

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

Date of hearing and Order: 22nd August 2016

+ CRL.REV.P. 410/2016
KAMLESH YADAV

..... Petitioner

Through: Mr. Ashutosh Kaushik, Advocate

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. G. M. Farooqui, Additional Public
Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE P.S. TEJI
ORDER

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P.S. TEJI, J. (ORAL)

1. By this petition filed under Section 397/401 of Cr. P.C., the petitioner seeks to challenge the order of conviction dated 30.07.2015 and order on sentence dated 05.11.2015 passed by learned Metropolitan Magistrate-06 (Central), Tis Hazari, Delhi, whereby the petitioner was sentenced to undergo simple imprisonment for a period of four months for the offence under Section 279 of IPC; four months for the offence under Section 337 of IPC and rigorous imprisonment for one year for the offence under Section 304 IPC. The petitioner also seeks to challenge the orders dated 25.01.2016 passed by learned Special Judge-CBI (P.C. Act)-06, Central, Tis Hazari Courts, Delhi, passed in Criminal Appeal No.27/2015, whereby the learned Special Judge has dismissed the appeal filed by the petitioner and upheld the

impugned orders passed by the learned Metropolitan Magistrate, Central, Tis Hazari, Delhi.

2. The facts of the case as mentioned in the impugned judgment are that a charge sheet was filed against the accused Kamlesh Yadav for the offences punishable under Section 279/304-A of IPC. On 30.07.2009 at about 5.00 AM, near DVW Office, Rajpur Road, Delhi within the jurisdiction of Police Station Civil Lines, Delhi the accused was driving the Half Body Truck bearing No. DLL 8655 in a rash and negligent manner, so as to endanger the human life and personal safety of others and while driving so in the said manner, struck against one stationed vehicle and caused death of Shankar Sahu and injuries to others and thereby committed the offences punishable under Section 279/304-A of IPC.

3. Trial commenced, evidences were led on behalf of both the sides and after conclusion of the trial, the petitioner was convicted for the offences with which he was charged. Aggrieved by the order of conviction and sentence, the petitioner filed an appeal before the learned Special Judge, which was also dismissed vide impugned order. Now the petitioner has preferred the present revision petition.

4. The learned counsel for the petitioner restricts his arguments on sentence passed by learned Metropolitan Magistrate and submits that the petitioner is not a previous convict and remained on bail during trial of the case for about 17 years and was not found involved in any criminal or anti-social activity. It is further stated that at present, the

petitioner is about 38 years of age and has four minor children and old aged mother. He is the only earning member in the family. More so, the petitioner has already deposited the total fine of Rs.9,500/- as directed by the learned Metropolitan Magistrate.

5. Mr. G. M. Farooqui, Additional Public Prosecutor appearing for the State contended that the impugned orders passed by learned Metropolitan Magistrate as well as order passed in appeal by learned Additional Session Judge are well reasoned orders and they do not call for any interference therefore the present revision petition is liable to be dismissed.

6. I have heard learned counsel for the parties and have also gone through the impugned judgments and orders and the nominal roll of the petitioner.

7. After considering the submissions advanced by both the sides and upon perusal of the impugned order, evidence on record and the decisions cited, I find that there is no illegality or infirmity in the impugned conviction of petitioner-accused. However, on the quantum of sentence, this Court observes that the petitioner has family to support, he is not a previous convict in any other case and in the considered opinion of this Court, the petitioner has already faced agony of these proceedings for last about 17 years. Nominal roll of the petitioner is also perused by this Court, according to which the petitioner has already remained behind the bars in this case for about 7 months.

8. This Court further observes that the petitioner is sentenced for the offence punishable under Section 279/337/304A of IPC, which does not prescribe any minimum sentence. Therefore, after considering the facts that the petitioner is not a previous convict, has family to support and has already undergone the agony of these proceedings for the last about 17 years, this Court is of the opinion that ends of justice would be met if petitioner's substantive sentence is reduced from one year to eight months.

9. In view of the aforesaid discussion, the present revision petition is partly allowed on the quantum of sentence to the extent indicated above.

10. Trial Court be apprised of this order forthwith by sending copy of this order.

11. Copy of this order be also sent to the Jail Superintendent for information.

12. This revision petition as well as application are disposed of in aforesaid terms.

P.S.TEJI, J

AUGUST 22, 2016
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