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

+ CRL.REV.P. 442/2009

RAJESH KUMAR

..... Petitioner

Through: Mr. Narendra Gautam, Adv.

versus

STATE

..... Respondent

Through: Mr. Raghuvinder Varma, APP for
State with SI Rambir Singh, P.S.
Subzi Mandi.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **08.01.2019**

1. Petitioner was convicted by the trial court under Sections 279/304A IPC and sentenced to undergo simple imprisonment for six months for the offence under Section 279 IPC and simple imprisonment for two years for the offence under Section 304A IPC. Petitioner was also directed to pay compensation of Rs.25,000/- to the parents of the deceased-child. Aggrieved by the said conviction as well as sentence, petitioner preferred an appeal before the Additional Sessions Judge, Delhi which has been dismissed by the judgment dated 7th July, 2009, which has been impugned in this petition.
2. That is how the petitioner is before this Court by way of present revision petition under Section 397 read with Sections 401/402 of the Code of Criminal Procedure, 1973.

3. 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.

4. 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. PW4 Hari Kishan is the eye witness. He has categorically deposed that on 13.04.1995 he was returning home after walking at Roshanara Road and when he reached at Central Patri he saw one redline bus coming from Ghanta Ghar side and going towards railway station at a very high speed and in a rash and negligent manner. The said bus crushed one boy in the process. PW4 gave the number of the offending bus as DLIP-2513. PW4 further deposed that the bus stopped after 30 feet from the

spot and driver got down from the bus to see the boy. Thereafter, driver ran away from the spot after seeing the condition of the boy. PW4 categorically deposed that accident took place due to rash and negligent driving of the driver. He also identified the petitioner correctly in Court. He deposed that the boy died at the spot itself. PW4 is the author of the FIR who proved his statement as Ex. PW4/A. He also identified his signatures at point 'A' on his statement Ex. PW4/A. Testimony of PW4 has been found trustworthy and reliable. Trial Court as well as Appellate Court have committed no irregularity in accepting the unchallenged testimony of PW4. Appellate Court has also noted that identity of petitioner was clearly established from the statements of PW1 and PW2 who were working as conductors in the offending bus at the time of the incident. PW1 and PW2 deposed that petitioner was driving the bus at the time of accident. PW6 Dr. Charkarwarty had conducted the post-mortem and proved his report as Ex. PW6/A. He had opined that death was due to crush injury on the head resulted by a blunt force, which was possible in a road traffic.

5. During the course of hearing, learned counsel for the petitioner has given up challenge to the conviction of petitioner on merits. However, he has prayed leniency in the sentence. It is submitted that petitioner has no

past criminal record. Petitioner has faced agony of trial for about 23 years. Petitioner has already completed sentence of more than 8 months. Petitioner and his wife are suffering from HIV disease. Petitioner is about 50 years of age. He has two daughters aged about 22 and 16 years. Petitioner's mother is aged about 75 years who is suffering from various ailments. Petitioner is the sole bread earner in the family. Therefore, sentence of petitioner may be reduced to the period already undergone by him.

6. 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, petitioner has already completed sentence of more than eight months out of the total sentence of two years. He is not involved in any other case. During the trial and pendency of revision also petitioner had been on bail, which concession he has not misused. Petitioner and his wife are HIV patients. Petitioner is the sole bread earner of the family comprising of his ailing wife and mother as also two unmarried daughters.

7. Keeping in mind the totality of the facts and circumstances of this case as detailed above, while upholding the conviction of petitioner under Sections 279/304A IPC, his sentences are reduced to the period already

undergone by him.

8. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

9. Dasti.

A.K. PATHAK, J.

JANUARY 08, 2019
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