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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 368/2013**

RAM BHUJ

..... Petitioner

Through: Mr. Arvind Singh, Mr. Vipin
Singh Raghav & Ms. Sanju
Singh, Advocates

versus

STATE

..... Respondent

Through: Mr. Kamal Kumar Ghai, APP

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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18.12.2018

1. The petitioner has filed the present petition under Sections 397/401 of the Code of Criminal Procedure, 1973 for setting aside the judgment and order dated 17.5.2013 passed by the learned Additional Sessions Judge, Dwarka Courts in Criminal Appeal No.1068/2013, whereby the learned Additional Sessions Judge maintained the conviction of one year rigorous imprisonment ('RI') under Section 304-A of the Indian Penal Code ('IPC') and 4 months RI under Section 279 IPC against the petitioner passed by the Metropolitan Magistrate, Dwarka Courts, New Delhi ('Trial Court').

2. The brief facts of the case are that, on 3.5.2006, at about 8:40 am, Umesh Nandan Singh, the complainant was driving a scooter and was heading to the Base Hospital, Delhi Cant along with his daughter, who was a pillion rider. As the complainant

reached in front of WZ-13, Naraina Village towards Ring Road, Dhaula Kuan, one oil tanker, being driven by the petitioner in a rash and negligent manner hit the complainant from behind, because of which the complainant and his daughter fell down. The complainant fell down some distance ahead of his scooter and the head of his daughter was crushed, who immediately died on the spot. Thereafter, the police came at the spot and after completing the investigation, a chargesheet under Sections 279/304-A IPC was filed against the petitioner.

3. The Trial Court, vide the judgment dated 15.12.2012, convicted the petitioner for the offences under Sections 279/304-A of the IPC and vide the order on sentence dated 19.12.2012, ordered that the petitioner shall undergo RI for a period of four months for the offence under Section 279 IPC and one year RI for the offence under Section 304A IPC. The said sentences were ordered to run concurrently. The petitioner thereafter assailed the judgment and the order of the learned Trial Court in CA No.13/2013. However, the appeal was dismissed by the Appellate Court vide judgment dated 17.5.2013, finding no infirmity in the impugned judgment and the order on sentence.

4. Learned counsel for the petitioner, at the outset, submitted that he is not arguing on the merits of the case and the petition may be treated as a mercy petition, taking into consideration the socio-economic as well as physical condition

of the petitioner, who is present in Court.

5. The learned APP had earlier filed the status report and has now filed the nominal roll of the petitioner on record, which shows that the petitioner has already undergone 4 months and 10 days in custody and he has also earned remission for a period of 1 month and 2 days. However, the unexpired duration of sentence, as stated in the nominal roll, is 6 months and 18 days, as on 9.10.2017.

6. The petitioner, who is present in Court, looks very weak and fragile. He is also suffering from hearing loss and also seems to be a member of the lower strata of the society and his age is around 65-66 years.

7. The Investigating Officer, who is present in Court, stated that the petitioner has no criminal antecedents.

8. Learned counsel for the petitioner submitted that the petitioner has a wife, one daughter and two sons and is working as a daily wager and has no other source of income.

9. The learned APP also accepts that the petition may be treated as a mercy petition, in view of the physical as well as socio-economic condition of the petitioner.

10. Taking into consideration the socio-economic position of the petitioner and his family members as well as the aforesaid submissions and the conduct of the petitioner as well as the age of the children of the petitioner, this Court is of the opinion that

the petitioner should be given a chance for rehabilitation and improvement. Further, there is no history of previous conviction and as per the nominal roll, the conduct of the petitioner is reported to be satisfactory during custody. There is otherwise nothing which warrants conclusion as to the convict cannot be reformed or reintegrated into the society as a productive member.

11. Accordingly, taking into consideration the aforesaid facts and circumstances and also the conduct of the petitioner as satisfactory in jail and the period already undergone, I am of the opinion that the ends of justice would be met if the sentence of the petitioner is modified to the period already undergone.

12. Consequently, the petition is allowed in part. The conviction order is maintained. However, the order on sentence by the Trial Court is modified to the extent indicated hereinabove.

13. Trial Court record be sent back forthwith along with a copy of this judgment. A copy of this judgment be also sent to the Superintendent, Tihar Jail for updating the record.

14. The petition is disposed of in the above terms.

CHANDER SHEKHAR, J

DECEMBER 18, 2018

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