

Ex. \_\_\_\_\_



Received on :  
 Filed on :  
 Decided on :  
 Duration : Y M D

**BEFORE THE COURT OF**  
**HON'BLE 2<sup>nd</sup> ADDITIONAL SESSIONS JUDGE,**  
**KHEDA AT NADIAD.**

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**Criminal Appeal No. 88 of 2019.**  
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**Appellants (Original accused) :-**

- 1 Jyantibhai Kantibhai Patel  
Adult, Occupation : Agriculture,
- 2 Mitulbhai Jyantibhai Patel  
Adult, Occupation : Agriculture,  
Both are residing at Run,  
Ta. Sojitra, District : Anand.

**V E R S U S**

**Respondent**

The State of Gujarat

**Sub : Appeal filed under Section 374 of Cr. P. C against the judgment and order passed by Ld. Judicial Magistrate First Class, Vaso, in Criminal Case No.348/2017 dt.10.07.2019.**

For the appellants	Ld. Advocate Shri M.H. Trivedi
For the State.	Ld. A.P.P. Shri P.R. Tiwari

## JUDGMENT

1. The present appeal is preferred against the judgment of conviction and sentence recorded by the Ld. Judicial Magistrate First Class, Vaso, passed in Criminal Case No.348/2017, dated 10.07.2019, whereby the present appellants-original accused came to be convicted for the offence punishable under Section-324, 114 of the Indian Penal Code, (hereinafter referred to as 'the I.P.C') to undergo rigorous imprisonment for Two year and fine of Rs.9,000/- (Rupees Nine Thousand Only) each accused and and in default of payment of fine amount, further to undergo rigorous imprisonment for 6 months.
2. Ld. Advocate for the appellants-original accused moved an application at Ex.58 and requested this court to grant benefit of probation as provided under section 360 (3) (4) of Criminal Procedure Code, 1973 (New Section-401 (3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as "Code") or Section-4 of Probation of Offender's Act.
3. Learned Advocate Mr. M.H. Trivedi for the appellants-original accused submitted that he does not press the appeal, as far as, order of conviction and sentence passed by the Learned Trial Court is concerned, but he has requested this Court to grant

benefit of probation under the Probation of Offenders Act, 1958, (hereinafter referred to as 'the Act') in favour of appellants.

4. Pursuance to the above referred application i.e. Ex.58 this court had requested the Probation Officer, Nadiad, to submit the detailed report with regard to the conduct, health and past antecedents with other relevant details of appellants/ accused.
5. The Learned Probation Officer, Nadiad, submitted the detailed report under the Act and same is recorded at Ex.60 and in the above referred report submitted by the Probation Officer depict the fact that, the accused persons are having deep roots in the society and are respected members of the society and there are no past antecedent of the accused persons and on these counts, he opined that appellants/accused may be granted benefit of Section-360 of Code or Section 4 of the Act.
6. The Learned A.P.P. Shri P.R. Tiwari appeared on behalf of the State and he has submitted that, since Learned Advocate for the appellants-accused has not argued on the finding recorded on the point of conviction and sentence imposed by the Learned Trial Judge, he has no objection, if the request made by Learned Advocate for the appellant for getting benefit under the Act is granted. Ld. A.P.P further submitted that the State or the original

complainant has not preferred any Appeal or Revision against the present impugned order of conviction for enhancement of sentence.

7. As the Learned Advocate for the appellants-accused has not argued with regard to the findings recorded by the Learned Trial Court and order of conviction and sentence, this court does not have any other choice, but to confirm the impugned order dated 10.07.2019. Therefore, the order of conviction and sentence recorded by the Learned Trial Court is hereby confirmed.
8. On perusal of the report, it transpires that the appellants/accused are aged about 68 years old and 36 years old. Moreover the accused persons are having deep roots in the society and there are no past antecedent of the accused persons. The accused persons are only the earning member of their family and if the accused are sent to the jail, not only their future but the future of their whole family would be ruined. The offence was occurred in the year 2006 and now considering the nature of offence, age and family background of accused persons there are no impediments to grant probation. It is required to be noted that appellants are convicted and are directed to undergo sentence of rigorous imprisonment for the period of 2 years only therefore, this is fit case to exercise discretion

and grant accused benefit under Section-4 of the Act. At this stage it is required to be noted that as per Section 5 of the Act, while granting benefit u/S-4 of the Act, Court can pass an order of compensation u/S-5 of the Act, which is to be paid in favour of the victim/injured. On perusal of the order of Ld. Trial court, the Ld. Trial Court has not awarded any compensation to the victim, hence in view of the above referred discussion, if each appellants/accused are also directed to pay compensation of Rs.5,000/- in favour of the victim then it would serve the ends of justice. In view of forgoing reasons, following Order is passed in the interest of justice :-

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

1. The present appeal is hereby partly allowed.
2. The order of conviction and sentence dated 10.07.2019 passed by the Learned Judicial Magistrate First Class, Vaso, in Criminal Case No.348/2017 is hereby confirmed.
3. Both the appellants are directed to deposit Rs.5,000/- (Rupees Five Thousand Only) each before the Ld. Judicial Magistrate First Class, Vaso, as compensation. Said amount shall be paid by appellants within 15 days from date of this order. Upon

depositing the said amount, same shall be paid to victim/and/or legal heirs of victim.

4. Appellants are released on probation of good conduct and they shall be under observation of Probation Officer for 1 year from date of this order.
5. Appellants are directed to furnish bond of Rs.10,000/- (Rupees Ten Thousand Only) each before the concerned Police Station, stating that they will keep peace and will not act in any manner which may affect the peace.
6. If the above referred condition is violated, concerned police will be at liberty to arrest the appellants without there being any formal warrant issued by this court sent back to the trial court.
7. R & P be sent back to the Ld. Trial Court along with the copy of this order for implementation of the order.
8. Yadi to be sent to the concerned Police Station for compliance.

Signed and pronounced in the open Court.

Date : 02-04-2026. **(Pinky Marutkumar Trivedi)**  
Nadiad. 2<sup>nd</sup> Additional Sessions Judge  
Kheda at Nadiad.  
**(GJ01600).**

