

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRAA No.41/2009

Reserved on: 16.07.2026

Pronounced on: 28.07.2026

Uploaded on: 28.07.2026

*Whether the operative part or
Full judgment is pronounced: **Full***

State (now UT) of J&K through
SHO Police Station Sunder Bani.

.....Appellant(s)

Through: Mr. Bhanu Jasrotia, GA

Vs

Ravi Kumar S/O Lekh Raj
R/O Baja Bian,
Tehsil Sunder Bani
District Rajouri



..... Respondent(s)

Through: Ms. Manpreet Kour, Advocate
Mr. Kamal Mangotra, Advocate.

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

01. This criminal acquittal appeal has been preferred by Appellant-UT of J&K, against judgment dated 13.05.2009 ('impugned judgment') passed by learned Additional Sessions Judge Rajouri ('Appellate Court) in Criminal Appeal No.05/Appeal titled 'Ravi Kumar V. State', whereby the conviction and sentence passed by the learned Judicial Magistrate, Sunder Bani (Trial Court), by accepting the appeal filed by the accused/convict (respondent herein) setting aside his conviction and sentence and acquitted him in case

titled 'State V/S Ravi Kumar' from the charge of commission of offence punishable U/S 304-A RPC registered at Police Station Sunder Bani, Rajouri.

02. Having been aggrieved of the acquittal, the appellant-State (now UT) of J&K, after obtaining sanction to file appeal vide Govt. Order No. 1390-LD(ACQ) of 2009 dated 07.07.2009, preferred this appeal, assailing the impugned judgment passed by the Appellate Court, on the following grounds:

- a) *That the learned trial court after proper appreciation of evidence on record has convicted and sentence the accused-respondent herein for commission of offence under Section 279/304-A RPC, however, the learned appellate court by placing reliance on minor discrepancies has ordered the acquittal of the accused-respondent herein vide impugned judgment;*
- b) *That order/judgment impugned in appeal is against the law and facts of the case as such, is required to be set aside;*
- c) *That the learned appellate court has mis-appreciated the evidence and misconstrued the law attracted to the facts of the present case, as such the judgment impugned is liable to be set aside on this score also;*
- d) *That the learned appellate court by ordering acquittal of the accused (Respondent) have committed grave error in law, which has resulted in passing of the impugned judgment; and*
- e) *That the prosecution has successfully proved the allegations leveled against the accused/respondent but even then the learned Judge has ordered his acquittal.*

03. Mr. Bhanu Jasrotia, learned GA argued that trial court has given reasoned finding vis-à-vis guilt of the accused; that prosecution has successfully discharged the onus of proving rash and negligent act on the part of the respondent and it was because of his conduct that a child was run over by the rashly driven vehicle, as a result, he died; that there was a proximate relationship of rash act of respondent with death so caused; that the learned Trial Court has rightly appreciated the evidence, however, the learned Appellate Court wrongly acquitted the respondent.
04. He further argued that the appellate court has passed not only an erroneous but also illegal judgment, while mis-appreciating the evidence brought on record, though the appellant while prosecuting the respondents had brought on record sufficient oral and documentary evidence, which established the commission of the alleged offence by the respondent/accused and prayed that the impugned judgment, being not sustainable, be set-aside and the appeal be allowed by upholding the judgment dated 20.08.2002 passed by the learned Trial Court, whereby the petitioner has been convicted and sentenced for commission of offences punishable under Sections 279/304-A RPC. In support of his contentions, learned GA has relied upon judgments of the Supreme Court in ‘State of Punjab V. Dil Bahadur’ reported as **(2023) 18 SCC 183** and Delhi High Court in ‘State V. Sabu’ reported as **2026:DHC:1518**
05. Learned counsel for the respondent, on the other hand, argued that there was no credible evidence against the respondent to bring home the charge against him; that the deceased had suffered contusion over right parital bone, abrasion over right cheek and shoulder; that had he been hit by Mini

Bus driven by the respondent, he would have received serious injuries; that the deceased has suffered no injury in pelvic region; that the passengers of vehicle were not cited as witnesses; that grandfather of the deceased, who is the complainant was the only eye witness, in his testimony had made glaring inconsistencies, as such, the appellate court has rightly recorded the acquittal of the respondent, by a reasoned judgment. It was finally prayed that appeal be dismissed and the impugned judgment passed the Appellate court be upheld.

