

\$~25

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

+ CRL.REV.P. 120/2018, CrI MA 2609/2018, CrI MB 255/2018

SUDHIR

..... Petitioner

Through Mr. H N Pandey, Adv

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through Ms. Meenakshi Dahiya, APP for State
SI Jasmer singh, P S Jahangir Puri

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

12.02.2018

Petitioner was convicted by the trial court for the offence under sections 279/304A/337/338 IPC and has been sentenced to undergo SI for one year for offence under section 304A IPC, six months for offence under section 338 IPC, three months for offence under section 337 IPC and three months for offence under section 279 IPC with directions that all sentences shall run concurrently and convict-petitioner is also to be given the benefit of section 428 CrPC. Petitioner was also directed to pay compensation of ₹50,000/- to the LRs/ heirs of the deceased.

Petitioner preferred an appeal against the said order which has been dismissed by the learned Addl. Sessions Judge (North), Rohini Courts. Having remained unsatisfied with the concurrent findings of the trial court and the appellate court, petitioner is before this Court

by way of the present petition.

There are concurrent findings of two courts against the petitioner on appreciation of evidence adduced before the trial court. It is trite law that High Court cannot appreciate evidence adduced by the trial court and substitute its findings of facts as against the findings of the trial court and the appellate court. High court has to step in only if it is shown that the courts below have violated any legal principles or have returned findings of guilty on the evidence resulting in miscarriage of justice.

In this case two eye witnesses were examined, who have duly supported the prosecution version that petitioner on 1st November, 2004 at about 1:30 PM, while driving offending vehicle i.e. bus No. DL-1PA-5049 at GTK Road on red light, in a rash and negligent manner and fast speed, had hit scooter bearing No.DL-5SD-8812 and a rickshaw resulting in death of the scooterist namely Amit who came under the wheels of the bus and injuries to other persons. Testimony of PW-2 Ct. Paramvir Singh has supported the prosecution version that accused-petitioner was driving the bus in a rash and negligent manner and that the bus hit the scooter and a rickshaw due to which Amit fell down and came under the front wheel of the bus and died at the spot. Mechanical Inspection Report has corroborated the version of eyewitness. According to the report the scooter was found damaged from behind because of impact of being hit by the bus. Petitioner did not take the plea that he was not driving the bus rather he took a plea that axle of the bus broke down in as much as brakes had failed which resulted in fatal accident further that steering wheel

also became free. The plea as taken by the petitioner could not be substantiated, in view of the statement of PW-7 who has denied the suggestion that brake was in broken condition. Same was the reply in respect of the axle.

After arguing for some time, learned counsel for the petitioner has given up challenge to the conviction of the petitioner on merits. He has only prayed for leniency in sentence.

It is contended that the convict is 45 years of age and has no previous criminal record. He has already faced trial for over 13 years. He has two daughters and one son. His paralytic father is also dependent on him. Wife of convict has already expired and he is the sole bread earner in the family. The whole family is leading life of vagrancy in his absence.

Keeping in mind the totality of the facts and circumstances of this case, as detailed above, while upholding the conviction of petitioner for the offences under which he has been convicted, his sentence for the offence under section 304A IPC is reduced to six months. Rest of the sentences are maintained. However, all the sentences shall run concurrently and benefit of section 428 CrPC shall also be given to the petitioner.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous. Dasti.

A.K. PATHAK, J

FEBRUARY 12, 2018

sm