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

+ CRL.REV.P. 150/2017

ANIL KUMAR

..... Petitioner

Through: Mr. R.K. Tarun and Mr. Rohit
Shukla, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Tarang Srivastava, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **28.02.2017**

Petitioner was convicted by the trial court under Sections 279/304A IPC and sentenced to undergo simple imprisonment for 4 months with fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for 10 days for the offence under Section 279 IPC and rigorous imprisonment for 1 year with fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for 1 month for the offence under Section 304-A IPC. Sentences were directed to run concurrently. Petitioner preferred an appeal before the Sessions Judge which has been dismissed vide judgment dated 18th February, 2017 passed by the Special Judge-IV (P.C. Act) CBI: Delhi.

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

Revision Petition under Section 397 of the Code of Criminal Procedure, 1973.

There are concurrent findings of the trial court as well as appellate court regarding the guilt of the petitioner under Section 279/304-A IPC, on appreciation of evidence. In *Amar Singh vs. State* MANU/DE/9203/2007, a bench of co-ordinate jurisdiction has held thus “the scope of revisional jurisdiction in matters where the Court has to examine the factual findings, and concurrent ones at that, are extremely limited. The High Court can, if it is convinced that the approach of the Courts was palpably illegal or led to a manifest failure of justice, intervene under exceptional circumstances”. It is trite law that revisional jurisdiction is of the supervisory nature exercised by this Court for correcting the miscarriage of justice and the powers of a revisional court cannot be equated with the powers of an appellate court. The High Court would not normally re-assess the evidence and interfere merely because the view taken by the trial court based on the available evidence could not be a possible view. In other words, revision would not lie on the mere ground of misappreciation of evidence unless any glaring feature is brought to the notice of the revisional court which would otherwise tantamount to flagrant miscarriage of justice. Reliance is placed

on Satyendra Nath Dutta and Anr. Vs. Ram Narain MANU/SC/0200/1974. It is also well settled that the concurrent findings of fact should not be generally disturbed unless it causes grave injustice.

As per the prosecution, petitioner while driving Toyota Qualis jeep bearing No. DL-1VB-0132, in a rash and negligent manner and at a fast speed, knocked down the deceased aged 35 years at about 8 pm on 30th August, 2004 near Sindhi Baba Mandir at Majnu Ka Tila resulting fatal injuries to the deceased, who was removed to Trauma Centre by the PCR van and was declared as brought dead by the doctor. Accident was witnessed by HC Bal Hussain (PW4), who apprehended the petitioner at the spot itself. Trial court as well as appellate court have returned a categorical finding that testimony of PW4 HC Bal Hussain was trustworthy and reliable. Petitioner was apprehended at the spot itself and was handed over to the Investigating Officer. Offending vehicle Toyota Qualis was seized from the spot. Post-mortem of the deceased was got conducted vide post-mortem report Ex. PW12/A. PW13 Dr. K. Goyal, while deposing in Court, had proved his post-mortem report Ex. PW12/A and said that according to him, all the injuries were ante-mortem in nature, caused by blunt force impact and were possible on road side vehicular accident and the cause of death was

cranio-cerebral injuries. PW9 Dr. Thinosekho Chucha deposed that on 30th August, 2004 at around 9:12 pm, the patient, namely, Tom Nyarangi Moturi was brought by ASI Jai Singh of PCR Sugar 53 with alleged history of road traffic accident and the patient was examined by him vide MLC report Ex. PW8/A. All the other police officials deposed about the proceedings conducted in their presence. PW12 Retd. SI Jai Singh deposed that on 30th August, 2004 at about 8:20 pm, he received a PCR call regarding accident at Sindhi Baba Mandir, Majnu Ka Tila and pursuant to the said call, he reached at the spot and removed the injured to the Trauma Centre and got him admitted there. Trial court and appellate court have concluded that prosecution had succeeded in proving that the deceased died due to the injuries sustained by him in a road traffic accident. Trial court as well as appellate court relied upon the testimony of PW4 HC Bal Hussain to conclude that the accident was caused by the petitioner while driving Toyota Qualis DL-1VB-0132 in a rash and negligent manner and at a fast speed. No flagrant miscarriage of justice could be pointed out during the course of hearing.

By placing reliance on Hira Lal vs. The State of NCT of Delhi 2012 (2) JCC 1311, it is contended that prosecution had failed to prove the

negligent act of the petitioner while driving Toyota Qualis vehicle. It is further contended that merely because the vehicle was driven at a fast speed by itself would not mean that it was driven in a rash and negligent manner. I find this judgment to be in the context of different facts. In the said case, court noticed that deceased was riding a bicycle in a reckless manner. He was riding the bicycle in the middle lane of the road between the truck and blue line bus. The speed of the truck was also 30/34 kph, inasmuch as, there were no skid marks of the tyre on the road which, according to the court, indicated that it was not driven in a rash and negligent manner or stopped with a jerk. In the present case, no such thing has come on record that deceased was guilty of contributory negligence. No such suggestion was even given to PW4 in his cross examination. PW4 Bal Hussain deposed that Toyota Qualis DL-1VB-0132 came from the side of Wazirabad. The offending vehicle was driven in a rash and negligent manner and at a high speed and hit the deceased. His version has remained unchallenged in his cross-examination on this point.

For the forgoing reasons, I do not find any material irregularity or illegality in the concurrent findings returned by the courts below regarding the conviction of the petitioner under Section 279/304-A IPC.

Learned counsel for the petitioner has next contended that petitioner is aged about 45 years and is having three school going children. His old parents are also dependent upon him. Petitioner is the sole bread earner in the family. Incident took place 13 years ago. Petitioner has faced the agony of trial all this while. He has no previous criminal record. During the trial, petitioner was on bail. Petitioner has reformed himself as he has not involved himself in any other offence, while on bail. Keeping in mind the facts and circumstances of this case, sentence of the petitioner is reduced to rigorous imprisonment for 6 months for the offence punishable under Section 304-A IPC. All the sentences shall run concurrently. Benefit of Section 428 Cr.P.C. be also given to petitioner.

Revision petition is disposed of. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

FEBRUARY 28, 2017

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