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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 532/2016 & CrI.M.A.Nos.1482/2016 & 12588/2016
MAHESH KUMAR Petitioner
Through : Mr. Shivam Sharma and Ms. Vrinda
Bhandari, Advs.
versus

STATE (GOVT OF NCT DELHI) Respondents
Through : Mr. Tarang Srivastava, APP for R-1.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK
ORDER
% **16.08.2016**

Petitioner was convicted under Sections 279/304-A IPC by the Trial Court and sentenced to RI for two years and to pay compensation of ₹1,00,000/- to the legal heirs of deceased Smt. Raj Kumari, for the offence under Section 304A IPC and in default of payment of compensation to under SI for one month. He was also sentenced to undergo RI for one month for the offence under Section 279 IPC.

As per the prosecution, deceased along with eye witness Smt. Parvati was travelling in the bus bearing no.DL 1PA 5923 plying on route no.519 and driven by the petitioner on the fateful day. They were returning from Mangal Bazar, Chhattarpur. At about 6:00 pm, the bus stopped at the bus stop situated at Dera Fatehpur Road, Opposite Ansal Villa Gate. Eye

witness Smt. Parvati de-boarded the bus. However, while deceased was in the process of de-boarding the bus from the front gate, petitioner, all of a sudden, started the bus, as a result whereof deceased fell down on the road and came under the left rear wheel and died.

Trial Court found the testimony of eye witness Smt. Parvati to be trustworthy and reliable and concluded that deceased died due to rash and negligent act of petitioner. Trial Court has noted that petitioner had refused to TIP, therefore, adverse inference has to be taken against him that if he had participated in the TIP, he would have been identified by the witness. Petitioner was correctly identified by Smt. Parvati in the Court. Trial court has returned the findings of guilt on scrutiny of evidence on record.

Petitioner filed Crl.A.No.9/2016 before Sessions Court, which has been dismissed by the order impugned in this revision petition. Appellate court marshalled the evidence carefully and has given reasons, for concurring with the findings of guilt returned by the Trial Court. Learned counsel for the petitioner contended before the Appellate Court that petitioner was justified in refusing the TIP as he was shown to the eye witness in the police station and which fact was admitted by the PW. This plea has not found favour of the Appellate Court, for the reasons recorded in

the impugned order. Be that as it may, PW-2 Veer Singh is the owner of the vehicle bearing no. DL 1PA 5923, which was involved in the accident. He has categorically deposed that on the day of accident, the vehicle was driven by his driver Mahesh Kumar (petitioner). He also identified the petitioner in Court. His statement was recorded on 8th November, 2012. He was not cross examined. After three years, he was recalled for cross examination wherein he tried to resile from his earlier statement. This clearly shows that he was won over during the three year period. It also emerges from the evidence that Veer Singh was served with the notice under Section 133 of the Motor Vehicle Act and pursuant thereof he had produced petitioner, which fact has been admitted by him, inasmuch as, he identified his endorsement made on the notice, which was exhibited as Ex.PW-2/B. He admitted his signatures on the notice. He also admitted his signatures on the arrest memo of petitioner Ex.PW-2/C. This supports the identification of the petitioner in Court by the eye witness Parvati and leaves no doubt that it is the petitioner, who was driving the bus.

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 substitute a finding against what has been arrived by the two courts

below after marshalling the evidence. Revision cannot partake the status of appeal. 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. Learned counsel for the petitioner has failed to point out any perversity and illegality in the impugned order resulting in miscarriage of justice, inasmuch as, has given up the challenge to the conviction of petitioner, on merits. Accordingly, conviction of the petitioner under Section 279/304-A IPC is confirmed.

Learned counsel for the petitioner has, however, prayed for leniency in sentence. It is submitted that Trial Court as well as Appellate Court have awarded maximum sentence, as provided under Section 304-A IPC. Petitioner's mother is suffering from cancer. Petitioner has three children. Petitioner is the only bread earner in the family. In his absence the whole family would suffer and future of children will be ruined. Petitioner is not involved in any other offence. He had been on bail during the trial and also during the pendency of appeal. He has faced the agony of trial for 10 years, therefore, a lenient view may be taken.

Keeping in mind the totality of circumstances, the substantive sentence of imprisonment of petitioner, under Section 304-A IPC is reduced to 9 months. So far, sentence of compensation and Section 279 IPC, as awarded by the Trial Court and confirmed by the Appellate Court, are not interfered. All the sentences shall run concurrently.

Revision petition is disposed of. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 16, 2016/dk