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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 320/2018 & CRL.M.A.6772/2018

UMESH DAS

..... Petitioner

Through: Ms. Shivani Das, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Panna Lal Sharma, APP
with SI Yogesh Kumar,
PS:Kotla Mubarakpur, New
Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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13.11.2018

1. The petitioner has filed the present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 against the impugned judgment dated 7.3.2018 passed by the Appellate Court, Saket, New Delhi in Criminal Appeal No.287/17, which upheld the impugned judgment dated 27.6.2017 delivered by the learned Metropolitan Magistrate, Saket Court and the Order on Sentence dated 28.6.2017, whereby the petitioner is convicted for offences punishable under Sections 279/304-A of Indian Penal Code, 1860 ('IPC') and was sentenced to undergo simple imprisonment for a period of three months for offence punishable under Section 279 of IPC and has been further sentenced to simple imprisonment for the period of one year along with fine of Rs.5,000/- for offence punishable under Section 304-A of IPC. The petitioner, after pronouncement of

the impugned judgment dated 7.3.2018, was taken into judicial custody.

2. Brief facts emanating from the record, as stated, are that the petitioner herein committed an accident on 16.1.2015 at about 1:45 pm by rash and negligent driving of DTC bus in front of DDA, Vikas Sadan, INA Market, New Delhi. In the said accident, one pedestrian, namely, Maghu, while crossing the road, got injured and later died. The accident took place when the petitioner, while driving the bus took a left turn and struck the pedestrian. He was immediately taken to the hospital, where he succumbed to his injuries. An FIR dated 16.1.2015 was registered against the petitioner and charge was framed under Sections 279/304-A of IPC against the petitioner.

3. Learned counsel for the petitioner submitted that the petitioner has four daughters, one son and a wife. Out of the 4 daughters, three daughters are married and one daughter is working, who is earning Rs.7,000/- per month and is living with her mother in a rented accommodation.

4. The Investigating Officer has filed the status report, dated 12.11.2018, wherein he has stated that, on verification of family status of the petitioner, it was found that the petitioner has six members in his family; the petitioner has five children, including four girls and one boy; one girl is doing private job and earning Rs.7,000/- per month; three girls are married and reside separately with their in-laws; the wife of the petitioner is

a housewife; the son of the petitioner has left studies due to financial problem; it was found that family of the petitioner is residing in a rented accommodation; statement of wife of the petitioner and two neighbours have been recorded in this regard; it was further found during inquiry that the petitioner is a native of district Vaishali, Bihar; the financial condition of the family of the petitioner is not good.

5. The nominal roll of the petitioner demonstrates that the petitioner has already undergone 8 months and two days in custody and he has earned remission of two months.

6. Learned counsel for the petitioner submitted that the present petition may be treated as a mercy petition and taking into consideration the financial status of the petitioner and his family, she is arguing only on the point of sentence and not pressing the revision petition on merits. Learned counsel for the petitioner further submitted that a sympathetic view may be taken and taking into consideration the family status as well as the period the petitioner has already undergone and the remission period he has earned, his sentence may be reduced. Learned counsel for the petitioner further submitted that the petitioner has already deposited the fine amount of Rs.5,000/-. The learned APP, on instructions, confirms this submission.

7. The Investigating Officer, on the query of the Court, submitted that as per the nominal roll of the petitioner, the conduct of the petitioner is reported as satisfactory.

8. Learned counsel for the petitioner submitted that the petitioner would abide by the orders of this Court on the order on sentence.

9. Now coming to the sentence, there is no history, as stated, of previous conviction of the petitioner, and as per the nominal roll, the conduct of the petitioner is reported as 'satisfactory'.

10. Having regard to the culpability of the petitioner, financial status of his family, conduct of the petitioner in the jail and the period of incarceration, I am of the opinion that the ends of justice would be met if the sentence of the petitioner is modified to imprisonment for the period already undergone.

11. Consequently, the revision petition is allowed in part. Pending application is disposed of. The conviction order and the order on sentence recorded by the Trial Court are modified to the extent indicated hereinabove. The fine imposed on the appellant and the default sentence awarded shall remain unaltered.

12. Trial Court record be sent back along with a copy of this order. A copy of this order be also sent to the Superintendent, Central Jail No.2, Tihar, New Delhi for updating the record.

CHANDER SHEKHAR, J

NOVEMBER 13, 2018/tp