.

.....J.
(R.K. AGRAWAL)

.....J.
(S. ABDUL NAZEER)

New Delhi
October 4, 2017.