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

+ CRL.REV.P. 144/2019

GAJRAJ

..... Petitioner

Through: Mr. Sanjay Kr. Mishra, Adv.

versus

THE STATE(NCT OF DELHI)

..... Respondent

Through: Mr. Mukesh Kumar, APP with SI
Yogendra, P.S. Gulabi Bagh.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **05.02.2019**

1. There are concurrent findings of fact returned by the trial court and appellate court against the petitioner, on appreciation of evidence. It is concluded that prosecution had succeeded in proving beyond shadow of reasonable doubt that petitioner had committed offences under Section 279/338/304-A IPC. Trial Court handed down the sentence of simple imprisonment for six months for the offence punishable under Section 279 IPC; simple imprisonment for one year for the offence punishable under Section 338 IPC and simple imprisonment for one year for the offence punishable under Section 304A IPC. All the sentences were directed to run concurrently. Benefit of Section 428 Cr.P.C. was also given to petitioner.
2. Appellate Court has upheld the conviction as well as sentences

handed down by the trial court.

3. That is how the petitioner is before this Court by way of present revision petition under Section 397 of the Code of Criminal Procedure, 1973 ('the Code', for short).

4. It is trite law that in exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record and substitute its independent findings of fact against the concurrent findings of fact returned by the trial court and Appellate Court on appreciation of evidence. Revisional jurisdiction of High Court cannot partake the status of appeal. 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.

5. During the course of hearing, learned counsel for the petitioner has given up challenge to the conviction of petitioner under Sections 279/338/304A IPC. He has only prayed for reduction of sentences.

6. Even though the conviction has not been challenged on merits but still to satisfy my conscience I have perused the material placed on record more particularly the statement of eye witness PW3 Kundan Shah. PW3 has

categorically deposed that he was a rickshaw puller. He was carrying a passenger (deceased) in his rickshaw four-six years ago; when he reached at 40 Feet Road in front of police picket one TSR hit his rickshaw from behind as a result of which he along with the passenger fell down on the road. Auto rickshaw was driven in a rash and negligent manner. He sustained injuries; whereas the passenger died. The number of TSR was 6464. Petitioner was driving the said TSR. He further stated that his statement Ex.PW3/A was recorded on the spot. He identified his thumb impression on his statement. He further stated that he was taken to Hindu Rao Hospital. He categorically stated that petitioner was arrested by the police in his presence vide arrest memo Ex. PW3/B. He also identified his thumb impression on the personal search memo Ex. PW3/C of the petitioner. In reply to a question put by the learned Public Prosecutor he admitted that the date of accident was 31.08.2003. He had also given the initial number of TSR as DL1RE. Testimony of this witness has remained unshattered in his cross-examination on material points. He reiterated that passenger (deceased) was sitting in his rickshaw. He denied a suggestion given by the counsel for petitioner that accident occurred as he was crossing the red right. His cross-examination shows that a specific question was put to him that accident did not take place

due to the fault of accused. He denied this suggestion. This question put to this witness makes it clear that happening of the accident was not even disputed. PW11 Dr. Akash Jhanjee proved the post-mortem report as Ex. PW11/A. He deposed that cause of death was due to haemorrhage and shock consequent upon blunt force impact to the chest and abdomen regions. Injuries were consistent with road traffic accident. MLC of PW3 Kundan Shah was also placed on record by the prosecution and proved as Ex. PW5/A. Investigating Officer ASI Jagbir Singh was examined as PW17. He proved the investigation conducted by him. Other witnesses examined are police officials and have corroborated the prosecution story. I do not find any perversity in the impugned judgments. It is not the case that the conviction is without any evidence.

7. Accordingly, conviction of the petitioner is not interfered.

8. 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. However, he has not indulged himself in any other similar offence. Petitioner has faced agony of trial for more than 16 years. He has a family comprising of his wife and three minor children. 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.

9. It is trite law that purpose of awarding sentence of imprisonment is twofold; one is punitive and other is reformative. It is not necessary that in each and every case the maximum sentence has to be awarded.

10. Keeping in mind that petitioner has no past criminal record and has a family comprising of his wife and three minor children, who are totally dependent on him; during the trial petitioner was on bail which concession he has not misused, the sentences of petitioner under Sections 338/304-A IPC are reduced to a period of six months. Sentence under Section 279 IPC is maintained as it is. All the sentences shall run concurrently. Petitioner be also given benefit of Section 428 Cr.P.C.

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

12. Dasti.

A.K. PATHAK, J.

FEBRUARY 05, 2019

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