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

+ CRL.REV.P. 907/2018, CRL MA 1641/2018 & 34443/2018

DEEP RAJ PATHANIYA Petitioner
Through Mr. Ajay Mahla, Adv

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent
Through Mr. M S Oberoi, APP for State
SI Jasmer Singh, PS Jahangir Puri

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **16.10.2018**

1. Petitioner was convicted for offence under sections 279/304A IPC by the learned Metropolitan Magistrate vide judgment dated 18th August, 2018. Vide order on sentence dated 10th October, 2017, petitioner was sentenced to undergo rigorous imprisonment for six months for the offence under section 279 IPC and rigorous imprisonment for two years for the offence under section 304A IPC and both the sentences were directed to run concurrently. Petitioner was also directed to pay compensation of ₹1,00,000/- to the legal heirs of the deceased and in default, to further undergo simple imprisonment for six months.

2. Petitioner preferred an appeal before learned Addl. Sessions Judge-04 (North) Rohini Courts, Delhi which has been dismissed by the judgment dated 20th August, 2018 impugned in this petition under section 397 Cr.P.C.

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3. 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.

4. 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.

5. As per the prosecution, petitioner while driving vehicle bearing registration no.HR 38E 1247 in rash and negligent manner on 26th March, 2013 at about 2:30 PM, hit the deceased Mukesh Kumar near Northend Banquet Hall, GTK Road, Delhi resulting in death of the deceased. The accident was witnessed by PW-1 Sanjay (brother of deceased). The post-mortem report indicated that the death was due to injuries suffered by the victim which were possible by vehicular accident. PW-1 Sanjay has fully corroborated the prosecution version. Petitioner did not dispute his identity before the trial court.

Petitioner was arrested from the spot. PW-9 Insp. Sanjay Dahiya has deposed to this effect. PW-1 has deposed that on 23rd June, 2003 he alongwith his brother (deceased) was returning home on a rickshaw-rehri and when they reached near Northend Banquet Hall at GTK Road, a truck bearing registration no.HR 38E 1247 hit their rickshaw-rehri from behind. The truck was being driven at a very fast speed and as a consequence of the collision, deceased fell down on the road and the tyre of the truck ran over deceased's head. PW-1 said he also fell down due to impact of the collision. The truck was stopped by some public persons. PW-1 deposed that name of the driver was Deep Raj. Further, that petitioner's personal search was taken in his presence vide Ex. PW1B.

6. After arguing for some time, learned counsel for the petitioner has given up challenge to the conviction of petitioner under Sections 279/304A IPC on merits. Learned counsel has prayed for reduction of sentence of the petitioner. It is contended that father of petitioner is aged about 70 years and is suffering from cancer. In fact, the father of petitioner has been discharged from the hospital by saying that it is the last stage of his ailment. Petitioner's wife is an illiterate and housewife. Elder brother of the petitioner is an alcoholic. Petitioner belongs to a poor family. Accident took place in the year 2003 and petitioner has suffered agony of trial for 15 years.

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. Keeping in view that appellant belongs to a poor family; he is the only bread earner in the family; he has no criminal history; he has faced agony of trial for about 15 years; his sentence under Sections 304A IPC is reduced to one year while confirming the sentence under section 279 IPC. Both sentences shall run concurrently.

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

A.K. PATHAK, J

OCTOBER 16, 2018/sm