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DECIDED ON	:	29/06/2026		
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Exhibit				

IN THE COURT OF 2nd ADDL. SESSIONS
JUDGE, AT RAJULA

CRIMINAL APPEAL NO. 08 OF 2026

Appellant:

- 1. Karshanbhai Valabhai Chohan, Age :-46 Yrs.,**
 - 2. Jaysukhbhai Karshanbhai Chohan, Age:-31 Yrs.,**
 - 3. Chandreshbhai @ Sanjaybhai Karshanbhai Chohan, Age :-27 Yrs., Occup. :- Labour**
- All residing at Patva Tal. Rajula, Dist. :Amreli.*

VERSUS

Respondents:

The State of Gujarat
 (Notice through APP)

Appearance:

Mr. R. V. Dhakhda: Learned Advocate for appellants.
 Mr. B. M. Shiyal : Learned APP for State.

J U D G M E N T

1. The present appeal has been filed by all the appellants-accused against the judgment and order dated 18/02/2026, passed by Learned Additional Chief Judicial Magistrate, Rajula, in Criminal Case No. 954 of 2023, by which all the appellants-accused

have been convicted and sentenced under Sections 323 R/W 114 of the Indian Penal Code (hereinafter referred to as "IPC") and in following manner:

<i>S. No.</i>	<i>Accused Name</i>	<i>Offence under Section</i>	<i>Sentence</i>
1.	Karshanbhai Valabhai Chohan	323 R/W 114 of Indian Penal Code	Simple Imprisonment for one year to all the applicants-accused and fine of Rs. 1,000/- from each accused, total Rs. 3,000/-. In default of payment of fine all the accused shall further undergo simple imprisonment for three months.
2.	Jaysukhbhai Karshanbhai Chohan,		
3.	Chandreshbhai @ Sanjaybhai Karshanbhai Chohan,		

2. *For the sake of convenience, the parties shall be referred to as they were before the learned Trial Court.*
3. *At the very outset in brief the case of prosecution is that on 09/12/2022, all the appellants-accused had caused injuries to the complainant and thereby, committed the offences under the aforementioned sections. After conducting a full fledged trial, all the applicants-accused were convicted and sentenced as aforesaid.*

4. *Upon filing of present appeal notice in this regard was issued to State of Gujarat and learned APP has put in his appearance on behalf of respondent State.*
5. *At the very outset the learned Advocate for all the accused have submitted that they do not want to challenge the judgment of conviction, rather they have prayed that a lenient view may be taken qua imposition of sentence upon all the accused. It has been further argued that learned Trial Court did not take into consideration the provisions of Section 360 of the Code, and since all the accused is neither previously convicted nor any other case has ever been registered against them, hence, a lenient view should have been taken by the learned Trial Court while imposing the sentence.*
6. *After hearing the Ld. advocate of all the applicants-accused, the report of probation officer was called for, who has reported vide **Exh. 08, Exh. 09** and **Exh. 10** that they are not previous convicts and no adverse report has been made by probation officer in context of all the accused.*
7. *On the other hand, learned APP for the State has submitted that since all the accused have not challenged the part of the conviction in the impugned judgment, hence, they do not deserve any leniency. However, he has prayed that appropriate order in accordance with law may be passed.*
8. *Before I proceed further with the adjudication of the*

present appeal it is necessary to reproduce Section 360 and 361 of the Code below:

“360. Order to release on probation of good conduct or after admonition :--(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, Character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that, where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to

that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu, thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of Sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his

recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant shall be brought forthwith before the Court issuing warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1951), the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youth offenders.

361. Special reasons to be recorded in certain cases:-

Where in any case the Court could have dealt with,-

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or

(b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so."

9. A perusal of above Sections reveals that when offence of which any accused person is convicted is punishable up to 7 years imprisonment or with fine

only then any accused either who is above or less than 21 years of age and no previous conviction is proved against the offender then the Court convicting the accused may having regard to age, character or antecedents of the accused and the circumstances in which the offence was committed release such accused on probation of good conduct. Apart from it provision of Sub-Section 4 of Section 360 of the Code reveals that an order under Section 360 can be made by the Hon'ble High Court or this Court or by any Appellate Court while exercising its power of revision.

