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Date of Decision:- 30.01.2019

....Petitioner

VS.

....Respondent

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mohd. Arshad, Advocate,
for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner has been convicted under Sections 279 and 304-A IPC and has been sentenced vide judgment of conviction dated 16.4.2018 and order of sentence dated 17.4.2018 as under:-

Under Section	Sentence
279 IPC	To undergo imprisonment for a period of six months and to pay a fine of ₹ 1000/-. In default of payment of fine, to further undergo simple imprisonment for one month.
304-A IPC	To undergo imprisonment for a period of two years and to pay a fine of ₹ 2000/-. In default of payment of fine, to further undergo simple imprisonment for two months.

2. Both the sentences shall run concurrently.
3. Appeal filed against the above-said conviction has been dismissed vide judgment dated 17.9.2018. Hence, the present revision petition.
4. The accident took place on 19.9.2014 at about 12.30 a.m. on the Sohna-Tauru road. The complainant was driving a Canter vehicle and was coming from Sohna to Tauru when a head on collision took place with the Dumper being driven by the accused-petitioner.

took place, his vehicle was parked on the road due to some mechanical defect. The complainant was driving his Canter in a rash and negligent manner and hit the stationary vehicle. Thus, there is no act of rashness or negligence on the part of the petitioner-accused and the Courts below have erred in convicting him. A reference has been made to site plan Exhibit P-2, Mechanical Report Exhibit PW1/A and Exhibit PW1/B as well as photographs Exhibits P-11 and P-12.

6. The photograph Exhibit P-2 shows that the accident took place on the left side of the Sohna-Tauru road. Undisputedly, the Canter was being driven from Sohna to Tauru and thus, at the time of accident it was being driven on the correct side of the road. The Courts below have disbelieved the version of the petitioner-accused that his Dumper was stationary at the time of the accident and although learned counsel for the petitioner has failed to point out any perversity in this finding, even if the version of the petitioner-accused is to be accepted, the Dumper was parked on the wrong side of the road. Thus, even accepting the version of the petitioner-accused, the accident took place on account of his negligence in parking a heavy vehicle on the wrong side of the road. Reliance placed upon mechanical report Exhibits PW1/A and PW1/B does not help the case of the petitioner in any manner because the said reports only say that both vehicles were damaged on account of a head on collision. Photographs Exhibits P-11 and P-12 also reflect a head on collision and the contention of the learned counsel that branches were fixed on the rear of the vehicle does not advance his case in any manner as the branches could have been fixed at any time.

7. Learned counsel for the petitioner has placed reliance upon a judgment of Hon'ble the Supreme Court in Azeez vs. State of Kerala, 2011(4) Scale 241, and two Single Bench judgments of this Court in Tarsem Singh vs. State of Haryana, 2007(4) RCR (Criminal) 605 and Binder Singh @ Ravinder Singh vs. State of Haryana, 2010 (15) RCR (Criminal) 969. The judgment in *Azeez's case (supra)*

complainant did not express any objection. The judgment in *Tarsem Singh's case (supra)* is also not relevant as in the said case it was held that the complainant was negligent because he was entering upon the highway from a side road and should have stopped his tractor trolley before entering thereupon. The facts of this case are thus, totally different.

8. Similarly, *Binder Singh's case (supra)* is also not attracted as the judgment therein is based upon a finding that the Courts below misread the evidence of PW-3. In this case, no argument has been raised regarding misreading of the evidence of the prosecution witness or non-consideration of the evidence of anyone of them.

9. No other infirmity or illegality has been pointed out in the judgments of the Courts below.

10. The petition has no merit and is accordingly dismissed.

January 30, 2019
poonam

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether reportable **Yes**