

GJMH010022282025



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**IN THE COURT OF 6th ADDITIONAL DISTRICT JUDGE
& ADDITIONAL SESSIONS JUDGE, MAHESANA.**

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Criminal Appeal No.389/2025

Exh. _____

Rabari Karsanbhai Sendhabhai Mehorbhai;
Aged about 56 years,
Occ.: Agriculture & Animal Husbandry,
Residing at Kherva, Nr. Sanganpur Chokdi,
Ta. & Dist. Mahesana.

... Appellant

V E R S U S

The State of Gujarat.

... Respondent

Appearance

For Appellant : Ld. Adv. Mr. G.M.Thakore/A.D.Chauhan

For Respondent: Ld. APP Mr. C.B.Chaudhari.

Criminal Appeal u/s. 415 of the B.N.S.S.

J U D G M E N T

1. The present appeal is preferred by the original accused no.1 of the Criminal Case No.5651/2017, under Sec. 415

of the Bhartiya Nagrik Suraksha Sanhita (B.N.S.S.), 2023, against the conviction order passed by Ld. 5th Additional Judicial Magistrate First Class, Mahesana.

2. For the convenience the parties are referred to as their original status before Ld. the Trial Court, i.e. the appellant is as 'accused' & the respondent is as 'the prosecution'. The impugned judgment delivered by Ld. 5th Additional Judicial Magistrate First Class, Mahesana, so the said Court is referred as 'Ld. the Trial Court' & the Judgment and order challenged by this Appeal is referred as 'the impugned order' hereinafter this judgment.
3. Ld. the Trial Court has convicted the present appellant / accused for the offence punishable u/s. 323 of Indian Penal Code and ordered to undergo simple imprisonment of 6 months along with the fine of Rs.1,000/- [One Thousand], and in default of fine, he will further undergo simple imprisonment of one month, the appellant/accused is also convicted u/s.325 of the Indian Penal Code and ordered to undergo simple imprisonment of 3 years along with the fine of Rs.10,000/- [Ten Thousand], and in default of fine, he will further undergo simple imprisonment of 6 months. Feeling aggrieved and dissatisfied with the said judgment, the present appeal is by the appellant/accused, however, the appellant/accused was acquitted from the offence punishable u/s.143, 147, 148, 149, 504, 506(2), 427 of the Indian Penal Code & u/s. 135 of the Gujarat Police Act. By the said pronouncement, three other accused – Rabari

Bhagabhai Sendhabhai, Rabari Rameshbhai Kamabhai & Rabari Jigarbhai Ranchhodbhai are acquitted from all the charges leveled against them.

4. As per order passed below an application submitted at Exh.5, the impugned order of conviction has been stayed till the final disposal of this appeal and the accused was enlarged on bail.
5. On service of notice to the respondent - the State, Ld. APP Mr. C.B.Chaudhari appeared for the State.
6. Brief fact of the prosecution case is; on dtd. 7/3/2017 four cows were kept in a cattle shed of Kherva Gram Panchayat, hence, the first informant and others were going to drop the said cows near Khari river at Mahesana in Eicher vehicle No.GJ.02.Z.5324 at around 1:30 to 2:30 pm, when they reached near the garbage dump of the municipality situated near Mehsana Kasba, the present appellant/accused and other ten people came with sticks, and stopped the said Eicher vehicle. Keeping the enmity that had arisen earlier, the present appellant/accused had beaten the first informant with the stick and fractured his right hand and left shoulder, abusing him and threatening to kill him, also, caused damage to the Eicher vehicle. The first information report came to be registered before the Mahesana Taluka Police Station being No.First-50/2017 for the said incident.

