

Ex.

GJRJ220003212025 	Received on :	31-05-2025		
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	Decided on :	07.08.2026		
	Duration :	Yr.	Mths.	Days

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IN THE COURT OF THE 10th ADDITIONAL SESSIONS
JUDGE DHORAJI AT RAJKOT

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CRIMINAL APPEAL No. 23 of 2025

Appellant: Rafikbhai Allarakhabhai Mathupotra,
Age: 45 yrs., Occ.: Labour Work,
Residing at: Khambhaliya Gam, Rupavati
Road, Junagadh.

VERSUS

Respondents: The State of Gujarat,
Through A.G.P., Dhoraji.

**CRIMINAL APPEAL AGAINST CONVICTION U/S. 415 OF
BNSS**

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Appearances

Ld. Advocate Mr. B. A. Juneja for the Appellant.

Ld. AGP Mr. K. M. Parekh for the Respondent.

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JUDGMENT

01. The present appeal has been filed by the appellants against the Judgment and order of the Ld. Judicial Magistrate First Class, Upleta in Criminal Case No.778 of 2023, wherein as per the provisions of 248(1) of CrPC, the accused no. 1, Rafikbhai Allarakhabhai Mathupotra, is acquitted for the offences punishable under Sections 504, 506(2) read with Section 114 of the Indian Penal Code (IPC), and Section 135 of G.P. Act. However, as per the provisions of 248(2) of CrPC, he is convicted for the offences punishable under Sections 324 and 323 of the IPC. For the offence under Section 324 of IPC, he is directed to undergo simple imprisonment for three (3) years and to pay a fine of Rs. 3,000/- (Rupees Three Thousand Only). For the offence under Section 323 of IPC, he is sentenced to simple imprisonment for six (6) months and a total combined fine under both sections amounting to Rs. 2,000/-. In default of payment of the total fine amount of Rs. 5,000/- within 30 days, he shall undergo a further simple imprisonment of two (2) months. Additionally, under Section 357 of the Cr.P.C., the accused no.1 is directed to pay Rs. 10,000/- (Rupees Ten Thousand Only) as compensation to the injured/complainant, Shahrukh @ Sharuk Likhubhai Hamirani, failing which he shall undergo a further simple imprisonment of one (1) month.

Further, the accused no. 2 Akrambhai Allarakhabhai Khafi, has been acquitted and set free from all charges under Sections 324, 323, 504, 506(2), 114 of the IPC and

Section 135 of the G.P. Act due to a lack of evidence on record against him.

02. The brief facts of the prosecution case are that on 01/10/2022 at around 05:00 - 05:15 O' Clock, on Kolaki Road, near Alpha Mill on road, the accused of this case and the complainant's father-in-law had a dispute regarding some matter, and a video of the altercation between both sides was made. About five days prior to this, a video had gone viral involving Accused No. 1, due to which the complainant called Accused No. 1 and reprimanded him, leading to a verbal argument between both over the phone. Keeping malice about this matter, when the complainant and witness Inayat, aged about 12 years, were traveling from Rabarika towards Upleta, Accused No. 1 came from behind with his wife, abused the complainant, and told him to stop. Upon stopping the motorcycle, Accused No. 1 abused the complainant, slapped him, engaged in a verbal altercation, and called his brother-in-law, Accused No. 2, over the phone to bring a wooden stick (*laakdi*). Accused No. 1 took this stick and struck a blow to the complainant's head, causing an injury that required six stitches, and inflicted injuries on his body with the said wooden stick, causing blunt injuries to both legs, the left rib cage area, and the first finger of the left hand. Accused No. 2 also hurled abuses and threatened to kill him. Therefore, the complainant filed a detailed complaint regarding this incident at the concerned police station. The police registered the offense, investigated the crime, recorded

statements of relevant witnesses during the investigation, prepared a panchnama in the presence of panchas, arrested the accused, and upon finding sufficient evidence against the accused at the end of the investigation, submitted a charge-sheet before the court.

