

Filed on : 04/09/2010.
Registered on : 21/01/2020.
Decided on : 03/02/2023.
Duration : 12Y- 4M- 30D.

Exh. : 78 .

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
40TH COURT, GIRGAON, MUMBAI.**

(PRESIDED OVER BY SHRI.N.A.PATEL)

- (a) The serial number of the case : 32/PW/2020
Old Case No. 427/PS/2010
- (b) The date of the commission of the offence : 30/05/2010
- (c) The name of the Informant : The State (Malbar Hill Police Station in C. R. No. 48/2010)
- (d) The name of the accused person/s, age and residence : ***Cyrus Percy Hormusji,***
*Age – 44 years, Occ.- Business,
Res: 101, Mantri Parijat,
Saraswati Road, Santacruz-W,
Mumbai.*
- (e) The offence complained of : Under Sections 289, 352 and 324 of the Indian Penal Code.
- (f) The plea of the accused and his examination : The accused pleaded not guilty.
- (g) The final order : The accused is **Convicted.**
- (h) The date of such order : 03/02/2023.

Ld. APP for the State : Shri. B. U. Gavali.

Ld. Adv. for the accused : Shri. Madan Gupta.

J U D G M E N T
(Delivered on 3rd February, 2023)

The accused is facing trial for the offences punishable Under Sections 289, 352 and 324 of the Indian Penal Code.

Factual matrix of the prosecution case are as under ;

2. The incident took place on 30/05/2010 at about 16:45 am at Godrej Baug, Nepean Sea Road, Near Simla House, Mumbai. The accused called the informant and told that they intending to came to his house. Therefore, the accused and his wife went to the house of the informant in car along with two dogs. One was brown Labrador and one is black Rottweiler. From 17:30 to 17:45 hours they were taking their dog on the street for wondering. Thereafter, son of the informant came down and told to the accused that they want to go for attending one program so meeting was not possible. Thereafter, the accused called the informant down to the building. When they were talking near the car the accused suddenly opened the door of his car and therefore, both dogs were took bite of the informant's right hand shoulder and elbow. Thus, the report.

3. On the basis of the report an offence punishable under Sections 289, 352 and 324 of the Indian Penal Code was registered vide Crime No. 48/2010. Thereafter, Investigating Officer have recorded the statements of the witnesses, obtained the Medical Certificate and submitted the charge-sheet against the accused.

4. The accused was appeared. My Ld. Predecessor has recorded plea and framed the charge vide Exh.35. Thereafter, the prosecution has

examined five witnesses. I have recorded the statement of the accused under Section 313 of the Cr.PC vide Exh.77.

5. Following points are arises for my determination and I have recorded my findings for the reasons thereon is as below ;

<u>Sr. Nos</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prosecution proves that on 30/05/2010 at about 16:45 hours at Godrej Baug, Opp. Nepean Sea Road, Near Simla house, Mumbai, accused knowingly or negligently omitted to take such order with respect of black colour Rottweiler dog in his possession as was sufficient to guard against any probable danger to human life or any probable danger of grievous hurt, and thereby committed an offence punishable under Section 289 of the IPC ?	<u>In affirmative.</u>
2.	Whether prosecution proves that on above said date, time and place accused assaulted or used criminal force to the informant and thereby committed an offence punishable under Section 352 of the IPC ?	<u>In negative.</u>
3.	Whether prosecution proves that on above said date, time and place accused knowingly or negligently made free the dangerous Rottweiler dog in his possession and the said dog took bites of the complainant on his right arm and right leg and caused grievous hurt to him and thereby committed an offence punishable under Section 324 of the IPC ?	<u>No, 337of the IPC.</u>

4. What order ?

Accused is
Convicted.

REASONS

AS TO POINT NOS. 1 TO 3 :-

6. To bring home guilt of the accused the prosecution has examined informant Kersi Irani as (PW1) vide Exh.43. He deposed that he knows Cyrus Hormasji. He is son-in-law of his brother-in-law. Freny Irani is his wife. Hormasji Irani is his son. Pestanji is his brother-in-law. The accused is son-in-law of Siraj Dhanji Sha. Parida is wife of Siraj Dhanji Sha. The incident was occurred on 13/05/2010 at about 5:30 to 6:00 pm at Nepean Sea Road below his residential building. On the day of incident the accused made him phone call and told him that he wanted to talk with him about the flat. At the time of incident dispute between him and the accused was subjudise. He told him that whatever he wanted to talk with him in Court. He again insisted him to talk with him. The accused called him down the building and he went there. He met the accused. The accused told him that they will talk on the subject of subjudice matter. He told to the accused that he was not interested in talking with him. There were exchange of words between them. There was one dog in car of the accused. The dog was of Labrador breed. It was of black colour. The dog was trying to came out of the car. He told to the accused to not to release the dog still the accused had opened the door of car. The dog attacked him. The dog directly came and caught hold his right leg calf. He fallen down. His calf was released from the mouth of the dog. Again dog attacked his calf and took bite. The dog jumped and caught his right side hand above the elbow and took bite. Before releasing the dog his son Hormas was present there. His son immediately took photographs of the wounds by his mobile phone. Before attacking him third time his son tried to control the

dog but he could not. His son called taxi and sent him to hospital. His son called police from Simla house. Thereafter, he was treated in the hospital. He was called in the police station. He narrated incident to the police. Police recorded his statement vide Exh.44. The would marks of dog bite were visible.

