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

+ CRL.REV.P. 785/2014

SADHAN KUMAR

..... Petitioner

Through : Mr. Rahul Sharma and Mr. Ashish
Dogra, Advs. with petitioner in
person.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr. Sudershan Joon, APP with SI
Anish Sharma PS Kalkaji.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **20.07.2016**

Vide judgment dated 20th March, 2014 petitioner was convicted under Sections 279/304A IPC by the Metropolitan Magistrate (South East), Delhi in the case arising out of FIR No. 738/1998 registered at Police Station Kalkaji and vide order on sentence dated 28th March, 2014, he has been sentenced to undergo simple imprisonment for a period of three months and also sentenced to pay a fine of ₹5,000/- for the offences punishable under Sections 279/304A IPC.

Petitioner preferred an appeal before the Sessions Judge, which has been dismissed vide judgment dated 3rd December, 2014.

That is how the petitioner is before this Court by way of present

revision petition under Section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code').

Briefly stated facts are that petitioner, on 13th August, 1998, while driving a DTC bus bearing registration no.DEP-9467, in a rash and negligent manner near Des Bandhu College, hit a lady who was walking on the left side of the road, as a result whereof the lady fell down and came under the left rear wheel of the bus. PW-4 Ct. Jitender was on the bus checking duty at Des Bandhu Gupta College and witnessed the incident. Petitioner stopped the bus at about 50 feet away from the spot. He was apprehended by the PW-4. PW-1 ASI Raj Singh along with PW-5 Constable Ramesh reached the spot on receipt of DD No.18. Since the victim was already removed to All India Institute of Medical Sciences, PW-1 reached the hospital and came to know that victim was already declared dead by the doctor. PW-1 returned to spot where PW-4 Ct. Jitender handed over petitioner to PW-1 ASI Raj Singh. Petitioner was arrested. Site plan was prepared. Bus was seized.

Learned Trial Court meticulously scrutinized the statement of the witnesses, more particularly the eye witness PW-4 and concluded that petitioner had caused the accident by the rash and negligent act resulting in death of the lady. The testimony of PW-4 Ct. Jitender was held to be

trustworthy and reliable. Consequently, petitioner was convicted. Appellate court has also marshalled the statement of witnesses and other material on record and has concurred with the findings of the Trial court.

PW-4 has categorically deposed that on 13th August, 1998 he was on bus checking duty at Des Bandhu Gupta College from 6:00 am to 10:00 pm. At about 7:30 pm, he saw one bus DEP 9467 plying on route no.416 from Lajpat Nagar to Dr. Ambedkar Nagar going via Hans Raj Sethi Marg towards Des Bandhu Gupta College. One lady walking by the side of the road. The driver suddenly turned the bus towards left and knocked the lady who fell down and came under the rear wheel of the bus. The lady was removed to the All India Institute of Medical Sciences in a TSR with a person present at the spot. The bus stopped and petitioner was caught. ASI Raj Singh reached the spot along with Ct. Ramesh and went to the hospital. After one hour, ASI Raj Singh returned and took the petitioner in custody. PW-4 identified the petitioner in Court as the same person, who was driving the bus. PW-4 has corroborated his statement, that is, Ex.PW-4/A. In the cross examination, his statement has remained unshattered on material points. Trial Court as well as Appellate court has found the testimony of PW-4 to be trustworthy and reliable. Petitioner was arrested at the spot,

inasmuch as bus was seized from the spot, which was taken as corroborative evidence.

It was contended before the Trial Court that PW-4 Ct. Jitender was on the other side of the road and could not have witnessed the incident since the victim was on the left side of the bus. Learned Appellate Court has not found this contention to be convincing in view of the categorical statement of PW-4 that he had seen petitioner driving the vehicle in rash and negligent manner and taking sudden left turn as a consequence of which lady came under the left wheel. No question was put to PW-4 in his cross examination that he had not witnessed the incident.

I do not find any perversity or manifest error of law nor is there any flagrant violation of procedure, in the concurrent judgments of two Courts below.

In the State of A.P. Vs. Pituhuk Sreeinvanasa Rao (2000) 9 SCC 537, Supreme Court held that the exercise of revisional jurisdiction of High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence, in view of the fact that revisional jurisdiction is basically supervisory in nature. In Amar

Chand Agarwala Vs. Shanti Bose and Arn. MANU/SC/0074/1972 : AIR 1973 SC 799, Supreme Court held that revisional jurisdiction of the High Court under Section 439 of Code of Criminal Procedure is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice.

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 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 order 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.

Learned counsel for petitioner has vehemently contended that no public witness was examined. There is no law that statement of a police

officer cannot be relied upon in absence of public witness. Testimony of police officer has to be treated alike any public witness except that it has to be scrutinized with care and caution. Testimony of PW-4 has remained unshattered in his cross examination. It is a matter of common knowledge that it is hard to find public witnesses in metropolitan cities like Delhi, as the witnesses avoid joining the investigation in order to avoid their subsequent harassment of appearances in courts and also from the accused.

For the foregoing reasons, revision petition is dismissed. Petitioner is on bail. His personal bond and bail bond are cancelled. Petitioner shall surrender before the concerned Metropolitan Magistrate on 26th July, 2016 and be sent to Tihar Jail for serving the remainder sentence.

A.K. PATHAK, J.

JULY 20, 2016/dk