7. On completion of the investigation, the Investigating Officer has filed a charge sheet against four accused for the offence committed punishable under Sections 143, 147, 148, 149, 323, 325, 504, 506(2), 427 of the Indian Penal Code and Section 135 of the Gujarat Police Act, which registered as Criminal Case No.5651/2017 in the Court of Ld. Chief Judicial Magistrate, Mahesna. Thereafter, Ld. 2nd Additional Chief Judicial Magistrate, Mahesana, has framed the charge against all the accused at Exh.07 and recorded the plea of all the accused, in which, they denied the charges leveled against them, hence, following evidence is put forth by the prosecution to prove the charges:

Exh.	Oral / Documentary Evidence
13	Deposition of First Informant- Prajapati Manilal Sendhabhai
14	First Information Report
19	Deposition of Witness- Patel Yogeshbhai Virambhai
20	Deposition of Witness- Govindbhai Kantibhai Patel
25	Deposition of Witness- Patel Ghanshyambhai Ishwarbhai
35	Deposition of Witness- Bharatbhai Maganbhai Patel
37	Deposition of Witness- Govindbhai Shankarbhai Patel
39	Deposition of Witness- Rakeshkumar Babulal Patel
40	Deposition of Witness- Bipinbhai Babubhai Patel
41	Deposition of Witness- Ashokbhai Natvarbhai Patel
43	Deposition of Witness- Jignaben Ashokkumar Patel
44	Copy of the application made to Mamlatdar by Panchayat
47	Deposition of Panch Witness- Prajapati Babubhai Motiram
48	Panchnama of the scene of the offense
49	Panchnama regarding the condition of the vehicle
50	Deposition of Panch Witness- Patel Kanubhai Kalidas
52	Deposition of Panch Witness- Chavda Ramesh Muljibhai

53	Panchnama of the physical condition of the accused
54	Deposition of Panch Witness- Rabari Tejabhai Varvabhai
57	Deposition of Witness- Dr. Vinodkumar Bhudarbhai Patel
58	Medical Certificate
59	X-ray reports (7 items)
61	Deposition of Witness- Parbatji Amuji Thakor
62	Telephonic Vardhi
63	Report made to register the offense
66	Deposition of I.O. - Romaben Kailaspuri Gosai
67	Depute order
68	Proclamation of Additional District Magistrate u/s.37(1)

8. On completion the evidence of prosecution, further statement of the accused u/s. 313 of the Criminal Procedure Code was recorded by Ld. the Trial Court, in which, they denied incriminating evidence against them. Further, all the accused have submitted a written statement in which they stated that in village Kherva a *Khedut Hitrakshak Samiti* is being formed, mostly they harass the cattle breeders. At the time of incident, the complainant was going to drop the cows which were not the accused, the accused have no connection with those cows and cattle. Actually, at night, some unknown people had beaten the complainant, but, later on, falsely implicated the accused in the said incident by the advice of the *Khedut Hitrakshak Samiti*. At this juncture it is pertinent to note that the order has been passed under the said statement that the same be kept along with the plea & further statement of the accused, but, the concerned clerk has not complied the order & kept the said statement in miscellaneous papers, so, the concerned clerk of Ld. the

Trial Court is hereby directed to comply the said order. After hearing Ld. advocates for both the parties, Ld. the Trial Court has pronounced the impugned judgment and convicted the present appellant/accused for the offence punishable u/s.323 & 325 of the Indian Penal Code.

9. During the hearing of this appeal the appellant prayed for calling the report of probation officer vide application at Exh.8. Pursuant to such application report from Probation Officer is called, which is brought on record vide Exh.10.
10. Having perused the report of Probation Officer [Exh.10], Ld. Advocate appearing for the appellant/accused argued that now the appellant is not challenging the judgment and order of conviction on merits, but the appellant is seeking benefit of probation, under the Probation of Offenders Act. He further argued that the appellant is aged about 58 years & only wife in his family, so, keeping in mind the said fact as well as for the betterment of his life, also, considering the fact that the appellant has no criminal antecedents, he pray to grant the benefit of probation to the accused.
11. Having gone through the report of Probation Officer, Ld. APP Mr. C.B.Chaudhari requested to pass necessary order in the interest of justice, further, he also argued that looking to the allegations leveled in the present criminal case, the victim is also required to be compensated.
12. Since the appellant is not challenging the impugned judgment and order on merits, so, this Court is not

required to re-appreciate the evidence recorded by the Ld. Trial Court, hence, the said evidence is not reproduced here in this judgment.

