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

+ CRL.REV.P. 195/2017

MAHESH KUMAR

..... Petitioner

Through: Mr. Girish Chandra, Mr. Tushar
Duneja and Mr. Seetanshu Shekhar,
Advs.

versus

STATE

..... Respondent

Through: Dr. M.P. Singh, APP for the State
with ASI Tarsem Lal, P.S. Kirti
Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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20.03.2017

Petitioner was convicted under Sections 279/337/338/304-A IPC by the trial court and sentenced to undergo simple imprisonment for 3 months each for the offences under Section 279/337 IPC; sentenced to undergo simple imprisonment for 6 months for the offence under Section 338 and sentenced to undergo simple imprisonment for 1-½ years for the offence under Section 304-A IPC. All the sentences were directed to run concurrently, inasmuch as, benefit of Section 428 Cr.P.C. was given to petitioner.

Petitioner preferred an appeal before the Additional Sessions Judge-02 (West), Tis Hazari Court, Delhi, which has been dismissed by the

judgment dated 9th February, 2017.

That is how petitioner is before this Court by way of present Revision Petition under Sections 397/401 of the Code of Criminal Procedure, 1973(The code, for short).

There are concurrent findings of facts returned by the trial court as well as appellate court, on appreciation of evidence. It is trite to say that in exercise of its revisional jurisdiction, High Court has not to sift and weigh the evidence on record as if hearing an appeal and arrive at a finding against what has been arrived at by the two 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 of any legal principle or misuse of procedure in the impugned judgment or when the settled legal position has been ignored.

During the course of hearing, learned counsel for the petitioner has failed to point out any flagrant violation of any principle of law, inasmuch as, I do not find that the impugned judgment has resulted in miscarriage of justice. PW5 Brijesh Kumar and PW6 Ashok Kumar are the eye witnesses. They were present in the tempo driven by the petitioner. They have

categorically deposed that on 5th February, 2005 at about 04:00 am they were going to Azadpur Mandi in the tempo Tata-407 bearing registration no. DL-1LE-9273 (offending vehicle) driven by the petitioner at a very high speed. Petitioner was requested a number of times not to drive the vehicle at such a fast speed, however, he did not bother and in the process Tata-407 turned turtle near Mayapuri Chowk; as a result whereof, they and the other occupants sustained injuries, inasmuch as, three persons died. PW2 Deep Chand is another material witness. He has deposed that he was driving the truck bearing registration no. HR-47-2226 on the fateful day near the spot. PW2 further deposed that the tempo driven by the petitioner, had first hit his truck from backside and thereafter, turned turtle. PW2 has also identified the petitioner as the driver of the tempo. He has further deposed that the persons sitting in the Tata-407 fell down and sustained injuries. PW2 categorically stated that he got down from his truck HR-47-2226 and helped the injured persons, who were sitting in the tempo. He has also deposed that accident took place due to the rash and negligent driving of the petitioner. Death of the three persons in the accident and injury sustained by others have been duly proved. Trial court as well as Appellate court have rightly concluded the guilt of the petitioner on scrutiny of the evidence available on

record.

Learned counsel for the petitioner has next contended that sentence of the petitioner may be reduced, keeping in view that he belongs to a poor family and has a family to support, inasmuch as has no previous criminal record. I do not find it to be a fit case to reduce the sentence of the petitioner in the facts of this case more so, when three persons have lost their lives due to the rash and negligent driving of the petitioner. Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

MARCH 20, 2017

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