

## **Baldevji Bhathiji Thakore vs State Of Gujarat on 15 February, 1979**

**Equivalent citations: AIR1979SC1327, 1979CRILJ1136, (1980)1SCC320, 1979(11)UJ262(SC), AIR 1979 SUPREME COURT 1327, 1980 (1) SCC 320, 1979 UJ (SC) 262, 1979 TAC 437, 1979 ACJ 475, (1979) SC CR R 308**

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**Bench: Syed M. Fazal Ali, A.D. Koshal**

### **JUDGMENT**

S. Murtaza Fazal Ali, J.

1. In this appeal by Special Leave, the appellant was convicted under Section 304A I.P.C, and was sentenced to one year's R.I. and fine of Rs. 500/- by the High Court after reversing the order of acquittal passed by the Magistrate in favour of the appellant. We have heard learned Counsel for the appellant and have also gone through the judgment of the High Court and of the Magistrate, The High Court has given good and cogent reason for displacing the findings of the Magistrate that the prosecution was not able to prove the charge against the appellant. There is clear finding to show that the appellant had caused the death of the deceased by rash and negligent driving. He had tried to run over the deceased while the deceased was trying to cross the road. The appellant did not make any attempt to save the deceased by swerving to the other side when there was sufficient space. We do not see any reason to interfere with the conviction of the appellant.

2. On the question of sentence, it was said that the appellant may be treated under the Probation of Offenders Act. The High Court has considered this aspect and refused to exercise its discretion and we fully agree with the view of the High Court. There is no merit in this appeal which is accordingly dismissed.