06. Heard learned counsel for the parties, perused the record and considered.
07. Shorn of minute details, the factual matrix of the case is that on 22.05.2000, at about 3 PM PW Parkash Shour lodged a complaint with Police Station Sunder Bani alleging therein that on that day at 1.15 PM, he accompanied by his grandson and other students had boarded Mini Bus No.JK02D-8527 and were on way back home; that the driver in order to board off the passengers as well as other students stopped Mini Bus on road side; that the complainant alongwith his grandson boarded off from the Bus, as they had to cross over to the left side, they did so. His grandson who was standing on the rough side of the road when Mini Bus No. JK02A-5587 coming from Sunder Bani driven by accused, in rash and negligent manner, ran over the grandson of the complainant, as a result he died on spot; that the offending Mini Bus driver did stop his vehicle 10/15 yards away, however, thereafter, he escaped from the scene of occurrence.
08. On receipt of this complaint, a case vide FIR No.7/2000 under Section 279/304-A of RPC came to be registered at Police Station Sunder Bani and investigated upon; that IO proceeded on spot, took over dead body of

deceased child, got autopsy conducted; prepared site plan, seized vehicle, recorded statement of witnesses and came to the conclusion that the child died due to rash and negligent act of the driver and ultimately challan was filed in the court of learned Judicial Magistrate (Munsiff), Sundar Bani, for the commission of aforementioned offences.

09. The respondent as an accused was charge-sheeted by the trial court on 24.08.2000, who denied charge and opted to face trial; that after conducting trial, the learned trial court vide its judgment dated 20.08.2002 convicted and sentenced the accused for commission of offences punishable under Sections 279/304-A RPC; that against the said judgment, criminal appeal No.05/Appeal titled 'Ravi Kumar V. State' was filed by the respondent and the learned Appellate Court vide impugned judgment dated 13.05.2009 acquitted the respondent. Aggrieved of the aforesaid judgment, present criminal acquittal appeal has been filed by the appellant, to assail the same on the grounds enumerated in the memorandum of appeal.
10. To appreciate the rival submissions in the context of grounds of challenge, this court would have to revert to the evidence brought on record. Prosecution, out of 18 listed witnesses, had examined 14 witnesses, namely, PW-1 Parkash Shour; PW-2 Girdhari Lal, PW-3 Joginder Singh, PW-4 Harbans Lal, PW-5 Hem Raj, PW-6 Hem Raj, PW-7 Yash Pal, PW-8 Babu Ram, PW-9 Subash Chander, PW-10 Gurmeet Singh, PW-11 Sat Pal, PW-12 Sanjay Kumar, PW-17 Mechanic and PW-18 Dr. V. P. Sharma. Out of the prosecution witnesses, PW-3 Joginder Singh, PW-4 Harbans Lal, PW-5 Hem Raj, PW-6 Ashok Kumar, PW-7 Yash Paul, PW-8 Babu Ram and PW-9 Subash Chander had been cited as eye-witnesses, whereas other

witnesses are either experts or witnesses to the drafting of the documents during investigation.

11. The prosecution case is that due to rash and negligent driving of the offending vehicle by the respondent, an accident had taken place on 22.05.2000, wherein a child namely Rohit Singh, aged about 5/6 years was hit, who lost his life.
12. PW-3 Joginder Singh, father of the deceased child, stated that he was at a distance of 100 feet from the scene of occurrence and claimed to have witnessed the occurrence but could not describe as to which portion of the offending mini bus, had his son struck with; PW-4 Harbans Lal stated that the deceased had already crossed the main road when he was hit by the offending vehicle; PW-5 Hem Raj, on the other hand, stated that the father of the deceased i.e. PW-3 Joginder Singh was working as a mason in a nearby house at a distance of 300 feet, wherefrom, he had witnessed the occurrence; PW-6 Ashok Kumar stated that after finishing his duty as Teacher, he was on his way to his home when he heard noise from main road and on going there, he saw that the respondent was driving the vehicle at a high speed; that he also heard that a child had been struck by a vehicle coming from Sunder Bani when the child was accompanied by his grandfather.
13. The appellate court, while discussing the prosecution evidence, has found that the factual aspects, which emerged from the ocular evidence, are that at the time of occurrence, deceased along with his grandfather had been going to native place in mini bus No. JK02D-8527, being driven towards Sundar Bani; that the deceased had to cross over to other side so as to reach his

place of destination and that the deceased with his grandfather and fellow passengers got down from the mini bus and, all of them, safely crossed the road, except the deceased; that the prosecution case is that the deceased had crossed the road, while he was standing at Kacha portion alongwith his grandfather, the respondent, driving mini bus No. JK02A-5587, in a rash and negligent manner, had hit the deceased resulting into his death.

