



**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S). 1415 OF 2021**

**(Arising out of SLP(Crl.) No(s). 931 of 2021)**

**SAGAR LOLIENKAR**

**....APPELLANT(S)**

**VERSUS**

**THE STATE OF GOA & ANR.**

**...RESPONDENT(S)**

**J U D G M E N T**

**Rastogi, J.**

1. Leave granted.
2. Heard Mr. Pallav Mongia, learned counsel for the appellant and Ms. Ruchira Gupta, learned counsel for the respondents.
3. The appellant has assailed the judgment and order dated 7<sup>th</sup> December, 2020 upholding his conviction for offences under Sections 279, 304-A of Indian Penal Code(IPC) and under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 (MV Act) and sentencing him with simple imprisonment of two months and

fine of Rs. 1,000/- for the offence under Section 279 IPC; simple imprisonment for two years and fine of Rs. 10,000/- for the offence under Section 304-A IPC; and to pay fine of Rs. 500/- or in default to undergo simple imprisonment of 10 days for the offence under Section 3 read with Section 181 of the MV Act.

Indisputedly, the appellant has undergone more than 7 months of substantive sentence.

4. The case of the prosecution is that the appellant on 13<sup>th</sup> February, 2013 at 1745 hrs while proceeding from Tilamol side to Zambaulim, which is a public way, drove his Wagon-R bearing registration no. GA-09-A-6921 in a rash and negligent manner and committed a culpable homicide not amounting to murder, by causing the death of Manohar Shetkar. It was also the case of prosecution that the accused was driving the offending vehicle rashly and negligently without holding an effective driving licence issued by the competent authority and, therefore, committed an offence under Sections 279, 304(II) IPC and Sections 3, 181 and 185 of the MV Act.

5. The prosecution in all examined seven witnesses including the investigating officer. Thereafter, the statement of the appellant was recorded under Section 313 of Code of Criminal Procedure.

Despite the opportunity, the accused neither examined himself nor led any evidence in support of his defence.

6. The learned trial Judge, by its judgment and order dated 30<sup>th</sup> September, 2014 held him guilty and convicted and sentenced him for the afore-stated offences. The appeal preferred by the appellant came to be dismissed by the High Court of Bombay at Goa by judgment impugned dated 7<sup>th</sup> December, 2020.

7. Learned counsel for the appellant has tried to persuade this Court that the evidence on record does not justify any conviction or sentencing and further submits that the ocular evidence is not at all reliable and the documentary evidence to a great extent supports the defence raised by the appellant.

8. Learned counsel further submits that there is some unreliable evidence suggesting that the offending vehicle was driven at “high speed” but such evidence is not at all sufficient to establish either rashness or negligence, which are essential ingredients to have a conviction under Sections 279 or 304-A of IPC and based on such vague testimony, the conviction as recorded is quite unsustainable.

9. Learned counsel further submits that as a matter of record, the appellant was holding a learner's licence to drive the motor vehicle on the alleged date of incident dated 13<sup>th</sup> February, 2013 and was accompanied by his wife(PW 5) who was sitting beside him and was the holder of a permanent licence to drive the motor vehicle and submits that the evidence was, therefore, required to be accepted in its totality. Learned counsel submits that wife of the appellant has deposed that the scooter was overtaking a parked truck and collided head-on with the Wagon-R driven by the appellant but such evidence was unduly rejected by the learned Sessions Court and further submits that the appellant only has to probabalise his defence and there is no requirement of establishing such defence beyond a reasonable doubt. In the given circumstances, the conviction which has been upheld by the High Court in the impugned judgment is not sustainable and deserves to be interfered by this Court.

10. Per contra, learned counsel for the respondent-State has supported the order of conviction passed by the High Court. However, the learned counsel did not seriously dispute the submissions of the learned counsel for the appellant relating to the reduction of sentence.

11. Under the directions of this Court, by an Order dated 5<sup>th</sup> April, 2021, the widow of the deceased was impleaded as respondent no. 2 to whom notice has been duly served but no one has put in appearance despite service. Further, in compliance of Order of this Court, the compensation amount of Rs. 3 lakhs has been deposited by the appellant in the Registry of this Court.

12. After going through the judgment and order passed by the High Court as well as the Courts below, we are of the considered opinion that the well-reasoned order of conviction passed by the High Court for the offences under Sections 279 and 304-A IPC needs no interference of this Court.

13. However, it has come on record that the appellant has been appointed as a Peon on temporary basis in the Directorate of Women & Child Development, Goa under the “Scheme for providing employment in Government to the Children of Freedom Fighters” by an Order dated 4<sup>th</sup> May, 2017 and has been blessed with the girl child on 19<sup>th</sup> February, 2018.

14. In the instant case, the appellant has been found to be guilty of offences punishable under Sections 279 and 304A IPC for driving rashly and negligently on a public street and his act

unfortunately resulted in the loss of the precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

15. Having regard to all these factors and bearing in mind the fact that the widow of the victim has not come forward despite notice being served and the compensation of Rs. 3 lakhs has been deposited by the appellant, we are of the view that a lenient view can be taken in the matter and the sentence of imprisonment can be reduced.

16. Accordingly, the conviction of the appellant under Sections 279 and 304A IPC is maintained. However, the substantive sentence of imprisonment is reduced to the period already undergone. Imposition of fine is also affirmed. Besides the fine, an amount of Rs. 3 lakhs which has been deposited by the appellant by way of compensation in the Registry of this Court be transferred to the Motor Accident Claims Tribunal, South Goa, Margao in Claim Petition No. 84/2013 which shall be released by

the Tribunal to the widow of the deceased Smt. Reshma Manohar Shetkar.

17. The appeal is disposed of accordingly. The bail bonds of the appellant, if any, stand discharged.

18. Pending application(s), if any, stand disposed of.

.....**J.**  
**(AJAY RASTOGI)**

.....**J.**  
**(ABHAY S. OKA)**

**NEW DELHI**  
**NOVEMBER 18, 2021**