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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 157/2019**

MOHD. SALIM

..... Petitioner

Through Mr. Rajiv Ranjan Dwivedi, Adv.

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP with ASI
Samsheer Singh, P.S. Adarsh Nagar

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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07.02.2019

1. Petitioner was convicted under Sections 279/304-A IPC by the trial court and sentenced to simple imprisonment for eighteen months with fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for seven days for the offence punishable under Section 304-A IPC and sentenced to pay fine of ₹500/- and in default of payment of fine to undergo simple imprisonment for 3 days for the offence punishable under Section 279 IPC.
2. Petitioner preferred an appeal before the Additional Sessions Judge-04, North District, Rohini Court, Delhi, which has been dismissed by the order impugned in this petition.

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 (for short, Cr.P.C.).

4. There are concurrent findings of fact returned by the trial court and appellate court against the petitioner, on appreciation of evidence. 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. After arguing for some time learned counsel for the petitioner has given up challenge to the conviction of petitioner under Sections 279/304-A IPC on merits. He has only prayed for reduction of the sentence. It is contended that petitioner has faced agony of trial for more than 18 years. Petitioner has no past criminal record. During the trial and pendency of

appeal petitioner was on bail. He has not indulged himself in similar offence. Legal heirs of the deceased have already been paid compensation of about ₹7 lacs by the MACT. Petitioner has a family comprising of his wife, six minor children and widow mother, who are totally dependent on him.

6. Even though petitioner's counsel has failed to point out any perversity and/or illegality in the impugned order resulting in miscarriage of justice, inasmuch as, given up challenge to the conviction on merits, yet to satisfy my conscience I have perused the material placed on record more particularly the statement of eye witness PW3 Tarachand and I am of the view that trial court has rightly accepted the testimony of PW3 to be trustworthy and reliable. PW3 deposed that he had witnessed the incident. He deposed that he was going from his house to Wazirpur side on his bicycle at about 2 pm and when he crossed Mahindra Park and reached a sweets shop, a truck bearing no. HR-26 D9200 came from Jahangir Puri side at a fast speed and in a rash and negligent manner. He stated that he saved himself by turning towards the road side. He saw that the said truck hit against a scooter which was driven by Omi @ Om Prakash, who was his neighbour, as a result of which the scooter and the scooterist fell on the road. The truck was stopped at the red light and public persons gathered there.

Accused disclosed his name as Salim Ahmad. PW3 identified the petitioner in court correctly. He further deposed that his statement Ex. PW3/A was recorded by the police and identified his signatures on his statement. He also stated that he pointed out the place of incident and site plan was made by the police on his instructions. He identified his signatures on seizure memos of the truck and scooter which were exhibited as Ex. PW3/B and Ex. PW3/C. He further deposed that the injured died at the spot. He also deposed that petitioner was arrested in his presence after his personal search was taken vide memos Ex. PW3/D and PW3/E. Trial court and appellate court have rightly accepted the testimony of PW3 to conclude that it is the petitioner who was driving the offending truck; accident took place due to rash and negligent driving of the petitioner; the deceased died due to fatal injuries sustained by him to which he succumbed at the spot. Testimonies of other witnesses, that is, police officials and doctors, have corroborated the statement of PW3.

7. PW4 Munna Lal had turned hostile partially regarding the factum of having witnessed the incident but supported PW3 on the material points. He deposed that on 07.09.2000 at about 2 pm he was going towards the bus stop when he saw the injured lying at the spot, who was his neighbour Omi

@ Om Prakash and had succumbed to his injuries. Further, that driver of the truck was present at the spot and his name was Salim Ahmad. Merely because this witness did not support his version that accident took place in his presence will not be sufficient to discard his testimony as a whole. PW3 Tarachand's statement alone was sufficient to nail down the guilt of petitioner.

8. In view of the above discussions, conviction of petitioner under Sections 279/304-A IPC is not interfered with.

9. 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 the present case, keeping in view that petitioner has no past criminal record; he has not indulged himself in any other similar offence; petitioner has already faced agony of trial for more than 18 years; he has a family comprising of his wife, six minor children and widow mother who are totally dependent upon him, sentence of petitioner under Section 304-A IPC is reduced to the period of nine months. Sentence under Section 279 IPC is maintained as it is. Sentences shall run concurrently. Benefit of Section 428 Cr.P.C. be also given to petitioner.

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

11. Dasti.

A.K. PATHAK, J.

FEBRUARY 07, 2019

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