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

+ CRL.REV.P. 509/2018 and Crl. M.A. No. 10727/2018 & Crl. M.B. no. 932/2018

RAMESH KUMAR Petitioner
Through Mr. Sandeep Saini and Mr. Mukesh Choudhary, Advs.

Versus
STATE Respondent
Through

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **29.05.2018**

There are concurrent findings of facts returned by the trial court and Appellate Court of guilt of petitioner under Sections 279/304-A IPC on appreciation of evidence. As per the prosecution, petitioner while driving his truck bearing registration no. HR-46-5355 in a rash and negligent manner on 13th December, 2005 at 10 pm, near police picket, Maya Puri Depot, Maya Puri Road, Delhi hit a motorcycle bearing no. DL-4SAS-8306, resulting in death of motorcycle rider, namely, Charanjeet Singh.

HC Bona Ram was on duty at the police picket, near Maya Puri Depot and had witnessed the incident. He was examined as PW2. He deposed that on 13th December, 2005 he was on duty from 8 pm to 8 am at police picket,

Maya Puri Depot at about 10 pm. He was standing outside the picket when he noticed truck bearing registration no. HR-46-5355 driven by the petitioner, coming from Maya Puri Chowk site at a high speed and hitting the motorcycle bearing registration no. DL-4SAS-8306 on the right side of the truck; as a result whereof motorcyclist fell down and came under the right wheel of the truck. Truck was stopped. Driver was apprehended. He made a call to Duty Officer of police station Maya Puri. ASI Vijay Singh came at the spot and took the petitioner in custody. He proved his statement as Ex. PW2/A. His testimony has remained un-shattered in his cross-examination and has been found to be trustworthy and reliable by the trial court and Appellate Court. PW1 Dr. B.N. Mishra had conducted post-mortem and has proved his report as Ex. PW1/A. According to him, death was due to the head injury followed by forceful impact from the hard object during the road accident. PW3 Dr. Babita had prepared MLC and has proved the same as PW3/A. She was not even cross-examined. PW5 SI Kartar Singh was the Duty Officer and has proved the FIR as Ex. PW5/A. PW6 Smt. Bhavneer Kaur is the truck owner and has deposed that petitioner was her permanent driver and was driving the vehicle on the fateful day. PW9 SI Vijay Singh is the Investigating Officer and has deposed about the

overall investigation done by him. These are the material witnesses and their testimonies have been found to be trustworthy and reliable by the trial court.

It is trite law that in exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal. High Court cannot substitute a finding of fact as against what has been arrived by the two courts below, on appreciation of 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.

During the course of hearing, learned counsel has failed to point out any flagrant violation of settled legal principles or perversity in the impugned judgment, inasmuch as given up challenge to the conviction of petitioner on merits. He has confined his prayer only to the reduction of sentence of one year under Section 304-A IPC to the period already

undergone by the petitioner, which is about two and half months. He contends that petitioner has no past criminal record. Petitioner has faced the agony of trial for about 13 years. He has four minor school going children, who are below the age of 10 years. Petitioner's wife is an illiterate and a housewife. Petitioner's aged and ailing parents are dependent on him. Petitioner is the sole bread-earner in the family. Entire family is leading life of vagrancy in absence of petitioner, inasmuch as studies of the children is suffering.

Keeping in view the contentions of learned counsel for petitioner and the facts and circumstances of this case, while affirming the conviction of petitioner under Sections 279/304-A IPC, his sentence under Section 304-A IPC is reduced to seven months simple imprisonment from one year. Other sentences of imprisonment under Section 279 IPC and of compensation are maintained as it is. All the sentences shall run concurrently. Petitioner shall also be entitled to benefit under Section 428 Cr.P.C.

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

A.K. PATHAK, J.

MAY 29, 2018
r.bararia