

(2026) 04 GUJ CK 0158

In the Gujarat High Court

Case No : R/Criminal Revision Application (Against Conviction) No. 360 Of 2018

Jagadishbhai Ghelabhai Rathod & Ors.

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-04-2026

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 360(1)(iii), 397, 401
Indian Penal Code, 1860 — Section 114, 323, 324
Gujarat Police Act, 1951 — Section 135
Probation Of Offenders Act, 1958 — Section 4

Citation : (2026) 04 GUJ CK 0158

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Amit R Joshi, Shruti Pathak

Final Decision : Disposed Of

Judgement

Hasmukh D. Suthar, J

[1.0] By way of present revision application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973, the applicants –accused have prayed for quashing and setting aside the judgment and order of conviction and sentence dated 07.02.2018 passed by the learned Judicial Magistrate First Class, Manavadar , in Criminal Case No.327 of 2013, whereby the learned trial Court has been pleased to hold the applicant No.1 guilty for the offences punishable under Sections 323, 324 read with Section 114 of the Indian Penal Code, 1860 (which shall hereinafter be referred to as "IPC" for short) read with Section 135 of the Gujarat Police Act and sentenced to undergo simple imprisonment for three years and also directed to pay fine of Rs.200/- and in default of payment of fine to undergo further simple imprisonment for 5 days whereas applicant No.2 is convicted for the offence under Section 323 of the IPC read with Section 135 of the Gujarat Police Act and sentenced to undergo simple imprisonment for a period of one month with fine of Rs.100/- and in default of payment of fine, to

undergo further simple imprisonment for a period of 5 days and applicant Nos.3 and 4 are convicted for the offence under Section 323 of the IPC and sentenced to undergo simple imprisonment for a period of one month with fine of Rs.100/- and in default of payment of fine, to undergo further simple imprisonment for a period of 5 days. The said order was assailed by way of filing Criminal Appeal No.115 of 2014, wherein, vide judgment dated 07.02.2018 passed by the learned Additional Sessions Judge, Junagadh, the appeal came to be dismissed and the order of conviction has been confirmed and upheld by the concerned Additional District Judge. Hence, the present Revision Application is filed by the applicants-accused.

[2.0] Heard learned Advocate Mr. Amit Joshi for the applicants and learned APP Ms. Shruti Pathak for the respondent – State.

[3.0] At the outset, the applicants – accused are convicted for the offences punishable under Sections 323 and allied offence of the IPC and there are concurrent findings of both the Courts below. The applicants have committed the offence for the first time and hence, the learned Advocate for the applicants has prayed to extend the benefit of probation to the applicants. This Court vide order dated 12.03.2026, has called for report of Probation Officer, Junagadh in compliance of which the Chief Probation Officer, Junagadh, has submitted the report dated 27.03.2026, which is taken on record. As per the said report the conduct of present applicants is good and Probation Officer has also recommended to extend the benefit of probation to the applicants. Furthermore, 13 years have passed since the date of the incident and during these period the applicants did not indulge in any further crime and report of Probation Officer also suggest good conduct of the applicants.

[4.0] Now, while exercising jurisdiction under Section 401 of the Code is discretionary and it is required to be used only in exceptional cases where glaring defect in the procedure and manifest error of law or there has been miscarriage of justice. Here no any such error is pointed out or no perversity is found from the reasons assigned by the learned Sessions Judge. Hence, the learned Sessions Judge has not committed any error in coming to the conclusion. Even in revisional jurisdiction the Court has to be more careful in re-appreciating the fact or evidence as revisional jurisdiction itself does not provide re-appreciation of evidence and considering the limited jurisdiction the Court cannot act as Appellate Court. Hence, no case is made out for interference with the impugned findings in light of scope of the scope of revision laid down by the Hon'ble Apex Court in Amit Kapoor Vs. Ramesh Chander, reported in 2012 (9) SCC 460.

[4.1] However, one of the prime consideration under the penology is reformatory approach. The Court has to also consider the possibility of rehabilitation and reformation of offender and therefore, the discretion given to the Court while awarding the sentence under Section 360(1)(iii) of the Code of Criminal Procedure and to consider the provision of Probation of Offenders Act. Considering the aforesaid fact, in order to permit rehabilitation of offender,

without finding their communal conscience and to secure the societal interest and justice, Court should prefer the reformatory approach instead of inflicting higher or harsher punishment.

[5.0] In view of above, the applicants – accused are directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, upon execution of probation bond in sum of Rs.20,000/- each, with one surety of like amount for a period of one (1) year.

[6.0] It is hereby further directed that the applicants – accused shall receive the sentence as and when called upon till the said period and the applicants shall maintain peace during above mentioned period of one (1) year.

[6.1] The above mentioned bond under Section 4 of the Probation of Offenders Act be submitted before the learned trial Court within 15 days of passing of this judgment.

[7.0] Accordingly, present revision application is disposed of. Record and proceedings, if any, be sent back to the concerned Court forthwith. Rule accordingly.