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

+ **CRL.REV.P. 490/2019**

SURESH CHANDER

..... Petitioner

Through: Ms Sunita Arora,
Advocate (DHCLSC).

versus

STATE

..... Respondent

Through: Ms Kusum Dhalla, APP
for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

10.02.2020

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a judgment dated 30.01.2019 passed by the Special Judge, whereby the petitioner's appeal (Criminal Appeal No.312/2018 captioned '*Suresh Chander v. State*') against the judgment dated 26.07.2018, convicting him of offences under Sections 279/304A of the IPC and the order on sentence dated 28.07.2018, sentencing the petitioner for imprisonment for a period of one year and imposing a fine of ₹5,500/-, was rejected.
2. By the order dated 28.07.2018, the Trial Court had also directed the petitioner to pay compensation of ₹20,000/- to the family of the

victim.

3. The petitioner was prosecuted pursuant to FIR No.271/2012, under Sections 279/304A of the IPC registered with PS Chhawla.

4. The Trial Court had accepted the case of the prosecution that at about 8:55 AM at Ghuman Hera Road, Electricity Pole No.117, BSES/JPPK, New Delhi, the petitioner while driving his truck (HR 63A 9920) in a rash and negligent manner had hit a car (Wagon R car No.HR 26 AZ 8883). The said the collision had resulted in the death of the person driving the car (Ms Nisha). The case of the prosecution was supported by two eye witnesses, Shri Suresh Yadav and Shri Vikram Yadav (PW-1 and PW-2, respectively). The fact that the petitioner was driving the said vehicle was established by the testimony of the said eye witnesses as well as the registered owner of the vehicle (who deposed as PW-4).

5. The two eye witnesses had deposed that they had seen one truck bearing no. HR 63A 9920, which was coming from the side of Ghumanhera, suddenly change lanes and colliding with one white car (Wagon R bearing No.HR 26 AZ 8883). They stated that public persons had gathered there. The petitioner had stopped the truck at the spot and had got down from his truck. PW-1 also identified that the petitioner as the one driving the said truck. PW-1 had deposed that he had proceeded for his work and on returning back after a few hours, had found that certain police officials were present at the spot. He had recorded his statement and a site plan (Ex.PW-1/A) was prepared at his instance. PW-2 had also deposed that the petitioner was driving the truck in a

rash and negligent manner and the driver of the truck had changed his lane and had struck a white coloured car (Wagon R No.HR 26 AZ 8883). Both PW-1 and PW-2 had deposed that the said car (Wagon R No.HR 26 AZ 8883) was ahead of the respective cars being driven by them and therefore, they had a clear view of the accident.

6. The site plan had also been produced on record. Ex.PW-1/B indicates the trajectory of the truck driven by the petitioner. It clearly indicates that the truck had veered towards a wrong side of the road and had collided with a car in question (Wagon R bearing No.HR 26 AZ 8883), which was coming from Najafgarh side and was proceeding to Ghumanhera.

7. After evaluating the evidence obtaining in this case, the Trial Court found that the petitioner was guilty of the offences under Sections 304A and Section 279 of the IPC.

8. Subsequently, by an order dated 28.07.2018, the petitioner was also sentenced to rigorous imprisonment for one year and a fine for committing an offence under Section 304A of the IPC. The petitioner was also sentenced to serve simple imprisonment for a period of three months and to pay a fine of ₹500 for committing the offence under Section 279 of the IPC and in default payment of fine, to undergo simple presentment for a further period of two months. The petitioner appealed against the said decision, which was dismissed by an order dated 30.01.2019 (the order impugned herein).

9. The learned counsel appearing for the petitioner has, essentially assailed the impugned order as well as the judgment dated 26.07.2018

on two fronts. She submits that the two eye witnesses (PW-1 and PW-2) were planted subsequently and were not present at the spot. She submits that this is evident from the testimony of PW-9 (Ct. Kuldeep). Second, that the petitioner had lost control over his vehicle on account of breakdown of the the *kamani* (shock absorbers).

10. In his testimony, PW9 had said that he was on emergency duty on 26.09.2012 and had received a DD Entry regarding an accident at Ghumanhera Road. He stated that he, along with the IO, had reached the spot and he found that one Wagon R bearing No.HR 26 AZ 8883 and a truck bearing no. HR 63A 9920 were in an accidental condition. He testified that the IO had taken photographs of the spot. He further stated that he had not met any eye witnesses. Subsequently, the IO had left him at the spot and had gone to the hospital (RTRM Hospital). The IO had returned after some time and had prepared a *rukka* and had handed over the same to him (PW-9) for the registration of an FIR.

11. It is apparent from the testimony of PW-9 that he was referring to no eye witnesses at the spot at the time that he reached the spot and before the IO had left him to go to the hospital. This is consistent with the testimony of PW-1 and PW-2 as they had stated that they had returned to the spot after a few hours and had found some police officials present there. It is not their testimony that they continued to remain at the spot immediately after the accident. Even if the testimony of PW-1 and PW-2 is discounted, the evidence on record clearly indicates that both the vehicles that were involved in the accident were on the right side of the road. Thus, it is evident that the vehicle driven

by the petitioner would have changed its lane, resulting in a collision on the right side of the road.

12. Given the evidence in this case, this Court finds no infirmity with the decision that the petitioner was responsible for the said accident and it had occurred on account of the petitioner driving the vehicle in a rash and negligent manner.

13. The learned counsel for the petitioner had also submitted that the petitioner lost control of the vehicle because of a breakdown of the *kamani* (shock absorber). It is, at once, clear that the said contention runs contrary to the petitioner's defence that he was not involved in the accident. The admission that the accident had occurred as a vehicle being driven by the petitioner went out of control is implicit in such defence. The only question that needs to be addressed is whether there is any material to establish that the petitioner had lost control of his vehicle on account of any mechanical breakdown. Admittedly, there is no evidence on record that even remotely establishes this defence.

14. The learned counsel appearing for the petitioner has also submitted that the sentence awarded to the appellant be reduced. She has relied on the decision of this Court in ***CRL. REV. P. 776/2019*** captioned '***Rishi Pal v. State***' decided on 27.09.2019 and ***CRL. REV. P. 362/2018*** captioned ***Krishan Kumar v. The State*** decided on 26.04.2018 in support of her contention.

15. In ***Rishi Pal*** (*supra*), a Coordinate Bench of this Court had considered the case where the petitioner therein had been convicted under Sections 279/304 of the IPC. The Court found that there was no

illegality or perversity in the finding of the court below thus declined to interfere with the petitioner's conviction. However, the Court also took note of the mitigating factors and reduced the sentence to one year nine days – the sentence already undergone. Similarly, in **Krishan Kumar** (*supra*) the Court had noted the mitigating circumstances and reduced the sentence awarded to the petitioner therein from one year to six months. However, the Court enhanced the fine from ₹20,000/- to ₹60,000/-. The decision in those matters turn on their facts and the mitigating circumstances of the persons convicted.

16. In the present case, the Trial Court has, in any event, awarded a lesser sentence on account of the mitigating circumstances of the petitioner. In view of the above, this Court finds no reason to interfere with the impugned judgment or with the order sentencing the petitioner.

17. The petition is unmerited and is, accordingly, dismissed.

18. The petitioner is on bail and shall surrender on or before 29.02.2020.

VIBHU BAKHRU, J

FEBRUARY 10, 2020
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