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

+ CRL.REV.P. 63/2018

MEGHLAL YADAV

..... Petitioner

Through : Mr. Abhipsit Mishra, Adv.

Versus

STATE

..... Respondent

Through : Mr. G. M. Farooqui, APP for State.

SI Om Prakash, PS Hauz Khas.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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22.01.2018

Petitioner was convicted under Section 279/304A IPC by the trial court and sentenced to rigorous imprisonment for 2 years with fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for 3 months under Section 304A IPC. He was further sentenced to rigorous imprisonment for 6 months under Section 279 IPC. Both the sentences were directed to run concurrently. Petitioner preferred an appeal before the Sessions Judge, which has been dismissed by the Additional Sessions Judge vide judgment dated 7th October, 2017.

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 guilt of the petitioner under Section

279/304A IPC. It is trite law that a Revision Petition cannot partake the status of an appeal. Evidence adduced before the trial court is not to be sifted and weighed by the High Court while exercising the revisional jurisdiction so as to superimpose its own finding as against the findings returned by the Trial court and the Appellate Court. High Court has only to see as to whether there is any violation of legal principles or whether the findings returned by the trial court on the evidence adduced are palpably perverse. This principle has been enunciated by this court and the Supreme Court in a catena of judgments.

Supreme Court in *Duli Chand v. Delhi Administration* MANU/SC/0113/1975, examined the scope of invoking jurisdiction of the High Court in criminal revision and held as under:

“The High Court in revision was exercising supervisory jurisdiction of a restriction nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. The High Court came to the conclusion that the evidence clearly established that the death of the deceased was caused on account of the negligent driving of the bus by the appellant. When three courts have, on an appreciation of the evidence,

arrived at a concurrent finding of fact in regard to the guilt of the appellant, it is difficult to see how this Court can, in the exercise of its extraordinary jurisdiction under Article 136 of the Constitution, interfere with such finding of fact.”

On appreciation of evidence trial court as well as appellate court have recorded that petitioner had run over a child of two and a half years while reversing the Tata make vehicle bearing registration no. HR-26J-2676 in a rash and negligent manner near service lane, Rose Garden Main Gate, New Delhi on 8th November, 2002 at about 9 am. Offending vehicle was seized from the spot. Petitioner was apprehended at the spot by the public witnesses.

PW1 Smt. Raj Kumari has deposed that accused (petitioner), present in Court, had hit his vehicle make Tata from behind. At the time of incident petitioner was driving the vehicle in a rash and negligent manner. Incident happened at about 9 pm. This witness was not even cross-examined. PW2 Sh. Bhagwan Das has also deposed that car bearing no. HR-26J-2626 was being driven by the petitioner who was reversing the vehicle without giving any indication and caused the accident. He confirmed that his statement Ex. PW2/A was recorded by the Investigating Officer. This witness was not cross-examined. PW8 Sh. Bhole has deposed that on the day of incident he along with Bhagwan Das was working at the gate no.1 and his wife PW9

Parvati and PW1 Rajkumari were buying vegetables and son of Rajkumari was standing on the patri near the gate. Petitioner was reversing his vehicle. They raised alarm that boy was standing behind the vehicle in order to stop the vehicle. However, petitioner did not listen, consequently, boy came under the vehicle and died. PW8 identified the petitioner in Court. He further deposed that petitioner got down from the vehicle and attempted to flee away from the spot, however, PW9 Parvati caught hold of him by his collar. Her testimony in her cross-examination, on the material points, has remained unshattered. PW9 Smt. Parvati has corroborated PW8. She has also deposed that petitioner was reversing his vehicle. They raised alarm that boy was standing behind the vehicle but petitioner did not listen and reversed the vehicle, as a result whereof boy came under the vehicle. Petitioner got down from the vehicle and tried to flee away from the spot, however, she chased him for about 40 steps and caught hold of him by his collar. Her testimony on the material points has also remained unshattered. Trial court as well as appellate court have found their testimony to be trustworthy and reliable.

I do not find any perversity in the findings returned by the trial court and appellate court, inasmuch as, it cannot be said that findings returned are

based on the evidence. No violation of any legal principles could be pointed out during the course of hearing, inasmuch as, learned counsel for the petitioner has given up challenge to the conviction of petitioner under Sections 279/304A IPC.

Learned counsel for the petitioner has prayed for reduction of sentences of petitioner. It is contended that petitioner is 42 years of age having three minor daughters. Wife of the petitioner is an illiterate woman and is not earning anything. Petitioner's family is leading a life of vagrancy in his absence in their native village. Petitioner has faced agony of trial for more than 15 years. Petitioner has no past criminal record.

For the foregoing reasons, while upholding the conviction of petitioner under Sections 279/304A IPC, his sentence under Section 304A IPC is reduced to 6 months. Rest of the sentences shall remain as it is. All the sentences shall run concurrently. Petitioner will also be entitled to the benefit of Section 428 Cr.P.C.

Revision petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

Dasti.

A.K. PATHAK, J.

JANUARY 22, 2018/ga