03. To prove the case, prosecution has led the following oral and documentary evidence:

Oral Evidence :

Sr. No.	Description	Exh.
1	Deposition of complainant Sharukh Likhubhai Hamirani	34
2	Deposition of Panch Witnesses Sohilbhai Allarakhabhai Hamirani	37
3	Deposition of Panch Witness Habib Dinmamad Sanghwani	39
4	Deposition of Panch Witness Sabbirbhai Musabhai Jedani	41
5	Deposition of Witness Vaseembhai Hamirbhai Khambhini	54
6	Deposition of Witness Samirbhai Likhubhai Hamirani	53
7	Deposition of Pratipalsinh Jilubha Rana who recorded the complaint	59
8	Deposition of Medical Officer Dr. Shahnawaz Sidikbhai Makadi	63
9	Deposition of I.O. Firozbhai Dadmahamadbhai Baloch	66
10	Deposition of Panch Witness Bodubhai Hosubhai Mathupotra	74

Documentary Evidence :

Sr. No.	Description	Exh. No.
1.	Complaint	35
2.	Spot Panchnama	38
3.	Arrest Panchnama	40
4.	Copy of Station Diary No.20 of 2022	60
5.	M.L.C. Form	61
6.	Offense Registration Report	62
7.	M.L.C. Certificate	64
8.	Depute Order	67
9.	Notification	82

04. At the end of the recording the evidence, further statement of the accused person was recorded under Section 313 of Criminal Procedure Code. The accused person has denied the incriminating evidence against him. Ld. Trial Court had heard both the sides and reached to the conclusion that prosecution had succeeded in proving case against the present accused persons for the offences mentioned in the charges. Hence, the Judgment and order at **Exh.83** is declared, which is now under challenge by the appellants.
05. During the hearing of the appeal, Ld. Advocate appearing for the appellant has preferred a stay application at Exh.5, seeking suspension of the execution of the substantive order of sentence dated 02/05/2025 passed in Criminal Case No. 778/2023 by the Learned Judicial Magistrate First Class, Upleta. The said application was allowed by this Court vide order dated 31/05/2025, and the substantive operation of the order of sentence passed by the Ld. Trial

Court was suspended during the pendency and till the final disposal of the present appeal, subject to the appellant furnishing a personal bond of Rs. 20,000/- and a surety bond of the same amount before the Ld. Trial Court.

Thereafter, looking to the order passed by the Ld. Trial Court and the offences under which the accused person was held guilty, this Court had called for a fresh report from the Probation Officer, which was duly received by this Court and is taken on record at Exh.08. This Court has considered the report of the Probation Officer, which is comprehensive and provides a positive opinion indicating that the accused person, namely Rafikbhai Allarakhabhai Mathupotra, is a simple individual leading a disciplined, law-abiding lifestyle engaged in agriculture, animal husbandry, and cattle brokerage work, whose personal disposition warrants a reformatory opportunity; furthermore, a comprehensive verification conducted through the Junagadh Taluka Police Station records indicates that the accused person possesses no prior criminal records, and this present case registered vide Upleta Police Station First CR No. 584/2022 is his first offence. Based on face-to-face meeting with the accused it appears that presently, he has a lot of repentance regarding the offence. The family relationships of the accused appear to be good. He lives in a joint family. The responsibility of his wife and children seems to rest on him and he appears to be fulfilling that responsibility properly. The accused is main earning members of the family. If the accused goes to

jail, there is a possibility of an adverse financial, social and psychological impact on the family of the accused. Sending the accused to jail might also lead to a change in his mindset towards crime due to coming into contact with other criminals. His conduct and behavior are certified as good by his opposite neighbor, Kanabhai Bharwad,. Therefore, adopting a purely reformatory approach and considering his socio-economic circumstances, it is recommended that instead of sentencing him to immediate imprisonment the accused person be placed under supervision of Probation Officer.

Although the Probation Officer, in his detailed report has recommended to release the accused Appellant No. 1, namely Rafikbhai Allarakhabhai Mathupotra, under the supervision of the Probation Officer to afford him an opportunity for reformation, this Court, after careful consideration of the entire facts and circumstances of the case, deems it fit, just, and appropriate to expand the scope of reformation; it is therefore ordered that the accused Appellant No. 1 be granted the extensive benefit of probation under Section 4(1) of the Probation of Offenders Act, 1958, upon entering into a bond to appear and receive sentence when called upon and in the meantime to keep the peace and be of good behaviour, and be placed under active supervision for an extended period of **02 (two)** years under the care and monitoring of the Probation Officer as per the strict mandates of Section 4(3) of the said Act, failing which, if he violates any terms and conditions of

the bond so executed, the judgment and sentence passed by the Ld. Trial Court shall stand revived against him automatically.

