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

Date of decision: 08th APRIL, 2021

+ **CRL.REV.P. 1005/2018**

SHIVANI SHARMA

..... Petitioner

Through Mr. Siddharth Luthra, Senior
Advocate with Mr. Anish Dhingra,
Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through Ms. Kusum Dhalla, APP along with
SI Nirankar PS CR Park.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. The present petition under Section 397/401 Cr.P.C is directed against the order dated 16.11.2018, passed by the Additional Session Judge-05, Saket Courts, Delhi in Criminal Appeal No. 407/2017, wherein the learned Additional Session Judge upheld the order of conviction dated 19.07.2017 and order on sentence dated 19.09.2017 passed by the learned Metropolitan Magistrate-04, South East District, Saket.
2. The facts, in brief, leading to the instant revision petition are as under:
 - a) It is the case of the prosecution that on 13.08.2013, at about 1:00 PM, at Shahid Surya Sain Marg, Near Gate No. 8, Mandakini Enclave, New Delhi, the petitioner herein (accused), who was driving a Wagon-R car bearing registration No.DL-3CT-4641 in rash and

negligent manner, hit a pedestrian, one Govind Gautam, causing his death.

b) After completion of investigation, Charge-sheet was filed stating that there is enough material to proceed ahead with the case against the petitioner herein for offences under Sections 279 and 304A IPC. Charges were framed against the petitioner to which the petitioner pleaded not guilty and claimed trial.

c) The prosecution examined 6 witnesses.

i. PW-1, Dr. Kalim Ahmed Khan, Chief Medical Officer, Hakeem Adbul Hameed Centenary (HAHC) Hospital, was examined to prove the MLC bearing No.1029/13. He deposed that the patient was unfit for statement and was unconscious. He also deposed that the patient was brought by one person named Sonu (PW-5) and the injuries were caused in a road accident.

ii. PW-2, Head Constable Ram Singh, is the main witness of the case. He deposed that on 13.08.2013, he was on patrolling duty near Mandakini Enclave and at about 1:00 PM one Wagon-R car, which was coming from Alakhnanda towards CR Park hit a person who was going from Alakhnanda side towards CR Park. He deposed that the car hit the person from behind and thereafter it hit the electricity pole. He deposed that the injured person was taken to the hospital in TSR (Auto). He further deposed that the above said car was being driven by one lady. He further deposed that he informed the duty officer regarding the accident and SI

Laxmi Chand (PW-6) came to the spot. He deposed that the car and the petitioner were handed over to SI Laxmi Chand. PW-2 also deposed that the victim was not walking on the footpath but on the road and the vehicle came from behind and hit the victim. He also stated that the road was not crowded.

iii. One Buddh Ratan was examined as PW-3. He deposed that on the fateful day he was standing at a Petrol Pump in front of Jahapanah Club, Kalka Public School Road, Alaknanda and was getting the petrol tank of his bike filled. He deposed that he heard a loud noise of application of brakes of vehicle and public started gathering on the spot and he also went to the spot to see as to what had happened. He deposed that he saw a man lying there in a pool of blood and nobody was picking him up. He deposed that he requested the people there but no one helped him. Thereafter a young boy came there and helped him to take the victim to the Hospital. He deposed that they took the victim to Majidia Hospital in an auto and later the victim was referred to Batra Hospital. He stated that he had not seen the accused/petitioner herein.

iv. PW-4 is Head Constable Sarnam Singh. He deposed that on receiving information of accident he reached the spot and he met PW-2. The Wagon-R car bearing registration No.DL-3CT-4641 was found at the spot. The petitioner was there near the car. He deposed that PW-6 arrested the petitioner. Site plan was prepared. He also deposed that the passerbies

were questioned.

v. PW-5, Sonu Upadhyay deposed that on the fateful day he was preparing lunch as he is working at a Dhaba near Alaknanda Petrol Pump. He deposed that he saw a red colour Wagon-R car coming from the direction of Greater Kailash and it hit one passerby. He further deposed that he took the injured to Majidia Hospital in a TSR and from there the victim was referred to Batra Hospital.

vi. PW-6, IO Laxmi Chand deposed that on receiving the information of the incident he reached the spot along with PW-4 and he saw that a car bearing registration No. DL-3CT-4641 had hit against the electricity pole. He further deposed that he met PW-2 who informed him that the injured had been sent to hospital. He stated that he went to Majidia Hospital and collected the MLC of the injured from the Doctor who stated that the injured was unfit for statement. He deposed that he recorded the statement of PW-2 and prepared *rukka* and sent PW-4 along with *rukka* to Police Station CR Park for registration of FIR. He further stated that he prepared the site plan at the instance of PW-2. He stated that the petitioner was arrested and the car was seized. Photographs of the spot were taken on his mobile phone. He deposed that the mechanical inspection of the car was conducted. He deposed that on enquiring about the injured from Batra Hospital it was found that the injured was admitted in the ICU. He deposed that on 14.08.2013 he received information from Batra Hospital that

the injured had passed away. He deposed that he reached Batra Hospital and took the body of the deceased to AIIMS Hospital Mortuary for post-mortem. Family members of the deceased were contacted and the body was handed over to them. He deposed that the documents of the vehicle, which was being driven by the petitioner herein, were found to be genuine.

