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

+ CRL.REV.P. 936/2018

JAGBIR

..... Petitioner

Through: Mr. C.M. Thapliyal and Mr. S.P.
Paul, Advs.

versus

STATE

..... Respondent

Through: Ms. Manjeet Arya, APP for State with
SI Prem Kumar, P.S. Kotwali.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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09.01.2019

1. Petitioner was convicted by the trial court under Sections 279/337/304A IPC and sentenced to undergo rigorous imprisonment for six months for the offence under Section 279 IPC; rigorous imprisonment for six months for the offence under Section 337 IPC and sentenced to rigorous imprisonment for two years for the offence under Section 304A IPC. Petitioner was also directed to pay compensation of ₹30,000/- to the legal representatives of the deceased under Section 357 Cr.P.C. Aggrieved by the said conviction as well as sentences, petitioner preferred an appeal before the Additional Sessions Judge, Delhi which has been dismissed by the judgment dated 13.09.2018, 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 Section 401 Cr.P.C.

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. 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. PW1 Dilshad is the eye witness/injured. Deceased was his father. PW1 has categorically deposed that he was going on his motorcycle bearing registration no. DL6SJ-4178 along with his father

to the Sales Tax Office, ITO, New Delhi on 05.11.2004 and when he reached near Vijay Ghat at about 11 am one truck bearing registration no. HR38-G-7273, driven by the petitioner, came from behind in a rash and negligent manner and at a very high speed and hit the motorcycle from the right side as a result whereof he and his father fell down on the road. He sustained injuries; whereas his father died at the spot. In the meantime, PCR Van came at the spot and took him to Trauma Centre. PW1 identified his signatures on his statement Ex. PW1/A recorded by the Investigating Officer, which is the foundation of the FIR. PW1 identified his motorcycle and the truck correctly. He also identified the photographs and negatives of the spot Ex. P-1 to Ex. P-10. Petitioner was correctly identified by him in Court. His testimony has remained unshaken in his cross examination on material points. PW12 ASI Radha Kishan was on patrolling duty in the area. He deposed that when he reached on the ring road near Shantivn at about 11:30 am he found the motorcycle and truck in an accidental condition. He also found the injured/victim lying there. PW12 further deposed that ASI Anoop Singh reached at the spot and apprehended the petitioner. Their statements corroborated the PW1 regarding the happening of incident as well as proved apprehension of petitioner at the spot.

Accordingly, conviction of the petitioner is affirmed.

5. Learned counsel for the petitioner has prayed for reduction of sentence of two years. It is submitted that petitioner is 50 years old and has no past criminal record. During the trial petitioner was on bail. He has not indulged himself in any other similar offence. Petitioner has faced agony of trial for more than 14 years. He has a family comprising of his wife, three minor children and aged parents. Petitioner is the sole bread earner in the family. Petitioner has completed sentence of 4 years. Accordingly, 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.

7. 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 the period of one year. Rest of the sentences are maintained as it is. All the sentences shall run concurrently. Petitioner be also given benefit of Section 428 Cr.P.C.

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

9. Dasti.

A.K. PATHAK, J.

JANUARY 09, 2019

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