13. On going through the probation report Exh.10 which is of accused Karsanbhai Sendhabhai Rabari, it is found that the accused is of 58 years old, studied up to std.8th, also, his wife is of 52 years, he has no children, no parents alive, he is residing with his wife; it means, the accused is living a settled life and engaged in his family. His family is lower middle class family or middle class family & as per probation report he is doing labour work of agriculture to maintain himself as well as to maintain his family. The village people & neighbours Rachhodbhai Jorabhai Rabari, Patel Bharatbhai Shivram, Chaudhary Premjibhai Mahadevbhai have reported good conduct of the accused. Also, Ex-member of the Taluka Panchayat & Secretary of Kherva Co-operative Society have ratified the conduct and character of the appellant. Thus, the accused maintains good rapport with his neighbours & village people.
14. Further, it is found from the probation officer's report [Exh. 10] the accused is doing labour work of agriculture, it is also found from the report that the accused having no past criminal history, the accused is before the court, he feel remorse and repentance. From the report it also appears that, as of now, the accused is mild and sober by nature, his conduct and behaviour is good with the family members as well as with the neighbours, he has no

addiction. On going through the evidence recorded before Ld. the Trial Court, there is reason to believe that due to the sudden quarrel regarding the stray cows, a sudden incident took place at the relevant time. Further, as noted the above, the accused having only his wife in his family and his family is lower middle class or middle class family, therefore if the accused i.e. main member of the family is sent behind the bars, it is highly probable that his future as well as the future of his wife will be put in dark & the real sufferers would other person i.e. the wife of the present accused. The Probation Officer, therefore, while filing the report, recommends for extension of probation, in view of Sec. 4(1) & 4(3) of the Probation of Offenders Act. At the outset considering the nature and gravity of the offence believed by the Ld. Trial Court as well as fact of injury caused to victim, however, the injury caused to the victim is grievous, but, considering the provision of offence punishable u/s.325 is bailable one and on going through the above report of the Ld. Probation Officer at Exh. 10, this was his first and only conflict with law and that too was an outcome of minor quarrel.

15. In these circumstances, this Court on scrutiny of material and evidence finds that since accused is facing conviction, the benefit under the Probation of Offender Act should be given. The Provision of Sec.4 of Probation Offender Act is as under;

"when any person is found guilty of having committed an offense 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 offense 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."

In case of **Dalbirsing Vs. State of Hariyana, [AIR 2000 SC 1677]**, Hon'ble Apex Court has held ;

"if the court forms the opinion that it is expedient to release the offender on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offense". Thus section 4 can be resorted to when the court considers the circumstances of the case, particularly the "nature of the offense" and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct"

In the case of **Ayubhai Ashrafbhai (Vanzara) Bhatti Vs. State of Gujarat, [2011 JX (Gujarat) (0) 629]**Hon'ble High Court of Gujarat held that;

"the apex court clearly goes to indicate in some of its decision that while dealing with the sentence imposed upon the accused the court should consider the category of case. The court is aware that Protraction of trial or delay of hearing, of criminal appeal would normally would not comes in the way of imprisonment of sentenced and that by condition, would not sufficient to reduce the quantum of punishment of imposed. But considering the circumstances that may be pointed out to the court, the lesser punishment can be imposed by the court. Ultimately, the imposition of punishment,

period of punishment and substantive sentenced should be able to carry the proper message to the society, but in each case the court could not be enthusiastic to see that each order of punishment should deter the members of the society. I am of the opinion that the learned trial judge ought to have thought whether the appellant should be given any benefit of section 4. of the probation of offenders act or not."

