

GJMR010017682019



Received on : 14/11/2019

Registered on : 14/11/2019

Decided on : 08/08/2026

Exhibit :

IN THE COURT OF 2nd ADDITIONAL SESSIONS
JUDGE, DI STRICT MORBI.

CRIMINAL APPEAL NO. 96 OF 2019

Exh. No. _____

Appellants(Ori. Accused) :

- (1) Jagdishbhai Gokalbhai Chauhan,
Aged: 34 yrs., Occu.: Agriculture.
- (2) Hiteshbhai Gokalbhai Chauhan,
Aged: 31 yrs., Occu.: Agriculture.

Both residing at Charadva, Gopalnagar,
Tal. Halvad, Dist. Morbi.

VERSUS.

OPPONENT:

The State of Gujarat, through
D.G.P., Morbi.

APPEARANCE :

Mr. H. N. Mehta, Ld. advocate for the appellants.
Mr. N. D. Karia, Ld. A.P.P. for the opponent.

APPEAL FILED U/s. 374(3)(A) OF CRIMINAL PROCEDURE
CODE/U/s. 415 OF BHARATIYA NAGARIK SURAKSHA
SANHITA, 2023

JUDGEMENT

- 1) Present appeal emanates from the judgment of conviction, sentence and fine, recorded by Ld. Additional Judicial Magistrate, First Class, Halvad, Dist. Morbi (hereinafter referred as Ld. Magistrate), in Criminal Case No. 353 of 2017, dated 25/10/2019, whereby the present appellant/accused No. 1 and 2 are convicted for the offences punishable under Sections 323 and 114 of Indian Penal Code and are directed to undergo simple imprisonment of 6(six) months, also directed to deposit fine of Rs. 1,000/- with default stipulation; appellant/accused No. 1 and 2 are convicted for the offences punishable under Sections 135 of G.P. Act and are directed to deposit fine of Rs. 500/- each with default stipulation and appellant/accused No. 1 and 2 are convicted for the offences punishable under Sections 324 and 114 of Indian Penal Code and are directed to undergo simple imprisonment of 2.5 years(30 months), also directed to deposit fine of Rs. 10,000/- with default stipulation.
- 2) Ld. Advocate for the appellants / accused Nos. 1 and 2 filed their affidavits at Mark 39/1 and 39/2 alongwith the probation benefit report at Exh.39 and has requested this Court to grant benefit of probation as provided U/s. 360 of Cr. P.C./U/s. 401 of B.N.S.S., 2023(hereinafter referred as 'B.N.S.S.') and Section 3 and 4 of the Probation of Offenders Act, (hereinafter referred as 'Act').

- 3) Ld. Advocate for appellants / accused has submitted that he does not press the present appeal as far as order of conviction and sentence is concerned. But, he requested this Court to grant benefit of probation under the Act in favour of appellants. Hence, this Court requested the Probationer Officer, Morbi to submit the detail report with respect to the conduct, health and past antecedents with other relevant details of appellants / accused.
- 4) Accordingly, Shri J, K. Chauhan, Probation Officer, Morbi submitted the detail report of appellant/accused no. 1 and 2 under the Probation of Offenders Act and same is recorded at Exh. 42 and 43 respectively.

4.1) Above referred report, submitted by the Probation Officer depicts the fact that appellant No. 1 is aged about 41 years and he is living with his wife, parents, one daughter and son including himself, appellant no.1 having total 4 members in his family and they are staying under one roof. He is doing agricultural work and he is maintaining his family and he does not have any criminal antecedents and he is only bread earner of his family members. Probation Officer has finally opined that accused/appellant no.1 be granted benefit of Section 401 of B.N.S.S. and Section 3 and 4 of the Act.

4.2) Above referred report, submitted by the Probation Officer depicts the fact that accused

accused/appellant No. 2 is aged 36 years and he is living with his wife, parents and three daughters including himself, in all 6 family members are staying under one roof. He is not having any criminal antecedents. He is doing agricultural work and he is maintaining his family and he does not have any criminal antecedents and he is only bread earner of his family members. Probation Officer has finally opined that accused/appellant no.1 be granted benefit of Section 401 of B.N.S.S. and Section 3 and 4 of the Act.

