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

+ CRL.REV.P. 619/2017

GURUBAX

..... Petitioner

Through: Mr. Neeraj Sharma, Adv.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Chauhan, APP for
State with SI Vineet, P.S. Anand
Vihar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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23.08.2017

Petitioner has been convicted under Sections 279/304-A IPC by the Metropolitan Magistrate, Delhi and sentenced to undergo rigorous imprisonment for two years with fine of ₹1 lac, to be paid to the legal heirs of deceased and in default of payment of fine to undergo simple imprisonment for six months.

Petitioner filed an appeal before the Additional Sessions Judge which has been disposed of by the order impugned in this revision petition under Section 397 read with Section 482 Cr.P.C..Conviction has been upheld; while sentence has been reduced to one year of rigorous imprisonment with fine of ₹50,000/- under Section 304-A IPC and rigorous imprisonment for three months under Section 279 IPC.

Trial Court, as well as, Appellate Court on meticulous examination of

the documentary as well ocular evidence on record have returned with findings of guilt of the petitioner. There are two concurrent findings of the courts below. Both the courts have held that petitioner, while driving a taxi bearing no. DL-IT-5495 on 1st June, 2009 at about 12:30 pm, in a rash and negligent manner had hit the scooter bearing registration no. DL-7SAB-1933 driven by the deceased-Sushil Chand Bhardwaj near Karkardooma Court Red Light, Delhi resulting in fatal injuries to the deceased, to which he succumbed before he could reach the hospital. Both the courts have found the testimony of PW1(Deepak Bhardwaj) to be trustworthy and reliable. PW1 has deposed that he along with his father (deceased) was going on a Bajaj Chetak scooter no. DL-7SAB-1933 and when they reached at the Red Light near AGCR Enclave, One Ambassador car no. DL-1T-5495, driven by the petitioner, came from behind and hit the scooter, as a consequence of which they fell down and deceased sustained fatal injuries. Deceased was taken to the Hedgewar Hospital in the said Ambassador car but was declared brought dead. PW1 has correctly identified the petitioner in Court.

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 substitute a finding of facts as against what has been arrived 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 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. There are concurrent findings of two courts based on the appreciation of evidence, which, in my view, cannot be interfered with by this Court in exercise of its supervisory jurisdiction under Section 397 of the Cr.P.C., by re-appreciating the evidence. It is trite to note here that High Court will interfere only if the judgment suffers from any flagrant violation of any legal principle or any grave perversity is pointed out during the course of hearing.

Learned counsel for the petitioner has vehemently contended that mechanical inspection report was not proved by calling the technical expert. It is further submitted that testimony of PW1 is discrepant. In his examination-in-chief, PW1 had stated that he was sitting on pillion when

Ambassador car hit from the behind; whereas in his cross-examination he has deposed that he got down at the Red Light and, thereafter, when his father was taking a turn towards AGCR Enclave, the Ambassador car hit the scooter. Learned counsel contends that presence of PW1 at the spot itself is doubtful on this court.

I find the said discrepancy, as pointed out by the learned counsel, to be minor and insignificant. PW1 has not deposed in his cross-examination that after getting down from the scooter, he went away. He has deposed that after he got down his father was taking a right turn when Ambassador car hit them. Presence of PW1 cannot be doubted since as per the MLC, PW1 and petitioner had taken the deceased to the hospital. This also shows that PW1 was very much present at the spot when accident took place. As regards mechanical inspection report is concerned, the same was admitted by the petitioner and this fact has been noted by the Appellate Court. Since inspection report was admitted by the petitioner, it was not required to be proved by calling any witness in the witness box.

For the foregoing reasons, petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 23, 2017/ga