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

+ CRL.REV.P. 951/2018

RAVINDER KUMAR Petitioner

Through: Mr. Deepak Sharma, Adv.

versus

STATE Respondent

Through: Mr. Izhar Ahmad, APP for State.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **30.10.2018**

1. Petitioner was convicted under Sections 279/304A IPC by the trial court and sentenced to simple imprisonment for three months under Section 279 IPC and sentenced to simple imprisonment for one year under Section 304A IPC. Both the sentences were directed to run concurrently. Petitioner preferred an appeal before the Appellate Court which has been dismissed vide judgment dated 25.10.2018.
2. That is how petitioner is before this Court by way of present Revision Petition under Section 397 Cr.P.C.
3. There are concurrent findings of fact, on appreciation of evidence rendered by the two courts. It is trite law that a Revision Petition cannot partake the status of an appeal. Evidence adduced before the trial court is not to be sifted and weighed by the High Court while exercising the

revisional jurisdiction so as to superimpose its own finding as against the findings returned by the trial court and the Appellate Court. High Court has only to see as to whether there is any violation of legal principles or whether the findings returned by the trial court on the evidence adduced are palpably perverse. This principle has been enunciated by this court and the Supreme Court in a catena of judgments.

4. Supreme Court in *Duli Chand vs. Delhi Administration* MANU/SC/0113/1975 examined the scope of invoking jurisdiction of the High Court in criminal revision and held as under:

“The High Court in revision was exercising supervisory jurisdiction of a restriction nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. The High Court came to the conclusion that the evidence clearly established that the death of the deceased was caused on account of the negligent driving of the bus by the appellant. When three courts have, on an appreciation of the evidence, arrived at a concurrent finding of fact in regard to the guilt of the appellant, it is difficult to see how this Court can, in the exercise of its extraordinary jurisdiction under Article 136 of the Constitution, interfere with such finding of fact.”

5. In *State of Orissa vs. Nakula Sahu and Ors.* MANU/SC/0178/1978,

Supreme Court has observed thus:

“That the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In State of Kerala vs. Puttamana Illath Jathavedan Namboodiri MANU/SC/0100/1999 : 1999CriLJ1443 it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as" a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

6. In State of Kerala vs. Putthumana Illath Jathavedan Namboodiri

MANU/SC/0100/1999, Supreme Court has observed thus:

“In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence

and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent.”

7. As per prosecution, petitioner was driving DTC Bus bearing no. DL-1PB-0958 on 08.07.2005 at about 2:10 pm. The bus was ferrying children from school to their homes. At about 02:15 pm bus reached at T-Point of Shankar Road near Hongchi Restaurant and stopped for dropping off some of the students; while deceased (Ashpreet Kaur), a student of Class II, was de-boarding the bus, the petitioner accelerated the bus, as a consequence whereof deceased fell down and came under the left front wheel of the bus and died at the spot. Petitioner was apprehended by PW4- Const. Jugal Kishore who was present at the spot. Petitioner was taken to the nearby police picket as public persons had started gathering there. Investigating Officer reached the spot. Sent the dead body to the hospital for post-

mortem, arrested the petitioner, seized the bus and conducted the investigations.

8. Post-mortem of the deceased was conducted by PW10-Dr. Punit Setia of Maulana Azad Medical College under the supervision of Dr. Anil Kumar, Professor Department of Forensic Medicine and opined that the deceased died due to 'Cranio Cerebral Damage' consequent upon crush injury to the head. He opined that all the injuries were antimortem, fresh in duration and could be caused due to run over by a vehicle in a vehicular accident.

9. According to the prosecution, PW1 Smt. Harpreet Kaur (mother of deceased) and PW4 Const. Jugal Kishore had witnessed the incident. Trial court as well as Appellate Court have concluded that PW1 and PW4 were trustworthy and reliable witnesses. From their statements coupled with the post-mortem report guilt of the petitioner was duly proved.

10. During the course of hearing, learned counsel for the petitioner, on instructions, has given up challenge to the conviction of the petitioner under Sections 279/304A IPC. However, he has prayed for reduction of sentence of petitioner.

11. Learned counsel has failed to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position has been

ignored. He has also failed to point out any perversity and/or illegality in the impugned order resulting in miscarriage of justice. However, in order to satisfy my conscience I have carefully marshalled the entire material placed on record including the statements of witnesses and I am satisfied that the trial court as well as Appellate Court have rightly concluded that deceased had died due to rash and negligent driving of the petitioner.

12. PW1 has categorically deposed that on 08.07.2005 she was present at Shankar Road, Rajinder Nagar stop and was waiting for the school bus of her daughter to arrive. At about 02:15 pm DTC bus bearing no. DL-1PB 0958 reached there. While her daughter was stepping down from the bus, driver moved the vehicle in forward direction as a result whereof her daughter fell down on the road and came beneath the front tyre. PW1 identified the petitioner correctly in court. Her testimony has remained unshattered in her cross-examination on material points. Her testimony is duly corroborated by PW4-Const. Jugal Kishore, who has deposed that on 08.07.2005 he was on duty from 8:00 am to 8:00 pm at Honeghi Restaurant Picket, Shankar Road. At about 02:10 pm, one DTC bus bearing no. DL1PB-0958, driven by the petitioner, came there and stopped near the picket. The school boys and girls were alighting from the said bus. One

baby aged about 6-7 years was getting down from the front gate of the bus and her mother had caught hold of her hand from outside the bus. In the meanwhile, petitioner suddenly drove the bus due to which said baby fell down and came under the left side front wheel of the bus. Her head and face were crushed by the wheel of the bus. He further deposed that he apprehended the petitioner and took him to police picket and later on handed over him to the Investigating Officer. PW5-Rajeev Suri was also present at the spot and he has deposed that on hearing the noise “*bachcha bus k neche aa gaya hai*”, he reached at the spot, that is, at the corner of the Shankar Market and saw the deceased under the DTC school bus. PW10-Dr. Puneet Setia has proved the post-mortem report Ex. PW10/A which corroborates the versions of the witnesses that deceased was crushed under the wheel of the bus. Insp. Ranjan Kumar (Investigating Officer) has proved the investigations conducted by him.

13. For the foregoing reasons, I am of the view that trial court as well as Appellate Court have rightly concluded that deceased died due to rash and negligent driving of the bus by the petitioner.

14. Petitioner has not disputed his identity. It is not his plea that he was not driving the bus or that incident did not take place. He took a defence

that deceased had already de-boarded the bus. He moved the bus after all the children had de-boarded and on the signal given by the conductor. This plea has rightly not been accepted by the trial court as well as the Appellate Court in view of categorical statements of PW1 and PW4. Petitioner ought not to have moved the bus without ensuring that all the children had de-boarded the bus.

15. For the foregoing discussions, the conviction of petitioner under Sections 279/304A IPC is confirmed. However, keeping in mind the contentions of learned counsel for the petitioner that petitioner is aged about 65 years; he is suffering from various ailments; he has no past criminal record; he has faced agony of trial for more than 13 years; during the trial he was on bail but has not committed any other offence, his sentence under Section 304A IPC is reduced to six months. All the sentences shall run concurrently.

16. Revision petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

17. Dasti.

A.K. PATHAK, J.

OCTOBER 30, 2018

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