14. It appears from the factual background, as narrated by the trial as well as appellate court, that the deceased after getting down from one vehicle and having crossed over to the other side of the road was hit by a vehicle coming from the opposite direction. It can be a case, where a child, aged about 5/6 years, would have been hit by the offending vehicle being driven by the respondent, as rashly and negligently. Such acts have to be inferred from the attending circumstances for determining the factum of rash and negligence. The deceased child, at the time of occurrence, was accompanied by his grandfather, on whose information, the case was registered and he could be the better person to narrate the occurrence, he, on one occasion, stated that his grandson had crossed the road when he was hit by the offending vehicle, however, on being asked as to from which portion of the vehicle deceased was hit, he replied that deceased was lying on ground and he could not observe from which portion of the vehicle deceased had been hit. PW-Dr.VP Sharma, who had conducted the post mortem of the deceased, as against the prosecution story, had not given the opinion that the pelvic area of the deceased has been crushed and, as per his opinion, the deceased had suffered contusion over right parietal bone and abrasion over right cheek and shoulder. Had the vehicle run over the

deceased, as has been projected by the prosecution story, the deceased would have suffered enormous damage to his abdomen, pelvic and spinal area.

15. The Appellate Court has rightly observed that in such a background, the testimony of PW-1 i.e. Grandfather of the deceased was suspicious to be relied upon to base conviction. PW-2 Joginder Singh, who is father of the deceased was also working as a mason in a nearby house at a distance of 300 feet and cannot be stated to have seen the occurrence himself, though, he may have visited the place of occurrence on hearing the bad news. PW-8 Babu Ram, whose testimony was relied upon to base conviction by the trial court, had stated that deceased, along with 5/6 children, while crossing the road was hit and that he had been hit by bumper of the mini bus; PW-10 Gurmeet Singh also stated on the same lines. From the testimonies of these two witnesses, it could be gathered that the deceased, after having boarded down from the mini bus along with his fellow passengers, crossed the road by running and had it been a case that the deceased would have been hit by a vehicle in presence of his grandfather PW-1 Parkash Shour, there would have been no occasion of deceased having been run over by the offending vehicle crossing the road, which has been shown as 12 feet in width.
16. The Appellate Court has again rightly observed from the evidence on record and the injuries received on the person of the deceased, as pointed out in the post-mortem report, that two probabilities could be inferred, firstly, that, while crossing the road, deceased might have become frightened on seeing offending vehicle, ran for safety and, in the process, got struck with rough portion of the road and fell on the road; and secondly,

that the deceased had crossed the road or was at the edge of the road, with the motion of the vehicle approaching from the other side of the road, might have got struck with rear portion of the vehicle. In both these probabilities, the respondent accused cannot be stated to have acted in a rash and negligent manner.

17. The Apex court, in a case reported as **AIR 1972 SC 221**, in a similar case of negligent driving, observed that if a pedestrian suddenly crosses the road without taking note of the approaching bus, there is every possibility of his dashing against the bus without the driver becoming aware of it and that the bus driver cannot save accident, howsoever, slowly he may be driving, therefore, he cannot be held to be negligent.
18. Rash and negligence under the Criminal Law has got to be of such a nature which may be hazardous and unmindful of the safety of others. The Appellate Court, from the evidence, has rightly observed that the deceased child had not been run over by the offending vehicle and the fatal injuries received by the deceased cannot be attributed to any rash and negligent act of the respondent.
19. The judgments relied upon by the learned counsel for the appellant, in support of its case, has no application, in view of distinguished facts and circumstances of the case.
20. The Appellate Court has recorded the findings, which are based on meticulous appreciation of evidence available on record. It is well settled in law that this Court, while hearing an acquittal appeal, can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the court below is also a reasonable view of the evidence on

record and the findings recorded by it are not manifestly erroneous, contrary to the evidence on record or perverse. (See ‘Ram Swaroop and others. Vs. State of Rajasthan, reported as **(2002) 13 SCC 134**, ‘Vijay Kumar v. State by Inspector General’, **(2009) 12 SCC 629** and ‘Upendra Pradhan vs. State of Orissa’ reported as **(2015) 11 SCC 124**).

21. For the foregoing reasons and observations made hereinabove, the acquittal appeal fails as the impugned judgment has been passed in consonance with law by the court below and does not warrant any interference by this court while exercising the appellate jurisdiction. The impugned judgment is upheld. As a result, the appeal fails and is dismissed.
22. Copies of this judgment shall be sent down forthwith, to both the Trial as well as Appellate Court along with record, for information.

(MA CHOWDHARY)
JUDGE

JAMMU
28.07.2026
Raj Kumar

Whether the order is reportable: Yes/No
Whether the order is speaking: Yes/No