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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 468/2013 & CrI.M.B.1689/2013**
OM PRAKASH Petitioner

Through : Mr. Pankaj Kumar Singh, Adv.
versus

STATE Respondent
Through : Dr. M. P. Singh, APP with SI Jasmer
Singh PS Jahangir Puri.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **16.03.2017**

Petitioner was convicted by the trial court under Sections 279/304A IPC and sentenced to undergo simple imprisonment for one month with fine of ₹1,000/- for the offence under Section 279 IPC and simple imprisonment for six months with fine of ₹5,000/- for offence under Section 304A IPC. Petitioner preferred an appeal before the Additional Sessions Judge, which has been dismissed vide impugned judgement dated 1st August, 2013.

That is how petitioner has approached this Court by way of revision petition under Section 397 Cr.P.C.

There are two 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 is 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.

As per the prosecution, on 23rd December, 1999 at 12:00 noon, petitioner, while driving the truck bearing no.HR-38-6595 in rash and negligent manner, hit the scooter of the deceased from behind as a result of which, deceased fell down on the road and sustained fatal injuries. Incident was witnessed by PW-4 Prabhat Kumar, one of the relatives of the deceased, who was present at the spot. Petitioner did not stop his truck instead, he fled from the spot after the accident. Petitioner was produced by his employer pursuant to notice under Section 133 of Motor Vehicles Act. As per the post-mortem report, deceased died due to injuries which were possible in a road accident. PW4 Prabhat Kumar duly supported the prosecution case and correctly identified the petitioner present in Court. He stood by his version as contained in the FIR. As per PW-4 Prabhat Kumar, petitioner's truck

bearing no. HR-38-6595 hit the scooter of the deceased from behind. Truck was being driven at a fast speed in a rash and negligent manner. After the accident, petitioner stopped his truck at some distance. He got down from the truck and came to see the deceased, who was lying on the road. Thereafter, he fled along with his truck. In the FIR also, PW-4 had given number of the truck. Testimony of PW-4 has been found trustworthy and reliable by the trial court as well as appellate court.

During the course of hearing, learned counsel for petitioner has failed to point out any flagrant violation of any legal principle, inasmuch as, has given up the challenge to the conviction of petitioner on merits. He has only prayed for the reduction of sentence of petitioner. It is submitted that accident took place in the year 1999. About 17 years have gone by since then. As of today, petitioner is aged about 72 years. Petitioner has no past criminal record, inasmuch as, is suffering from various ailments. Out of the sentence of six months, petitioner has already undergone more than three months. Vide order dated 13th November, 2013, sentence of petitioner was suspended during the pendency of revision petition. More than three and a half years have gone by since then.

Keeping in mind the age of petitioner and the fact that he is suffering

from various ailments, it will not be appropriate to send him to jail for serving the remaining sentence of about two and a half months.

I have considered the contentions of learned counsel for petitioner. In the totality of facts and circumstances of this case, while upholding the conviction of petitioner under Sections 279/304A IPC, his sentence is reduced to the period already undergone by him.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

MARCH 16, 2017/dk