06. The Ld. Advocate for the appellant now submits that considering the overall facts and changed circumstances, behaviour of the appellant and the reports of the Probation Officer, benefit of the Probation Offenders Act may be given to the present appellants.
07. The Ld. Public Prosecutor, too had submitted that considering the Probation Report and the change in behaviour of the appellants and particularly considering the fact that they are not the habitual offenders, this Court may pass necessary order in the interest of justice.
08. At the outset, considering the nature and gravity of the offences, believed by the Ld. Trial Court and going through the report of Ld. Probation Officer and after hearing Ld. Advocate for the appellant this Court finds that the present appellant is having pain and maintaining his family. He has realized the importance of the family, the seriousness of the offence, the responsibilities on their shoulders. There are no other antecedents against the appellant / accused which are put on record by the state. Further at the end of the report, Ld. Probation Officer has opined to give benefit of Probation Offenders Act to present appellants.

But looking to the gravity of the offence and the

injuries sustained by the victim, the Trial Court has already directed to the accused to pay a compensation of **Rs. 10,000/-** to the injured victims, namely Shahrukh @ Sharuk Bhikhubhai Hamirani. The said order of compensation is required to be confirmed as the injured victim has sustained physical and mental trauma.

09. Section 4 of Probation Offender Act reads as :

"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."

10. At this juncture, it is required to note that in the case of Dalbirsing v/s. State of Hariyana, reported in AIR 2000 SC 1677, Hon'ble Apex Court has held that,

"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"

11. Hence, considering the overall aspects, following order is passed in the larger interest of justice.

ORDER

1. Present appeal is partly allowed.
2. The Judgment and order of conviction recorded by the Ld. Judicial Magistrate First Class, Upleta in Criminal Case No.778/2023 on 02-05-2025 is sustained and confirmed. This Court extends benefit of Section 4(3) of the Probation of Offender Act to the present appellant/accused person.
3. The appellant/accused is hereby directed to execute a bond of Rs. 20,000/- (Rupees Twenty Thousand Only) as per Section 4(1) of the Probation of Offenders Act, 1958 read with Section 361 of the Cr.P.C. (Section 401 of BNSS) with a surety of like amount for a period of 02 (two) years before the Ld. Trial Court, and he shall simultaneously be placed under the supervision of the Probation Officer, Junagadh, as per the mandates of Section 4(3) of the Probation of Offenders Act, 1958, failing which the Ld. Trial Court is ordered to issue a non-bailable warrant of arrest against the appellant directing him to undergo the original sentence.
4. The substantive order of sentence of imprisonment imposed by Ld. Judicial Magistrate First Class, Upleta in

Criminal Case No.778/2023 on 02-05-2025 shall remain under abeyance till the period of bail bond i.e. for 2 years and in absence of any other order, it shall become inoperative on completion of period of 2 years.

5. Breach of any of the condition shall lead to issuance of non-bailable warrant against the accused to serve imposed sentence.
6. The appellant/accused is hereby directed to keep the peace, harmony and be of a good behavior during the period of 2 years and it is expected to be continued for rest of their life and shall also file affidavit qua, before Ld. Trial Court.
7. The Appellant shall deposit an amount of Rs. 10,000/- (Rupees Ten Thousand Only) before the Ld. Trial Court within 7 days from today, and the Ld. Trial Court shall, in turn, remit the same to the injured persons, namely Shahrukh @ Sharuk Bhikhubhai Hamirani, upon proper verification, as compensation under Section 5(1)(a) of the Probation of Offenders Act, 1958. Non-compliance or failure to deposit this amount within the stipulated period shall be construed as a direct breach of the conditions of the probation bond
8. The bail bond executed during hearing of this appeal shall be discharged, on executing bail bond stated herein above u/s.4 of the Probation of Offenders Act read with Sec.361 of Cr.P.C. which shall be executed as soon as possible but not beyond 7 days from today before Ld. Judicial

Magistrate First Class, Upleta.

9. With above order, the appeal stands disposed off.
10. R & P of C.C. No.778/2023 be sent back to the Trial Court with the copy of this order.
11. Copy of this order be sent to Probation Officer, Junagadh.

Signed and pronounced in open Court today on this 07th day of August, 2026.

Date : 07-08-2026

Place : Dhoraji

(Vaibhav Vasant Mondhe)
10th Additional Sessions Judge,
Dhoraji at Rajkot.
Code No. GJ00852