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

+ CRL.REV.P. 321/2016

LAL BABU RAI

..... Petitioner

Through : Mr. Sunil Tiwari, Adv.

versus

ST ATE

..... Respondent

Through : Mr. Sudarshan Joon, APP

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

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**15.07.2016**

1. Petitioner was sentenced by the trial court under Sections 279/304-A IPC in FIR No. 364/1999 registered at Police Station Kotwali, Delhi. Petitioner was sentenced to undergo rigorous imprisonment for three months under Section 279 IPC and for one year under Section 304-A IPC, besides fine of ₹1000/- and ₹5000/-, respectively.
2. Petitioner preferred an appeal bearing CA No. 03/16 before Appellate Court (Sessions Judge), which has been dismissed by the judgment dated 30<sup>th</sup> January, 2016. However, sentence of the appellant has been reduced to eight months of rigorous imprisonment under Section 304-A IPC.
3. That is how, petitioner is before this Court by way of revision petition

under Section 397 of the Code of Criminal Procedure, 1973. There are concurrent findings of the Court below on merits, on meticulous scrutiny of the evidence adduced by the parties.

4. Statement of PW4/HC Virender Singh, who was present at the spot and is eye witness to the incident, has been found trustworthy and reliable by the Court below. In his defence, petitioner has not stated that he was not driving the offending vehicle. The defence, taken by him, is that he was driving the vehicle slowly. PW4 stated in the cross-examination that petitioner was driving the vehicle rashly and negligently. Petitioner did not examine any witness in his defence to contradict this issue.

5. Trial court as well as Appellate Court has noted that PW4 had seen the petitioner driving the vehicle in a rash and negligent manner at about 12:30 AM on the date of incident. He had seen the tempo coming at a very high speed from Kalkatiya Gate and while turning towards Lal Qila from Kalkatiya Gate, tempo ramming in the middle verge and crushing a person sleeping on the middle verge. This itself shows that petitioner had no control over the vehicle.

6. It is trite to say that in exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal

and substitutes its findings against what has been arrived by the courts below after marshalling the evidence. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored. Petitioner has failed to point out any perversity and illegality in the impugned orders resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

7. At this stage, learned counsel for the petitioner submits that conviction of the petitioner is not challenged on merits. He prays for leniency in the sentence. It is submitted that petitioner has already completed sentence of about seven months. Petitioner is not involved in any other offence. Petitioner has three minor children, who are solely dependent on him. Wife of the petitioner is illiterate.

8. Keeping in mind the totality of circumstances, substantive sentence of rigorous imprisonment of the petitioner is reduced to the period already undergone by him. However, sentences of fine are maintained as it is. Subject to petitioner depositing the fine in terms of the order of the

Appellate Court, petitioner be released from the jail. In case fine is not deposited, petitioner will undergo the sentences awarded by the trial court in default of payment of fine.

9. Revision petition is disposed of in the above terms. All other miscellaneous applications are disposed of as infructuous. Dasti.

**A.K. PATHAK, J.**

**JULY 15, 2016**

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