d) The learned Metropolitan Magistrate after analysing the material on record held that PW-2 was present at the spot and had witnessed the incident. The learned Metropolitan Magistrate held that no ground for any reasonable doubt has been put forth by the defence with regard to the identity of the petitioner being the driver of the offending vehicle. On the basis of the evidence of PW-2, the testimony of PW-2 was accepted that the road was not crowded. The learned Metropolitan Magistrate held that the fact that the petitioner/accused hit the person walking on the road and thereafter hit the electricity pole is sufficient evidence of rashness as well as negligence while driving the vehicle in question. The petitioner was therefore convicted for offences under Sections 279 & 304-A IPC by an order dated 19.07.2017.

e) By a separate order dated 19.09.2017, the learned Metropolitan Magistrate sentenced the petitioner to undergo Simple Imprisonment for a period of one month and fine of Rs.1,000/- for offence under Section 297 IPC and Simple Imprisonment for a period of one month and fine of Rs.9,000/- for the offence under Section 304-A IPC. The learned Metropolitan Magistrate declined to grant the benefit of

probation under Section 360 Cr.P.C read with Section 4 of the Probation of Offenders Act to the petitioner herein in view of the judgment of this Court in Satya Praksh v. State, **203 (2013) DLT 652**.

f) The said order was taken in appeal in Criminal Appeal No.407/2017 before the learned Additional Session Judge. The learned Additional Session Judge upheld the order on conviction dated 19.07.2017 and order on sentence dated 19.09.2017 passed by the learned Metropolitan Magistrate-04, (South East), Saket Court, New Delhi in FIR No. 220/2013, registered at Police Station C.R. Park, under Sections 279 and 304-A IPC. The learned Additional Session Judge once again went through the entire material on record and held that there is no reason to disbelieve the evidence of PW-2. After analysing the material on record the learned Additional Session Judge accepted the version of PW-2 that the road was not crowded and therefore the petitioner was driving the vehicle at a high speed and in a rash or negligent manner. He also stated that the fact that the vehicle went and hit the electricity pole itself shows that the vehicle was being driven at a high speed. The learned Additional Session Judge also held that the fact that the deceased was walking on the road and not on the footpath, does not, in any way, absolve the petitioner of the crime. The learned Additional Session Judge, therefore, upheld the judgment of the learned Trial Court.

g) The said order is under challenge in the instant revision petition.

3. Heard Mr. Siddharth Luthra, learned Senior Counsel appearing for the petitioner and Ms. Kusum Dhalla, learned APP for the State and perused the material on record.
4. A reading of the judgment of two Courts below would show that the learned Metropolitan Magistrate and the learned Additional Session Judge have analysed the evidence thoroughly. There is nothing on record to show that there is any perversity in the judgments of the Courts below.
5. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. In State v. Manimaran, reported as (2019) 13 SCC 670, the Supreme Court observed as under:

“16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275] , ordinarily it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.” (emphasis supplied)

In State of Haryana v. Rajmal, reported as (2011) 14 SCC 326, the Supreme Court observed as under:

“14. In State of A.P. v. Pituhuk Sreeinvasa Rao [(2000) 9 SCC 537 : 2001 SCC (Cri) 642] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on

record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

It has been also held by this Court in Amar Chand Agarwalla v. Shanti Bose [(1973) 4 SCC 10 : 1973 SCC (Cri) 651 : AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 CrPC is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. (SCC p. 20, para 17 of the Report.)” (emphasis supplied)

In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, reported as (1999) 2 SCC 452, the Supreme Court observed as under:

“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well

as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”

(emphasis supplied)

6. After two courts have appreciated the deposition of PW-2 and have found him to be trust worthy, this Court cannot re-appreciate evidence while exercising its jurisdiction under Section 397/401 Cr.P.C. and substitute its own conclusion to the one arrived at by the Courts below. It cannot be said that the appreciation of evidence by the Courts below is so perverse that no Court would have come to the same conclusion.

7. The learned counsel for the petitioner contended that the petitioner is entitled to the benefit of Section 360 Cr.P.C read with Section 4 of the Probation of Offenders Act, 1958. The Trial Court has declined to give the benefit of Probation to the petitioner on the basis of a judgment of this Court in Satya Praksh v. State, **203 (2013) DLT 652**. A perusal of the said

judgment shows that the said judgment primarily dealt with the constitutionality of Section 357 and Section 357A Cr.P.C and it does not deal with the power of the Court to grant probation in case of an offence under Section 304A IPC under Section 360 Cr.P.C.

8. The petitioner is a lady having two children. The petitioner has no previous involvement in any other accident or any other case. The incident took place on 13.08.2013 and the litigation has been going on for more than seven years.

9. In view of the fact that the petitioner is a lady having two children and except for this aberration has a clean record and keeping in mind the nature of offence and the punishment imposed on the accused, this Court deems it appropriate to grant the benefit of probation under Section 360 Cr.P.C read with Section 4 of the Probation of Offenders Act, 1958 to the petitioner.

10. Accordingly, the petitioner shall furnish requisite bond of good behavior for one year before the learned trial court.

11. This court makes it clear, that if the petitioner is found to be involved in any unlawful activity, within the period of probation, her benefit of probation will be withdrawn and the petitioner would have to undergo the sentence imposed on her by the learned trial Court.

12. Accordingly, the revision petition is disposed of in the above mentioned terms.

CRL.M.A. 3347/2021 in CRL.REV.P. 1005/2018

1. This application is for grant of No Objection Certificate/permission to the petitioner for the renewal of passport. Permission is granted by this Court to the petitioner to get her Passport renewed.

2. Accordingly the application is disposed of.

SUBRAMONIUM PRASAD, J

APRIL 8, 2021

Rahul

