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

+ Crl.Rev.P.350/2017

BABU RAM THAPA Petitioners

Through: Mr. Jaideep Malik Adv.

versus

THE STATE Respondent

Through: Dr. M.P. Singh with
SI Parmod Kumar, P.S.Sangam Vihar

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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12.05.2017

Crl.M.A.7879/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

Crl.Rev.P.350/2017 & Crl.M.B.897/2017

Babu Ram Thapa, the petitioner was convicted by the Trial Court in connection with FIR No.896/2007 (P.S.Sangam Vihar) instituted for the offences under Sections 279/304A of the IPC and was sentenced to undergo RI for one year for the offence under Section 304A IPC and SI for three months for the offence under Section 279 IPC. The sentences have been ordered to run concurrently by judgment and order dated 23.03.2016 and 27.02.2017 respectively.

In appeal (C.A No.80/2017), vide judgment and order dated 25.04.2017 and 28.04.2017 respectively, the conviction of the petitioner was sustained but the sentence was modified to six months RI and fine of Rs.5000/- for the offence under Section 304A of the IPC and one month SI

and a fine of Rs.1000/- for the offence under Section 279 IPC.

The petitioner has preferred the present revision petition on question of sentence.

The petitioner is alleged to have been driving a trailer truck bearing registration No. HR-29A-2472 in a rash and negligent manner on 11.09.2007 near Sangam Vihar, leading to an accident in which a pedestrian, Hardam Singh, died. The incident was witnessed by Constable Jitender Kumar (PW-1) who was on patrolling duty. The petitioner was apprehended by PW-1 on chase.

On the statement of PW-1, FIR No.896/2007 (P.S.Sangam Vihar) was instituted for the offences under Sections 279 and 304A of the IPC and the petitioner was put on trial.

As stated earlier, Constable Jitender Kumar (PW-1) is the lone eye witness to the occurrence. Smt.Sudha Gupta (PW-4) who is the registered owner of the vehicle by which accident was caused has deposed that on the day of the occurrence, the petitioner was driving her vehicle. Head Constable Tara Chand (PW-3) testified to the effect that a dead body was lying on the road which was trampled by a speeding vehicle.

SI Satbir Singh (PW-9) has also supported the prosecution version.

Thus, the identity of the accused and of the offending vehicle being driven by the accused in a rash and negligent manner stood established. The deceased was found to be lying on the side of the road which was taken by the Trial Court to be good enough evidence of the fact that the vehicle was being driven in a rash and negligent manner. Had it not been the case, the road on which accident took place was wide enough for the vehicle to be manoeuvred to avoid any accident.

The post-mortem report reveals that the deceased suffered cranio-cerebral injuries caused by blunt external force which is possible in road traffic accident.

Thus, from the deposition of the witnesses, the post-mortem of the deceased and other circumstances, there is no reason to differ from the finding of the Trial Court as well as of the Appellate Court.

The only question which remains to be answered is whether the petitioner deserves leniency while sentencing him. It was submitted on behalf of the petitioner that he is a poor person and is presently maintaining his family by operating as street vendor. He has the responsibility of a minor child and heavily dependent aged parents. It further appears from the records that the widow of the deceased has received a sum of Rs.6 lakhs as compensation. There is nothing on record to suggest that the petitioner was earlier involved in any kind of rash and negligent driving.

The occurrence took place in 2007 and the petitioner has been participating in the legal proceedings for almost 12 years by now. He has already been sufficiently punished though after the conviction he has gone to jail from 28.04.2017. However, taking into account the totality of the circumstances, this Court is of the opinion that the interest of justice would be sub-served if the sentences imposed on the petitioner is modified to RI for four months for the offence under Section 304A of the IPC and SI for one month for the offence under Section 279 IPC. The quantum of fine imposed by the Appellate Court is allowed to remain the same. This has been done, taking into account the fact that in a case of this kind, deterrent sentencing would not be relevant and useful.

Thus conviction of the petitioner under Section 304A and 279 of the

IPC is upheld and affirmed but the sentence is modified to RI for four months for the offence under Section 304A IPC and SI for one month for the offence under Section 279 of the IPC for the sentences running concurrently.

The revision petition is partially allowed.

A copy of this judgment be transmitted to the Superintendent of the concerned jail for record and compliance.

ASHUTOSH KUMAR, J

MAY 12, 2017

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