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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 536/2018**

RAM SINGH

..... Petitioner

Through: Mr. Rajiv Bajaj, Adv.

versus

STATE

..... Respondent

Through: Ms. Neelam Sharma, APP for State
with ASI Tulli Ram, P.S. Badarpur.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **17.12.2018**

1. Petitioner was convicted by the trial court under Sections 279/304A IPC and sentenced to undergo simple imprisonment for six months with fine of ₹500/- and in default of payment of fine to further undergo simple imprisonment for three months for the offence under Section 279 IPC. He was further sentenced to undergo rigorous imprisonment for two years with fine of ₹1000/- and in default of payment of fine to undergo rigorous imprisonment for six months for the offence under Section 304A IPC. Aggrieved by his conviction, petitioner preferred an appeal before the Additional Sessions Judge, Delhi which has been dismissed by the judgment dated 06.10.2017.
2. That is how petitioner is before this Court by way of present revision petition under Section 397 of the Code of Criminal Procedure, 1973.
3. As per the prosecution, petitioner while driving the truck bearing no. HR 38 H 9685 in a rash and negligent manner on 15.06.2009 at about 12:30 pm knocked down a motorcycle bearing no. UP 80 AU 7290 from behind at

Mathura Road opposite NTPC Staff Quarter, as a consequence of which one lady and one child, who were sitting on the pillion seat of the motorcycle, fell down and came under the truck and died. Prosecution examined eight witnesses in all. PW3 Hari Singh was driving the motorcycle. He is eye witness to the incident. He corroborated the prosecution version. He also identified the petitioner in court correctly. He stated that petitioner was driving the offending truck. Petitioner had hit his motorcycle from behind. Petitioner took a defence that due to heavy traffic motorcycle fumbled. However, this plea has been rejected by the trial court and Appellate Court by saying that motorcycle will not fumble of its own only on account of heavy traffic on the road. Petitioner was apprehended at the spot.

4. There are concurrent findings of fact returned by the trial court and Appellate Court on appreciation of evidence. This Court is not to sift and weigh the evidence on record to substitute its findings against the concurrent findings returned by the courts below.

5. 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 at 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/or 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.

6. During the course of hearing, learned counsel for the petitioner has failed to point out any violation of legal principles nor is it a case based on no evidence, inasmuch as, has given up challenge to the conviction of the petitioner. The only relief pressed in this petition is that sentences of petitioner may be reduced to the period already undergone by him. It is submitted that petitioner has no past criminal record. Presently, he is aged about 30 years. At the time of incident petitioner was 21 years old. He is not involved in any other case. During the trial, petitioner was on bail which concession he has not misused by not indulging himself in any other offence. Petitioner has a family comprising of his wife and two minor children aged six and two and a half years old respectively. The whole family of petitioner is leading a life of vagrancy in absence of petitioner, who is in incarceration for more than one and a half years. Nominal roll of petitioner has been received which supports this version of learned counsel that petitioner is in incarceration for more than one and a half years. It is submitted that fine has already been deposited by the petitioner.

7. It is trite law that purpose of awarding sentence of imprisonment is twofold; one is punitive and other is reformatory. It is not necessary that in each and every case the maximum sentence has to be awarded. In *State GNCT of Delhi vs. Mukesh*, 2011 (3) Crimes 111, a Division Bench of this Court has observed thus: “a proper sentence is amalgamation of many factors such as the nature of offence, the circumstances extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender,

the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the court in deciding upon the appropriate sentence”.

8. Petitioner has already completed sentence of one and a half year out of the total sentence of two years. His jail conduct is satisfactory; he is not involved in any other case; during the trial, he was on bail, which concession he has not misused. Petitioner has a family comprising of his wife and two minor children, who are totally dependent upon him being the sole bread earner of the family.

9. Keeping in mind totality of the facts and circumstances of this case as detailed above, while upholding the conviction of petitioner under Sections 279/304A IPC, his sentences are reduced to the period already undergone by him. He be released from the jail forthwith, if not required in any other case.

10. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

11. Copy of the order be sent to the concerned Superintendent Jail for serving it on the petitioner and for compliance.

A.K. PATHAK, J.

DECEMBER 17, 2018

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