Needless to say that benefit of section 4 of the probation of offender act can also be extended at appellate stage or during the appeal. In the present case applying the above principles have been laid down, considering the nature of offense along with the attentive circumstances and the fact that accused faced stigma of conviction for the offence u/s. 325, 323 of I.P.C. and take note that the prosecution has not challenged the conviction on a ground of lesser punishment. Thus, this court is of the considered view that the justice shall be sub-served, if benefit of Probation is granted.

16. At this stage the provision of Section 5 of Probation of Offender Act is required to be considered. The said section provides that if the benefit u/s.3 or 4 is given, the court may direct person to pay such cost for court proceeding and to the victim, that feels reasonable and proper. On going through impugned judgment it transpires that the first informant/injured victim is compensated, but,

considering the greivous hurt caused to the victim, this court is of the considered view that the accused should pay Rs.10,000/- as compensation to the first informant/victim in addition to the compensation awarded by Ld. the Trial Court, while extending benefit of probation.

17. In light of the above entire discussion following order is passed in the interest of justice:

ORDER

1. The present appeal is partly allowed.
2. The judgment and order of conviction passed by Ld. 5th Additional Judicial Magistrate First Class, Mahesana in Criminal Case No.5651/2017, dated 09.06.2025, is hereby confirmed. However, this Court extends benefit of probation, under section 4 of the Probation of Offenders Act, 1958, to the appellant - Karshanbhai Sendhabhai Rabari.
3. The accused is hereby directed to execute bond of Rs.15,000/-, as per Sec.4 of the Probation of Offenders Act, 1958, read with Sec. 361 of Cr.P.C., along with surety of the like amount, for the period of Three years, before Ld. the Trial Court within 10 (ten) days from the date of this order, failing which the Ld. Trial Court shall issue Non-Bailable Warrant against the appellant/accused, directing him to receive sentence.

4. The order of substantive sentence of imprisonment, passed by Ld. 5th Additional Judicial Magistrate First Class, Mahesana in Criminal Case No.5651/2017 shall remain in abeyance for the next Three years and in absence of any further order, it shall become inoperative on completion of the period of Three years.
5. Appellant/accused is hereby ordered to maintain peace, harmony and shall be of good behaviour during the period of bail bond and it is expected that same behaviour shall be continued for the rest of his life. Appellant/accused shall also file affidavit *qua*, before the Ld. Trial Court.
6. Non-compliance of any of the above conditions shall lead to cancellation of the bail bond. Breach of any of the condition shall lead to issuance of nonailable warrant against the accused to serve imposed sentence.
7. The accused is directed to deposit Rs.10,000/- (Ten thousand) before Ld. the Trial Court for the payment of compensation to the first informant/victim in addition to the compensation awarded by Ld. the Trial Court at the time of executing the bail & bond as per the above order. Non compliance of this order shall be construed as breach of condition of the bail bond.
8. Ld. the Trial Court is hereby directed to disburse the compensation amount deposited by the accused as per the above order to the victim/first informant after verifying his identity, also, disburse the compensation awarded by Ld.

the Trial Court vide impugned judgment if not paid to the first informant/victim.

9. Bail bond executed during the hearing of the appeal shall stand discharged on executing the bail bond before the Ld. Trial Court, U/sec. 4 of the Probation of Offenders Act, 1958, read with Sec. 361 of Cr.P.C.
10. With the above order and observations, appeal stands disposed off accordingly.
11. Record & Proceedings of Criminal Case No. 5651/2017 be sent back to the Ld. Trial Court immediately, along with copy of this order for compliance of this order. Further, this court has observed in para 8 of this judgment, Ld. Presiding Officer of Ld. the Trial Court is requested to direct the concerned clerk of his court to comply with the order passed below the statement submitted by the accused while recording their further statement.
12. Copy of this order is also to be sent to the Probation Officer, Mahesana.

Pronounced in open Court on this 7th day of April, 2026.

Place: Mahesana.
Dated: 07.04.2026.

(Sushil Bhagwantray Bhatt)
6th Additional District Judge &
Additional Sessions Judge, Mahesana.
[UIC No.GJ00857]