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

+ CRL.REV.P. 51/2019

BIJENDER

..... Petitioner

Through: Mr. Manish Rohilla and Mr.
Abhishek Sharma, Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Raghuvinder Varma, APP for
State with SI Jasmer Singh, P.S.
Jahangir Puri.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **15.01.2019**

1. There are concurrent findings of fact returned by the trial court and appellate court against the petitioner, regarding his guilt having committed of the offences under Sections 279/304A IPC, on appreciation of evidence. Trial Court as well as Appellate Court have found the testimonies of witnesses; more particularly that of eye-witness PW5 Sh. Girish Chand Sharma to conclude that petitioner on 28.03.2016 at about 6:45 pm at Outer Ring Road near EE Bus stand, while driving TATA Sumo bearing no. DL-8CF-4581 in a rash and negligent manner, had knocked down a pedestrian namely Bindra Singh Chauhan resulting in his death.
2. 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. There

are concurrent findings of fact returned by the trial court and Appellate Court on appreciation of evidence. 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.

3. 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 petition. However, to satisfy my conscience I have gone through the entire material placed on record; more particularly the testimonies of witnesses and find that it is not the case based on no evidence. No perversity is there in the judgments which have been returned on appreciation of evidence on record. PW5-Shri Girish Chander Sharma has categorically deposed that on 28.03.2006 he was going to his house on his motorcycle bearing no. DL8S AD 1371 and when he was crossing the red light of Mukund Pur, one TATA Sumo overtook his motorcycle in a rash and negligent manner and hit one

passerby. He further deposed that he chased the TATA Sumo which stopped at next red light. TATA Sumo was bearing registration no. DL8CF-4581. He informed the traffic police man posted there that the person who was sitting in the TATA Sumo had caused the accident. Traffic police man apprehended the petitioner. PW5 proved his statement recorded by the Investigating Officer as Ex. PW1/A. Statement of PW5, as contained in Ex. PW1/A is consistent with his statement recorded in court. PW6 HC Om Prakash has corroborated PW5. He stated that PW5 pointed to him towards the TATA Sumo bearing no. DL8CF-4581 at red light and informed that he had caused the accident. PW8 Dr. Upender Kishore had conducted the post-mortem on the dead body of deceased-Bindra Singh Chauhan and has proved the same as Ex. PW8/A. PW8 opined that the cause of death was shock due to haemorrhages, as a result of multiple injuries to multiple internal organs caused by blunt forced impact, which was possible in a road traffic accident. PW9 ASI Devender Kumar has proved his report Ex. PW9/A which indicated that left side body and bumper of the TATA Sumo were damaged; left side headlight was also broken and bonnet was bent from the left side. PW5 is an independent public witness.

4. Learned counsel has prayed for leniency in the sentences. It is submitted that petitioner has no past criminal record. During the trial petitioner was on bail and has not indulged himself in any other similar offence. Petitioner has faced agony of trial for more than 13 years. He has a family comprising of his wife, two school going daughters and aged parents. His wife is a house wife. Petitioner is the sole bread earner in the family. Accordingly, sentences of petitioner may be reduced to the period already undergone by him.

5. 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.

6. Keeping in mind that petitioner has no past criminal record and has a family, which is totally dependent on him; during the trial petitioner was on bail which concession he has not misused, the sentence of petitioner under Section 304A IPC is reduced to a period of nine months. The sentences are maintained as it is. All the sentences shall run concurrently. Petitioner be also given benefit of Section 428 Cr.P.C.

7. Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

8. Dasti.

A.K. PATHAK, J.

JANUARY 15, 2019

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