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

+ CRL.REV.P. 133/2017

SATISH KUMAR

..... Petitioner

Through : Mr. Vikram Singh Dahiya, Adv.

versus

STATE (GNCT DELHI)

..... Respondent

Through : Ms. Neelam Sharma, APP with SI
Bharat PS Civil Lines.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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13.02.2017

Crl.M.A.2523/2017 (Delay)

For the reasons as stated in the application, delay is condoned.

Application is disposed of.

Crl. M.A.2524/2017 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

CRL.REV.P. 133/2017

Petitioner was convicted under Sections 279/304A IPC by the trial court and sentenced to undergo rigorous imprisonment for one year with fine of Rs.2,000/- and in default of payment of fine to further undergo simple imprisonment for one month under Section 304A IPC; simple imprisonment for four months with fine of Rs.1,000/- and in default of payment of fine to

further undergo simple imprisonment for ten days under Section 279 IPC. Petitioner preferred an appeal before the Additional Sessions Judge-01 (Central), THC, Delhi, which has been dismissed vide judgment dated 31st August, 2016. That is how petitioner is before this Court by way of petition under Section 397 Cr.P.C.

As per the prosecution, petitioner, while driving a bus bearing registration no. DL-1PA-4856 in a rash and negligent manner, on 9th December, 2000 at about 1:45 pm, hit a cyclist at Shamnath Marg, Near Vidhan Sabha, Delhi resulting in fatal injuries on his person due to which he died. Post-mortem was conducted. Incident was witnessed by PW-2 Shiv Shankar. Bus was seized and mechanical inspection was got done. Owner of the bus was served with notice under Section 133 of the Motor Vehicle Act pursuant whereof he stated that it was the petitioner who was driving the bus on that day. Trial court has noted that petitioner was identified by PW-2 Shiv Shankar in Court, inasmuch as, PW-5 stepped in the witness box and stated that petitioner was driving the bus on the fatal day and identification of petitioner by PW-2 corroborated with PW-5. PW-5 was not even cross examined.

There are concurrent findings of the courts below based on the

appreciation of evidence, which, in my view, cannot be interfered with by this Court in exercise of its supervisory jurisdiction under Section 397 of the Cr.P.C., by re-appreciating the evidence. During the course of hearing, learned counsel for petitioner has failed to point out any flagrant violation of any legal principle or any grave perversity, inasmuch as, has given up the challenge to the conviction of petitioner under Sections 279/304A IPC. He has prayed for the reduction of the sentence. It is submitted that petitioner is 47 years of age. His wife and three children are dependent upon him. Petitioner's widow mother is also dependent upon him. Petitioner belongs to a poor family. He has no past criminal record and has faced agony of trial for about sixteen years. Petitioner is in incarceration for more than seven months. The whole family of petitioner is living in misery.

Keeping in mind the above facts, while upholding the conviction of petitioner under Sections 279/304A IPC, sentence of petitioner under Section 304A IPC is reduced to 9 months. Sentences shall run concurrently.

Petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

FEBRUARY 13, 2017/dk