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

+ CRL.REV.P. 168/2018

SARFUDDIN

..... Petitioner

Through: Mr. Rashid Khan, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Dr. M.P. Singh, APP for State with
ASI Tulli Ram, P.S. Badar Pur.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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01.03.2018

Petitioner was convicted by the trial court for the offence under Sections 279/337/304A IPC and sentenced to rigorous imprisonment for 2 years with fine of ₹500/- for the offence under Section 304 A IPC and in default of payment of fine to undergo simple imprisonment for 15 days; sentenced to undergo rigorous imprisonment for 6 months with fine of ₹1000/- for the offence under Section 279 IPC and in default of payment of fine to undergo simple imprisonment for 6 months; sentenced to undergo rigorous imprisonment for 6 months with fine of ₹500/- for the offence under Section 337 IPC and in default of payment of fine to undergo simple imprisonment for 15 days. All the sentenced have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given to the petitioner. Petitioner assailed the judgment of the trial court by filing an

appeal which has been dismissed by the judgment impugned in this petition under Section 401 of the Code of Criminal Procedure, 1973.

There are two concurrent findings of facts by the trial court and appellate court on appreciation of facts. In exercise of supervisory jurisdiction of the High Court under Section 397 Cr.P.C., High Court has not to sift and weigh the evidence and substitute its own finding against the findings of courts below on appreciation of evidence. High Court has to step in only if it is shown that there is any flagrant violation of any legal principle or any grave perversity is pointed out in the sense that the same are based on no evidence. Revision cannot take part as status of appeal. No flagrant violation of legal principles could be pointed out nor it is the case that findings have been returned without any evidence showing the culpability of the petitioner. Petitioner was arrested at the spot. Offending vehicle, that is, HR 38 M 8814 was also recovered from the spot. Victim died on the spot as he came under the wheels of the truck. Pillion rider, that is, PW2 Manish had also sustained injuries. PW2 had duly supported the prosecution case that petitioner while driving the aforesaid vehicle in a rash and negligent manner on 5th September, 2009 at 6 am on Mathura Road Jaitpur Mor had hit the motorcycle bearing no. DL-3S-BJ-6148 from behind as a result

whereof deceased, who was driving the motorcycle, came under the wheel of the truck. PW2 had also sustained injuries. PW2 has identified the petitioner in Court. There is another eye witness PW1 Prem Singh Sagar who also supported the prosecution version. PW1 deposed that on 5th September, 2009 at about 6 am he was walking with his dog when he saw that a truck bearing no. HR-38-N-8814 came from Sarita Vihar side at a high speed hit the motorcycle from behind as a result whereof pillion rider fell down on the road. Truck dragged the motorcycle for a distance of 100 yards. Driver of the motorcycle died at the spot. Public gathered at the spot. He stopped the truck. PW2 also deposed that he along with deceased was going on a motorcycle. When they were at Jaitpur Mor truck bearing no. HR-38-N-8814 came from Sarita Vihar side at a high speed and hit the motorcycle from behind as a result whereof deceased trapped under the truck and dragged up to 100 yards. PW2 further deposed that he also sustained injuries. His friend was died at the spot. Their testimonies have been found trustworthy and reliable by the trial court as well as appellate court. Happening of the incident has also not disputed by the petitioner as he himself produced DW1 in the witness box who deposed that he was working as a helper on the truck. Helper deposed that motorcycle came at a

high speed and hit the rear tyre of the truck and the motorcyclist came under the tyre of the truck.

For the foregoing reasons, I am of the view that petitioner has rightly been convicted by the trial court for the offence under Sections 279/304A/337 IPC. However, keeping in mind the contentions of learned counsel for the petitioner that petitioner has no previous criminal record. He is the sole bread earner of his family which consists of his five minor children, an illiterate wife and old aged parents who are totally depended upon the petitioner. accordingly, sentence of the petitioner under Section 304A IPC is reduced to the period of one year. Rest of the sentences are maintained as it is.

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

A.K. PATHAK, J.

MARCH 01, 2018

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