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

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Judgment delivered on: 22.11.2018

+ CRL.REV.P. 753/2018

BHAGWAN DASS

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anuj Kapoor, Adv (DHCLSC)

For the Respondent : Ms. Kusum Dhalla, Addl. PP for the State with SI
Sunil Chandra

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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22.11.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 27.01.2018 whereby appeal of the petitioner impugning order on conviction dated 18.07.2014 and order on sentence dated 06.08.2015 was dismissed.
2. Petitioner has been convicted of the offence under Sections 279/338/304A of the Indian Penal Code, 1860.
3. Petitioner has been sentenced to undergo simple imprisonment for a period of six months each for the offence under Sections 279 and 338 IPC and further sentenced to undergo SI for a period of one year

for the offence under Section 304-A IPC. Petitioner has been further directed to pay a compensation of Rs. 20,000/- for the offences under Sections 279 and 338 of IPC and to further pay a sum of Rs. 80,000/- as compensation for the offence under Section 304-A IPC, in default to further undergo simple imprisonment for a period of three months.

4. Learned counsel for the petitioner who appears through Delhi High Court Legal Service Committee, submits that the trial court as well as the appellate court have not appreciated the evidence correctly.

5. Petitioner was a driver of Redline Passenger Bus. As per the case of the prosecution, the petitioner was driving the bus in rash and negligent manner thereby hit the scooter which was being driven by PW1 and the deceased was sitting as a pillion rider. As per the prosecution, the petitioner while driving the bus hit the scooter from behind because of which the scooter fell down and the victim came under the tyre of the bus and died.

6. Learned counsel for the petitioner submits that the testimony of PW1 cannot be believed as he has admitted in his cross-examination that the bus was behind the scooter and thus he could not have seen the manner in which the bus was being driven. He further submits that the testimony of PW1 further cannot be believed that the bus was being driven in rash and negligent manner without any averment as to how it was being driven.

7. Learned counsel further submits that PW2 who has been produced as a prosecution eye-witness who could not have seen the accident as he was in a Three-Wheeler on the right side and the victim came under the left tyre of the bus.

8. Learned Addl. PP submits that the testimony of PW2 is sufficient to establish that the petitioner was driving the bus in rash and negligent manner as the accident took place in the front of the bus and scooter was in front so the testimony of PW2 cannot be doubted. She further submits that the accident has been substantiated by the mechanical examination report. Further, it is contended that there is no dispute that the petitioner was driving the bus and the victim came under the tyre of the bus.

9. I have perused the record of the trial court as well as the appellate court. Though there may be a doubt in the manner in which the bus was being driven and even if the testimony of PW1 is disregarded, testimony of PW2 cannot be disregarded completely.

10. The petitioner has been in custody since 09.02.2018 and as per the nominal roll of the petitioner as on 09.08.2018 had undergone six months and 1 day of imprisonment and thereafter three months 12 days have passed and he may also has earned some remission during this period. Further, it is pointed out that petitioner was a driver and after the accident, which took place in the year 1995 he has given up the job and thereafter started vending fruits and vegetables. The

petitioner is sole bread-earner of the family comprising of wife and three minor children who are studying and was earning only Rs. 6,000/- per month.

11. Keeping in view the facts and circumstances as also the evidence recorded, I am of the view that the interest of justice would be served in case the sentence of the petitioner is reduced to the period already undergone. Keeping in view the financial condition of the petitioner the compensation amount is reduced to Rs. 50,000/- and in default sentence is reduced to 15 days (compensation amount for the offence under Section 338 IPC is reduced to Rs. 10,000/- from Rs. 20,000/- and compensation amount for the offence under Section 304-A is reduced to Rs. 40,000/- from Rs. 80,000/-).

12. Prior to release of the petitioner, the Superintendent (Jail) shall ensure that the compensation amount as reduced by this Court has been paid or the petitioner has undergone simple imprisonment of 15 days for in default period.

13. The petition is disposed of in the above terms.

14. Order *dasti* under signatures of the Court Master.

NOVEMBER 22, 2018
'rs'

SANJEEV SACHDEVA, J