- 5) Ld. A.P.P, submitted that since Ld. Advocate for the appellants has not argued *qua* the conviction, *quantum* of sentence and fine imposed by the Ld. Magistrate and, therefore, he has no objection if the request made by Ld. Advocate for the appellants for granting benefit of probation to the appellants / accused Nos. 1 and 2 is allowed.
- 6) As Ld. Advocate for the appellants has not argued with respect to the finding recorded by the Ld. Magistrate, therefore, this Court does not have any other choice, but to confirm the impugned order dated 25/10/2019. Therefore, order of conviction, sentence and fine recorded by Ld. Magistrate is hereby confirmed.
- 7) Appellants have requested to grant benefit under the Code and Act. It is required to be noted that appellants no. 1 and

2 are convicted for the offences punishable under Sections 323 and 114 of Indian Penal Code and are directed to undergo simple imprisonment of 6(six) months, also directed to deposit fine of Rs. 1,000/- with default stipulation; appellant/accused No. 1 and 2 are convicted for the offences punishable under Sections 135 of G.P. Act and are directed to deposit fine of Rs. 500/- each with default stipulation and appellant/accused No. 1 and 2 are convicted for the offences punishable under Sections 324 and 114 of Indian Penal Code and are directed to undergo simple imprisonment of 2.5 years(30 months), also directed to deposit fine of Rs. 10,000/- with default stipulation, and therefore, in my view, they are entitled to get benefit under the Code and Act. I requested the Probationer Officer to submit the detail report with regard to the conduct and past history of the appellants. As stated hereinabove, said report has been submitted before this Court and from the said reports of appellant no. 1 and 2, it appear that appellants are entitled to get benefit under the Act. It transpires from the report of the Probation Officer that the appellants/accused does not have any previous conviction. Having regard to the circumstances of the case including nature of offence and the character of the appellants/accused accordingly, I use my discretion to grant benefit under Section – 3 and 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 3 and 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 opponent. It is required to be noted that appellant No. 1 and 2 are doing agricultural work and they help to their family members and by doing so, they maintain their family members. Therefore, from the report of the Probationer Officer of appellant no.1 and 2, it clearly appears that appellants belong to a middle class family and are having responsibility of earning bread and butter for their family of persons. In the aforesaid premises, I pass the following order:

ORDER

- 1) The order of conviction, sentence and fine dated 25/10/2019, passed by Ld. Addl. Judicial Magistrate, First Class, Halvad in Criminal Case No.353 of 2017 is hereby confirmed.
- 2) Appellants are released on probation of good conduct and they are directed to furnish bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) each before the Ld. Magistrate, stating that they shall keep peace and shall not act in any manner which may affect the peace.
- 3) The Bond to be executed by the appellants/accused Nos. 1 and 2 on or before 25/08/2026, before the Court below, failing which, the Ld. Magistrate shall issue Conviction Warrant against the appellants / accused Nos. 1 and 2 to serve the sentence imposed against them.
- 4) The order of substantive sentence imposed on appellants shall remain under suspension till the period of bond i.e.

for a period of one year and if there is any breach of condition of the bond executed under Section 3 and 4 of the Probation of Offenders Act, the Court below shall have liberty to issue non – bailable warrant against the appellants for serving the sentence imposed against them.

- 5) Copy of this order to be sent to Ld. Magistrate and Probation Officer. Ld. Magistrate is also requested to send Yadi to the concerned Police Station.
- 6) The Probation Officer, Morbi is requested to file quarterly report regarding Good conduct of the appellants / accused Nos. 1 and 2, before the Ld. Magistrate, Halvad.
- 7) With above referred observation, the present appeal is partly allowed.

Pronounced in the Open Court on this 8th Day of **August**
Month of Year **2026**.

Date : 08/08/2026
Place : Morbi.

(Kamal Rasiklal Pandya)
2nd Addl. Sessions Judge,
Morbi.
(GJ00739)

Bmdangar