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Duration : 2 Months  
& 23 days  
Exhibit :

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**IN THE COURT OF SESSIONS JUDGE AT BOTAD**

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**Criminal Appeal No.119 of 2025.**

**Appellant:- Vijaybhai Hareshbhai Dhalvaniya,**  
**(Orig. Accused)** Age :- 22 years, Occupation :- Business,  
Residing at Ugamedi, Mafatpara  
Taluka :- Gadhda, District:- Botad.

**VERSUS**

**Respondent:- The State of Gujarat**  
**(Orig. Complainant)**

**Appearance :-**

**Mr. A. S. Metaliya**, Learned Advocate for the appellant (orig. accused).  
**Mr. K. M. Makwana**, Learned P.P. for the respondent State.

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**Sub:- Appeal U/s.374 of the Code of Criminal Procedure against the judgment & order dtd.07/07/2025 passed by the Learned Judicial Magistrate First Class, Gadhda in Criminal Case No.2724/2022.**

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

1. The present Criminal Appeal has been preferred by the appellant (orig. accused) under Sec.374 of Cr.P.C. challenging the judgment and order dtd. 07/07/2025 passed in Criminal Case No. 2724/2022 by Learned Judicial Magistrate First Class, Gadhda, whereby the present appellant have been convicted as per Sec.248(2) of Cr.P.C. for the offence punishable under Sec.323 IPC and have been sentenced to undergo three months simple imprisonment and to pay a fine of Rs.500/- and in default of payment of fine amount, the appellant have been sentenced to undergo one month simple imprisonment. Furthermore, the

appellant have been convicted as per 248(2) of Cr.P.C. for the offense punishable under Section 325 of IPC and have been sentenced to undergo two years simple imprisonment and to pay a fine of Rs.2,000/- and in default of payment of fine amount, the appellant have been sentenced to undergo two month simple imprisonment. The accused will have to serve the punishment for both the crimes simultaneously.

2. The appellant-herein is the original accused and the respondent - herein is the original complainant. (the appellant-herein shall be referred to as the "accused" and the respondent shall be referred to as the "complainant" for the sake of brevity and convenience).
3. After filing of the present appeal the summon was issued to the respondent/complainant, who have appeared in the present appeal responding the service of summon. R & P was called for and the same was received.
4. The brief facts of the case are as under:-  
On 29/05/21, the complainant said to accused that to not blow the horn, the accused got agitated and started abusing the complainant then the complainant said to accused that to stop abusing her then the accused gave injuries to the complainant with stick. Thereafter, to save the complainant, witness-Babubhai Makwana came in between so, the accused gave injuries to him also as to complainant and further threatened to kill the complainant and witness and thereby he is charged with Sections-323,325, 504,506(2) of the IPC and 135 of the G.P. Act.
5. The charge sheet had been filed against the accused and the copies of the police papers were provided to the accused as per the provision of Sec.207 of Cr.P.C.,1973, and the same was acknowledged by the accused. The charge at Exh.5 were framed against the accused then

accused after hearing and understanding the charge, refused to accept the charge leveled against him as per reply at Exh. 6 and prayed for the trial and, therefore, prosecution had produced the evidence. On behalf of prosecution, the complainant and the witnesses were examined and documentary evidence were produced on record to prove the charges leveled against the accused. Finally, the Ld. Trial Court have heard the learned advocates for both the sides, acquitted the accused from the charges for the offence punishable under Section 504 & 506(2) of IPC & Section 135 of the G.P. Act, while the Ld. Trial Court convicted the accused for the offence punishable u/s. 323 & 325 of I.P.C.

