

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Judgment: 29<sup>th</sup> October, 2009

+ **CRL.Rev.P.No.1044/2002**

SABIR

..... Petitioner  
Through: Mr.Rajesh Mahajan, Advocate.

Versus

THE STATE (NCT OF DELHI)

..... Respondent  
Through: Mr.Manoj Ohri, APP.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.** (Oral)

1. Vide impugned orders dated 17.8.2002, learned Metropolitan Magistrate had convicted the petitioner Sabir for the offence punishable under Section 304-A and 279 of the IPC. Vide order of sentence dated 19.8.2002 he had been sentenced to undergo RI for one year and to pay a fine of Rs.3000/-; in default of payment of fine to undergo SI for one month for the offence punishable under Section 304-A of the IPC; RI for a period of six months and fine of Rs.1000/-, in default of payment of fine to undergo SI for one month for the offence punishable under Section 279 of the IPC.

2. The appeal before the Sessions Judge had been dismissed vide order dated 9.10.2002. Sentence under Section 279 of the IPC had been set aside; no modification was made in the sentence otherwise imposed.

3. Vipin Mishra PW-6 was the eye-witness to the incident of this case. On 23.12.1992, he was running a shop in the name and style of Aman Paints and Hardware. At about 2.30 PM while coming out from Fauzi Dhaba he saw a truck no. HR29B 3775 driven by Sabir in a rash and negligent manner hit a cyclist. The cyclist got imbalanced; the truck crushed the cyclist. The truck driver fled away from the spot. Statement of the eye-witness Ex.PW-6/A was recorded.

4. Ct.Shyam Bir PW-8 posted at Govindpuri on the fateful day while on duty at the Masjid on Andheria Mor i.e. in the area of the accident, found one cyclist lying crushed on his head. He rushed towards Kalkaji Mandir side in which direction the truck had sped. PW-8 managed to overpower the vehicle and the driver. The driver of the truck was brought back to the spot where he was duly identified.

5. The post-mortem on the dead body was conducted by Dr.J.N.Tirki whose signatures had been identified on the post-mortem report Ex.PW-7/A by the concerned record clerk. Mechanical inspection report of the truck is Ex.PW-4/A. Both the courts below did not find the version of DW-1 credible.

6. Testimony of PW-6 remains unrebutted; he had identified the accused as the driver of the offending bus. No suggestion has been given to PW-6 that he is deposing falsely for any ulterior motive to implicate the accused. The bus and driver had been apprehended after chase by PW-8.

7. The counsel for the petitioner has in fact not challenged the conviction. He has prayed for modification of the sentence.

8. Nominal roll of the petitioner shows that he has suffered a sentence of a little more than seven months; the unexpired portion being about four months and 28 days, out of the substantive sentence of one year RI awarded to him.

9. In Jagdish Chander vs. State of Delhi (1973) 2 SCC 203 the court while considering the aspect of sentence of a convict having been convicted under Section 304-A of the IPC and the offence committed dating back to a period of almost eight years from the date when his appeal was heard; it was inter alia held:

*".....To send the appellant back to Jail to serve the sentence of 6 months after 8 years seems to us to be highly unjust for the kind of offence which has been upheld against him by the three courts below. It is unlikely to have any reformatory effect on him. Harassment of a criminal trial for more than 8 years and the expense which he must have incurred, in our opinion, can legitimately be taken into account when considering the question of sentence to be imposed by this Court at this point of time. The appellant is stated to have served out only three weeks of imprisonment but on a consideration of all the relevant circumstances of the case we think it would be just and proper to reduce the sentence of imprisonment to that already undergone but to increase the sentence of fine from Rs.500 to 700. ...."*

10. In this background, keeping in view the period of incarceration already suffered by the petitioner; the offence relatable to the year 1992 i.e. almost 17 years back, petitioner is sentenced to undergo the sentence already suffered by him. Petition disposed of.

**(INDERMEET KAUR)**  
**JUDGE**

29<sup>th</sup> October, 2009  
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