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

+ CRL.REV.P. 271/2019

SH. MANOJ KUMAR SINGH

..... Petitioner

Through: Mr. Gurmit Singh Hans and Ms. Aarti
Manchanda, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Mukesh Kumar, APP for State
with ASI Ram Mehar Singh, P.S.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **08.03.2019**

1. Petitioner was convicted under Sections 279/338/304-A IPC by the Trial Court and sentenced to simple imprisonment for three months with fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for five days for the offence punishable under Section 279 IPC; simple imprisonment for one year and six months with fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for fifteen days for the offence punishable under Section 304-A IPC and simple imprisonment for one year with fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for five days for the offence punishable under Section 338 IPC. All the sentences have been directed to run concurrently. Petitioner was further directed to pay

compensation of ₹50,000/- to injured-Dinesh Kumar and ₹1 lac to the legal representatives of deceased-Deepak Kumar Bose and in default of payment of compensation to undergo simple imprisonment for one month.

2. Petitioner preferred an appeal which has been disposed of by the Special Judge (PC Act) (CBI)-04, Central District, Tis Hazari Courts, Delhi by the order impugned in this petition. The conviction as well as sentences pronounced by the Trial Court have been upheld by the appellate court, however, compensation amount has been reduced to ₹20,000/- to be paid to injured Dinesh Kumar and ₹40,000/- to the LRs of deceased-Deepak Kumar Bose.

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 where the settled legal position has been ignored.

5. After arguing for some time learned counsel for the petitioner has given up challenge to the conviction of petitioner under Sections 279/338/304-A IPC on merits. He has only prayed for reduction of the sentences. It is contended that petitioner has faced agony of trial for more than 16 years. Petitioner has no past criminal record. During the trial and pendency of appeal petitioner was on bail. He has not indulged himself in any similar offence. Legal heirs of the deceased have already been paid compensation of about ₹3.50 lacs by the MACT. Petitioner has a family comprising of his wife and three minor children 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 the challenge to the conviction on merits, yet to satisfy my conscience I have perused the material placed on record and more

particularly the statements of PW5 to PW7. As per the prosecution, on 11.04.2003 at Monkey Bridge, Yamuna Vihar, Delhi accused (petitioner) while driving Tata Truck No. HR-38-G-4093, in a rash and negligent manner, hit the truck against a wall causing grievous injury to Mr. Dinesh Kumar and resulting in death of Deepak Kumar Bose. PW7-Dinesh Kumar is the eye-witness to the incident. He has deposed that he was present in the truck as a Helper, which was being driven by the petitioner. He was related to the petitioner. He categorically deposed that petitioner was driving the truck in a high speed and he had warned him about the high speed. This witness was even cross examined. In his cross-examination, he denied the suggestion that at the time of the accident petitioner was driving the truck in a normal manner and properly. He deposed that speed of the truck was about 70/80 km/h. He also denied the suggestion that the accident had occurred due to the failure of brakes of the truck. PW6 is the registered owner of the offending truck bearing no. HR-38G-4093. He deposed that on 11.04.2003 at the time of accident petitioner was driving his truck.

7. Even otherwise, petitioner has not disputed that accident took place. It is not his plea that he was not driving the truck. His defence is that the accident took place due to sudden brake failure. PW5 ASI Devender

Kumar is the Mechanical Inspector and has deposed that brake system got damaged due to the accident, as the front side axel with wheel dislocated due to damage to the suspension. He further deposed that the brake hose might have been broken due to excess pressure on the rubber brake hose which occurred due to collusion. He also stated that examination showed that the brake must have been in working condition before the accident. In his cross examination, PW5 categorically deposed that the rubber brake hose pipe was broken due to the heavy impact of the accident. He further deposed that his mechanical examination showed that the brake must have been in working condition prior to the accident. Testimony of PW5, PW6 and PW7 have remained unshattered in their cross examination. Trial Court as well as Appellate Court have found these witnesses to be trustworthy and reliable and there is no reason to take a different view than what has been taken by the courts below.

8. In view of the above discussions, conviction of petitioner under Sections 279/338/304-A IPC is not interfered with and accordingly upheld.

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. 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 16 years; he has a family comprising of his wife and three minor children who are totally dependent upon him, sentences of petitioner under Sections 304-A/338 IPC are reduced to nine months. All the 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.

MARCH 08, 2019

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