6. On behalf of complainant, following oral as well as documentary evidence are produced before the Learned Trial Court :

**:: ORAL EVIDENCE ::**

<b>Sr. No.</b>	<b>Particulars of documents</b>	<b>Exh.</b>
1	Deposition of Complainant Sangeetaben @ Chakuben Jitendrabhai Jadav.	07
2	Deposition of witness Babubhai Kulabhai Makwana.	10
3	Deposition of witness Jitendrabhai Popatbhai Jadav.	12
4	Deposition of witness Bhratbhai Kulabhai Makwana.	13
5	Deposition of witness Jayaben Bhratben Makwana.	16
6	Deposition of panch-witness Praveenbhai Govindbhai Bavaliya.	17
7	Deposition of panch-witness Dharmeshbhai Ranchodbhai Kalapara.	19
8	Deposition of panch-witness Bhaveshbhai Ghanshyambhai Makwana.	21
9	Deposition of panch-witness Alpeshbhai Balabhai Dharajiya.	23
10	Deposition of Dr. Yogin Upendrakumar Patel.	25
11	Deposition of Dr. Divyarajsinh Anirudhsinh Dabhi.	36
12	Deposition of I.O. Manojkumar Bhanushankar Baraiya.	39

**:: DOCUMENTARY EVIDENCE ::**

<b>Sr. No.</b>	<b>Particulars of documents</b>	<b>Exh.</b>
1	Complaint.	08
2	FIR.	40
3	Panchnama of place of offense.	18
4	Panchnama of arrest.	20
5	Certificate of injuries.	26 & 27

7. After the evidence of the complainant, the accused have not examined himself nor led any oral or documentary evidence.
8. Thereafter, the further statement of accused was recorded u/s.313 of Cr.P.C. in which the accused has denied the evidence produced at the trial.
9. After the completion of recording of evidence the Learned Trial Court has heard the learned advocates for the respective parties and after considering the evidence on record convicted the present appellant/accused for the offence punishable under Section 323 & 325 of I.P.C. by passing the impugned judgment and order dtd.07/07/2025. Being aggrieved and dissatisfied with the said judgment, the present appeal is preferred by the accused persons.
10. Learned Advocate Mr. A. S. Metaliya, for the appellant has submitted that the impugned judgment and order passed by the Learned Trial Court is against the established principles and provisions of law. He has further submitted that, the Learned Trial Court has not properly evaluated the oral as well as documentary evidence. He has further submitted that the prosecution has not submitted evidence beyond doubt before the Learned Trial Court, though the burden of proving the

entire evidence lies on the prosecution and this fact has not been taken into consideration by the Learned Trial Court. He has further submitted that as per the provisions of the Evidence Act, the fact of the panchnama has not been proven with regard to the place of offense, even though the Learned Trial Court has passed order of conviction on the basis of presumption that the injuries was caused by carrying the stick. He has further submitted that the Learned Trial Court has not properly taken into consideration that there is a contradiction in the history narrated before the doctor and the complaint and the testimony of the complainant on oath. He submitted that the Ld. Trial Court has not taken into consideration the principles of criminal jurisprudence in evaluating the entire evidence. He submitted that the panchas have not corroborated the facts of panchnama on oath, inspite of that Ld. Trial Court has convicted the appellant/accused and, therefore, the judgment and order of the Ld. Trial Court is illegal and erroneous and requires to be set-aside.

- 11.** It is pertinent to note here that the Ld. Advocate for the accused besides the above contentions submitted an application vide Exh.4 praying that the Learned Trial Court has not granted the benefit of probation to the accused and the present accused is the first time offender and very young in age and also being a good citizens and hence, without entering into the merits of the case, as per Sec.4 of the Probation of Offenders Act, 1958, she may be given benefit of probation.
- 12.** In view of the above submissions, this Court has called the report of the Probation Officer, Botad vide letter dtd. 24/12/2025 but the appellant/accused is residence of Rajkot so, the said Probation Officer sent a letter to Probation Office, Rajkot for Probation report of the said appellant/accused and then again this Court has sent a reminder letter

to the Probation Officer, Botad so in reply the Probation Officer, Botad sent another to this Court stated that the appellant/accused is resident of Rajkot District so, the report came from the Probation Officer, Rajkot and then submitted report vide letter dtd.09/03/2026, which is taken on record vide Exh. 4.