- 10. Apart from that a perusal of Section 361 of the Code reveals that where the Court do not find it proper to release all the accused on probation on good conduct then the Court has to record special reasons for not doing so.*
- 11. That being the position it appears from the language of both the Sections 360 & 361 of the Code, that the provisions of both the Sections are mandatory in nature and those should have been discussed by the learned Trial Court while sentencing all the accused at the time of commission of offense. Apart from that no previous conviction has been proved against all the accused. Even the learned APP could not mention any other criminal case registered against all the accused. That being the position this Court is of the opinion that provisions of Sections 360 & 361 of the Code, are mandatory in nature. In this regard I*

*draw my force from the judgment of **Hon'ble Supreme Court** in case titled as **Chandreshwar Sharma Versus State of Bihar**, reported in **2000 (9) SCC 245** wherein it has been observed by Hon'ble Supreme Court that:*

“From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the Code of Criminal Procedure. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Code of Criminal Procedure. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the Code of Criminal Procedure. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under Section 360, and as such, we direct that the appellant be released on probation of good conduct

instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly."

12. While relying on the above mentioned judgments similar view has been reiterated by a full bench of **Hon'ble Supreme Court in Eliamma & Anr. Versus State of Karnataka** reported in **2009(1) Supreme 804**. In **Lehna v. State of Haryana** Appeal (crl.) 733 of 2001 DOD 22-01-2002, it has been observed that:

"14. ..Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the Code which also uses the significant expression "special reason". It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562 of the Criminal Procedure Code, 1898 (in short "the old

Code”). Section 361 which is a new provision in the Code makes it mandatory for the court to record “special reasons” for not applying the provisions of Section 360. Section 361 thus 109 (2002) 3 SCC 76 casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and to state “special reasons” if it does not do so. In the context of Section 360, the “special reasons” contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute-book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the

circumstances, situations and the reactions and choose the appropriate sentence to be imposed.

13. *In the above mentioned facts and circumstances as regard the quantum of sentence in the considered opinion of this Court a lenient view deserves to be taken in favor of all the accused so far question of imposition of sentence is concerned.*

14. *The occurrence in the present case is of the year **2022** and all the accused have faced the agony of a protracted trial and appeal for a period of 03 years. As the accused has undergone the trial and appeal for 03 years, they are not a previous convict and the offenses in the present case fall under the ambit of Section 360 of the Code. Hence, this Court is of the opinion that no useful purpose will be served by making all the appellants-accused to undergo the sentence of imprisonment and it would be expeditious in the interest of justice to release them on the probation of good conduct. However, while releasing all the accused on probation this Court can not close its ears to shrieks of complainant/victim also who had suffered injuries at the hands of all the accused, hence, keeping in view his injuries, nature of injuries, period of treatment and sufferings it would be in the interest of justice to award appropriate compensation to complainant and injured witness.*

15. *As a sequel to what has been discussed above the*

present appeal deserves to be allowed in part and while the impugned judgment is upheld to the extent of conviction the order on quantum of sentence deserves to be modified and instead of sentencing all the accused straightway this Court is of the opinion that reformatory view is required to be taken in the present case. Further the interest of justice will be best served if all the appellants-accused is released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958. Hence, in these circumstances following order ensues:

-: ORDER :-

- (1) The present Criminal Appeal is partly allowed.*
- (2) The judgment and order dated 18/02/2026, passed by Learned Additional Chief Judicial Magistrate, Rajula, in Criminal Case No. 954 of 2023, to the extent of conviction of all the accused is upheld. However, so far it relates to quantum of sentence, same stands modified.*
- (3) All the appellants-accused are hereby directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, upon execution of a probation bond in sum of Rs.25,000/- (Twenty Five Thousand only), each with one surety in like amount for a period of 2 (Two) years before*

this Court.

- (4) It is hereby further directed that all the appellants-accused shall maintain peace and not violate any of the conditions of the Probation Bonds submitted on their behalf for period of two years. If breach any of the condition of this order and in case of failure as and when called upon to serve the same during the aforesaid period of 2 (Two) years, all accused-appellants shall undergo the sentence of imprisonment as per order of Trial Court.*
- (5) All the Accused-appellants shall follow the instructions of probation officer and they will be under observation of probation officer for the period of two years and they shall remain present before probation officer as and when they call out.*
- (6) The above mentioned bonds under Section 4 of the Probation of Offenders Act, be submitted before this Court or its successor Court as the case may be, within one week of passing of this judgment.*
- (7) As per the order of the Ld. Trial Court compensation of Rs. **2,800/-** (Rs. Two Thousand Eight Hundred Only) be given to complainant within one week from the date of this order.*
- (8) Certified copy of this order be sent to probation officer, District Social Welfare Officer for compliance of this order.*

(9) *R & P (if any) be sent back to the concerned Court with a copy of this judgment.*

*Pronounced in the open Court today on this **29th** Day of **June, 2026.***

*Date : 29/06/2026
Place: Rajula*

***[Divyang C. Trivedi]
2nd Additional District
and Sessions Judge
UIC No.GJ00583***