- 13.** Learned P.P. Mr. K. M. Makwana, for the respondent-State has submitted that the judgment and order dtd.07/07/2025 passed by the Ld. Trial Court is just, legal and proper and requires no interference from this court. He submitted that the Ld. Trial Court Judge has considered the law and facts in its proper perspective and has also considered the case law cited on behalf of accused and has also relied upon certain decisions considering the facts and circumstances of the case and has rightly passed the judgment and order. He submitted that Ld. Trial Court has recorded the evidence of the complainant and witnesses and has also considered the oral as well as documentary evidence produced and adduced on behalf of both the sides and has rightly passed the judgment and order. He submitted that sentence awarded by the Ld. Trial Court seems to be just and legal and, therefore, he requested to dismiss the present appeal by confirming the judgment and award passed by the Ld. Trial Court. The Ld. Trial Court while convicting the present appellant/accused has referred to the oral testimony of the witnesses and the documentary evidence on record and has come to the conclusion that the accused gave injuries to complainant and witness with the help of stick, abused them and threaten to kill and thereby, the prosecution has proved that the offence under Sec.323 & 325 of I.P.C. have been committed by accused and the prosecution has failed to prove the offence under Section 504 & 506(2) of the IPC and Section 135 of G.P. Act.
- 14.** Be that as it may, the Learned Advocate for the accused has submitted

before the court that the accused herein is the young in age and a good citizen. The incident took place before about five years and at the time of offence the accused was belongs to teen age so since then, he is a good citizen. Sending him to jail would put at stake the life and livelihood of his entire family. It is further stated by the Ld. Advocate that the accused is not a habitual offender and that considering the charges of Sections-323 & 325 of I.P.C, wherein the maximum punishment provided is upto one year and seven years respectively or with fine or with both, this is a fit case where the benefit of probation under the Probation of Offenders Act, 1958 may kindly be extended.

- 15.** The Learned P.P. has submitted that the offence of the accused is a very serious one and he should be punished and sentenced with the maximum punishment provided for the offenses committed by him. The accused herein do not deserve to have benefit of probation and consequently, the sentencing of the accused herein must be for full term. The accused herein is convicted for the offence under Sections-323 & 325 of the Indian Penal Code. This brings the maximum term of punishment which can be awarded to the convict to be upto one year and seven years or with fine or with both. The accused herein have put forward the request for extending the benefit of the Probation of Offenders Act, 1958 and he found guilty of having committed an offence not punishable with death or imprisonment for life and having regard to the circumstances of the case including the nature of the offence, it seems just and reasonable to call for the report of the Probation Officer concerned in relation to the case before consideration of request for passing the order under Sub- section (1) of Section 4 of the Probation of Offenders Act, 1958.
- 16.** In view of the aforesaid facts and considering the submissions of the Learned Advocates appearing for the respective parties, the following

issues arise for my determination :

1. Whether the appellant/accused is entitled for the benefit of Probation U/s. 4 of the Probation of Offenders Act ?
2. What order ?

17. My findings for the afore-stated issues are as under :

1. In affirmative.
2. As per final order.

### **:: REASONS ::**

#### **Issue No. 1 :**

18. Heard, Learned Advocate Mr. A.S.Metaliya for the appellant/accused and Ld. P.P. Mr. K.M.Makwana for the state.
19. Upon reading of Sec.19 of Probation of Offenders Act, 1958, makes it clear that provisions of Secs.360 and 361 are not applicable and shall not apply to the States of parts thereof in which the Act is brought into the force. The Gujarat State has also adopted this Act and made rules as Gujarat Probation Rules, 1973. For the sake convenience, I would like to reproduce the relevant sections of Probation of Offenders Act, 1958 are as under :

**3. Power of court to release certain offenders after admonition** When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offence, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

**Explanation** - For the purposes of this section, previous conviction against a person shall include any previous order made against him under this

section or section 4.

#### **4. Power of court to release certain offenders on probation of good conduct**

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, 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 behavior: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section 1, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section 1 is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section 3 shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section 3 shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders and the sureties, if any, and the probation officer concerned.

#### **5. Power of court to require released offenders to pay**

**compensation and costs**

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and (b) such costs of the proceedings as the court thinks reasonable. (2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section 1 in awarding damages.

**20.** Further, Section 12 of the Act provides that no disqualification is attached with the person, who has been found guilty of an offence and dealt with under the provisions of Sec. 3 & 4 of the Act subject to the proviso that after his released under Sec. 4 subsequently he is sentenced for original offence.

**21.** In **Lakhvir Singh v. State of Punjab, (2021) 2 SCC 763** the Hon'ble Apex Court, in relation to punishment under Section 397 IPC, observed as under:

**16.** Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the PC Act") prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In **Ishar Das [Ishar Das v. State of Punjab, (1973) 2 SCC 65 :1973 SCC (Cri) 708. Ed.:** Ishar Das decision is by a two-Judge Bench, the statutory provision in question was Section 16 of the Prevention of Food Adulteration Act, 1954. Section 16(1) provides for a minimum mandatory sentence and it was held in Ishar Das case that this would be subject to the non obstante clause in Section 4 of the 1958 Act.], this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other such offences where a mandatory minimum sentence has been prescribed suggests that the Act may be invoked in such other offences. A more nuanced interpretation on this aspect was given in **CCE v. Bahubali [CCE v. Bahubali, (1979) 2 SCC 279 : 1979 SCC (Cri)**

447. Ed.: Bahubali decision is by a three-Judge Bench.] . It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act. [State v. Ratan Lal Arora, (2004) 4 SCC 590 : 2004 SCC (Cri) 1353. Ed.: Ratan Lal Arora decision is by a two-Judge Bench which applies the principle laid down by the three-Judge Bench in Bahubali, (1979) 2 SCC 279:"that in cases where a specific enactment enacted after the Probation Act prescribes a minimum sentence of imprisonment, the provisions of the Probation Act cannot be invoked if the special Act contains any provision to enforce the same without reference to any other Act containing a provision, in derogation of the special enactment, there is no scope for extending the benefit of the Probation Act to the accused."Ratan Lal Arora case applied the above principle to hold benefit of the 1958 Act is not available in respect of conviction under Section 7 of the PC Act, 1988 providing for a minimum sentence of imprisonment, inter alia, the same having been enacted after the 1958 Act. See in particular para 12 of Ratan Lal Arora case.] It is in this context, it was observed in State of M.P. vs. Vikram Das [(2019) 4 SCC 125 : (2019) 2 SCC (Cri) 20. Ed.: Vikram Das decision is by a two-Judge Bench and applies the principle laid down by the three-Judge Bench in Bahubali and followed in Ratan Lal Arora, in para 6, that where an enactment enacted after the Probation Act prescribes minimum sentence of imprisonment and the special Act contains any provision to enforce the same without reference to any other Act containing a provision in derogation of the special enactment, the provisions of the Probation Act cannot be invoked.] that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 IPC, the offence in the present case. In fact, the observation made in Joginder Singh v. State of Punjab [Joginder Singh v. State of Punjab, 1980 SCC OnLine P&H 172 : ILR (1981) 1 P&H 1] are in the same context."

22. It would not be out of place to state here that the **High Court of Judicature at Madras** in the judgment dated 01.02.2022 passed in Crl.R.C.No. 939 of 2019 (Nitin vs. State Rep by its Inspector of Police, TIW (East) Police Station, Coimbatore) extended the benefit of the Act of 1958 to the accused, who was convicted for the offences as indicated under Sections- 279 and 304A IPC. The

relevant portion of the judgment reads as under:-

"13. Section 3 of the Probation of Offenders Act, 1958 confers power upon the courts to release certain offenders after admonition. When a person is guilty of offence punishable for any offence with imprisonment for not more than two years or with fine or with both under the Penal Code 1860 or any other law and there is no previous conviction proved against such offender. The said legal provision is extracted hereunder for ready reference:-

"3. Power of court to release certain offenders after admonition. When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition."

14. When the court empowered to try and sentence the offender to imprisonment declines to deal with him under Section 3 of the Probation of Offenders Act, 1958, the Appellate Court or the revisional court, as the case may be, i.e., either the Sessions Court or the High Court is empowered under Section 11(1) of the Act to of the Act, which reads as under:-

"11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.-

(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision."

23. In view of the above proposition of law, at the time of offence committed the accused being provoked by sudden anger, acted in a violent and aggressive manner and physically assaulted the complainant and witness and he have been convicted for the offence punishable under Sections 323 & 325 of the IPC. The offences are punishable upto one year and seven years imprisonment

respectively. Therefore, in the interest of justice, benefit of Probation can be extended to the appellants/accused. The offence is committed in the year of 2021. Therefore, I am of the opinion that benefit of sec. 4 of Probation Offenders Act, 1958 can be extended to the appellants/accused.

24. The Ld. Trial Court has considered the evidence of the witnesses and has convicted the accused as per Sec.248(2) of Cr.P.C. for the offence punishable under Sec.323 of IPC in which and the appellant/accused have been sentenced to undergo three month simple imprisonment and and to pay a fine of Rs.500/- and in default of payment of fine amount, the appellants have been sentenced to undergo one month simple imprisonment. Furthermore, the Ld. Trial Court has convicted the accused as per Sec.248(2) of Cr.P.C. for the offence punishable under Sec.325 of IPC in which and the appellant/accused have been sentenced to undergo two years simple imprisonment and and to pay a fine of Rs.2000/- and in default of payment of fine amount, the appellants have been sentenced to undergo two month simple imprisonment. Ld. Trial Court has specifically mentioned in his judgment that the accused will have to serve the punishments for both the crimes simultaneously. There is no reason to interfere in the order passed by the Ld. Trial Court. Thus, to the reasons given above the points for determination No.1 is in affirmative.

**Issue No.2:-**

25. In view of above, I pass the following final order:-

**:: O R D E R ::**

- (1) The present Criminal Appeal is hereby allowed.
- (2) The judgment of conviction passed by the Learned Judicial

Magistrate First Class, Gadhda in Criminal Case No.2724/2022, dtd. 07/07/2025 is hereby confirmed and upheld. However, the appellant is given the benefit of probation as per Sec.4 of the Probation of Offenders Act, 1958.

**(3)** The appellant/accused is directed to execute bond of amount of Rs.20,000/- (Rupees Twenty Thousand only) each as per Sec.4 of the Probation of Offenders Act, 1958 with surety of likewise amount for a period of one year, failing which the Learned Trial Court shall issue non-bailable warrant of arrest against the present appellant/accused directing him to receive sentence imposed by the Ld. Judicial Magistrate First Class, Gadhda in said Criminal Case No.2724/2022.

**(4)** The present appellant/accused is hereby directed to keep the peace, harmony and of a good behavior during the period of rest of their life. Further, he directed not to indulge himself in any illegal activity.

**(5)** The appellant/accused shall pay cost of Rs.1,000/-, under Sec.5 of the Probation of Offenders Act, 1958 into the District Legal Service Authority, Botad within Fifteen(15) days from today. Non-compliance of this order shall be considered as a breach of condition of bond.

**(6)** The present appellant/accused shall execute the bail bond and surety before Learned Judicial Magistrate First Class, Gadhda within seven (7) days from today, on executing such bail and bond, bail bond taken during the present Appeal stands disposed of.

**(7)** R & P of the Criminal Case No.2724/2022 be transmitted back to Learned Judicial Magistrate First Class, Gadhda along with the

copy of this order.

**(8)** Copy of this order is also be sent to the Probation Officer, Rajkot who shall keep observation upon behavior of the present appellant/accused and if found some illegal act, he/she shall inform to Learned Judicial Magistrate First Class, Gadhda.

Pronounced in the Court today i.e., on this **16<sup>th</sup>** day of **March, 2026**.

DATE : 16/03/2026.  
BOTAD.

**(M. J. PARASHAR)**  
SESSIONS JUDGE,  
BOTAD.  
CODE No.GJ00463