7. In support of him prosecution has also examined Hormas Irani as (PW2) vide Exh.47. He deposed that Kersi Irani was his father and the accused is his relative. He knows the accused very well. The incident occurred on 30/05/2010 at about 5:45 pm in his colony namely Godrej Baug. On the day of incident meeting was scheduled between him the accused, wife of the accused and his father and mother. Till 5:00 O'clock the accused and his wife did not arrive. There were Annual School Function in the school of his niece so he, his mother and sister left for school at about 5:15 pm. While passing through the colony they saw the car of the accused. It was stationary. The accused and his wife were roaming in the colony with two dogs. One was black Rottweiler and another was brown Labrador. He met them on the road and requested them that they could not have a meeting because they were leaving for the school. Thereafter, they all left. After about 15 minutes he called his father on his mobile phone. But unfortunately, he did not pick up his call. He was scared. He told his mother and sister to continue with the programme in the school and he left for home. When he came back in colony he saw that his father and the accused and his wife were having arguments on the road. So he requested the accused to go away from there. He also told the accused that no property matter could be discussed on the road. At that time black Rottweiler dog was sitting in the back side of car and brown Labrador dog was sitting in the front side seat of the car. They were barking. The accused went towards the car and tried to open the back side door of the car. He went and obstructed the accused not to open the door because both

the dogs were barking ferociously. In spite of his telling to not to open the door the accused opened the door. The accused explained him that if he would not open the door then the dogs would become mad and would fight with each other. He brought black Rottweiler outside the car with the leash and directed the dog towards him. However, his father intervened and became a victim of the dog bites. The dog took bite of right leg calf of his father. He also took bite of right hand shoulder by jumping over it. At that time leash of the dog was in hand of the accused. The accused made no attempts to control the dog. Without going to the police first he went to doctor first because there were profuse bleeding.

8. According to him, while going to the hospital at the gate of his colony fortunately he met the police Inspector Dandvate, who was on his bike. He was explaining him whole incident at that time he saw the accused and his wife fleeing from their colony. The accused was stopped by the tenants of Simla House Nagar. Mr. Dandvate assured him to take action against them. He took his father to Parsi General hospital. After treatment he went to the police station. Police asked him about the incident and recorded his statement twice. Before entering into witness box he has gone through his both statement. It was mentioned in his first statement that "*kutryala mogle sodle*". But this was not true. He clarified this fact in his next statement before the police.

9. Dr. Brijesh Yadav (PW3) was examined by the prosecution vide Exh.54. He deposed that on he was a Post Graduate Orthopedic Surgeon. He got Post Graduation Degree in the year 2014. He did his MBBS in the year 2008. In the year 2010 he was working with "The B. D. Petit Parsee General Hospital " Cumbala Hill, Grant Road-W, Mumbai as a Casualty Officer. On 30/05/2010 he examined Kersi H. Iran, 72 years male around 6:30 pm. On

his examination prima facie he found three injuries on his person caused by dog bites -

- Injury no.1 : CLW over right arm. It was 3x3 cm size,
- Injury no.2: abrasion over the midpoint of right leg anteriorly. It was 5x5 cm size.
- Injury no.3 : CLW of 3x3 cm over right leg on lateral aspect,

Injury nos. 1 and 3 were caused by dog bites. Injury no.2 may be caused by dog nails or fall during incident of dog bites. All the injuries were fresh in nature. He asked history to the patient and also to his relative before examining him. He gave Anti Rabies Vaccine to the patient. He also cleaned the wounds and also gave him pain killers. For the purpose of dog bites they do not apply bandage. Accordingly, he issued Medico Legal Certificate to Malbar Hill police constable. The said Medico Legal Certificate was proved vide Exh.55.

10. The prosecution has also examined Dr. Shivaji Talekar as (PW4) vide Exh.58. He deposed that he is MVSc and Ph.D in Veterinary Surgery. He got his Bachelor Degree in Veterinary Science in 1998. He got master degree in 2001. He completed Ph.D in 2007. In the year 2010 he was working as a Hospital Registrar at Bombay Veterinary college, Parel, Mumbai. On 02/06/2010 the accused went to him along with letter of Malbar Hill police station for general checkup of the dog of the accused. The dog was normal and did not show symptoms of rabies or any contagious disease. As per nature Rottweiler breed dogs are aggressive in nature. At the request of police station he issued letter in respect of nature of dog. The letter was proved vide Exh.60.

11. The Investigating Officer Vijay Dandavate (PW5) was also examined by the prosecution vide Exh.63. He deposed that he was attached

to Malbar hill police station between 2009 and 2014. In crime no. 48/2010 he took the information and registered the offence and also investigated the same. As per the information given by the informant Kersi he has lodged the FIR under Section 289 and 338 of the IPC. It was alleged by the informant that the accused allowed the dog to bite him. Before lodging the FIR the informant had taken the treatment at Parsi hospital. After narration of the information by the informant SHO decides that under which sections FIR was to be lodged. Thereafter, he reduces the information in writing and applies the sections he decided.

12. He further deposed that thereafter, he has recorded the statement of the informant's son and arrested the accused and made inquiry with the accused and recorded his statement. The accused told in his statement that he was fond of dogs and was having two dogs of Labrador and Rottweiler breed. The accused also told in his statement that time and again the dogs were vaccinated and he was holding vaccination certificate. He further told about the incident that hot exchanges were going on between Hormus and informant's wife. Hormus was shouting at informant's wife and on seeing this the dog Rottweiler, which was in the hand of the accused, slipped away from his hand and took bite of the informant. He tried to control it thereafter, but could not get success. He recorded the statement of the accused accordingly and took xerox copies of the Vaccination certificates from the accused. Three xerox copies of vaccination certificates were marked at Article-A collectively. Thereafter, he sent the dog for its examination to Veterinary hospital. He sent the accused, the dog and constable Pawar along with the letter to LDO. After examination the report came to be submitted to him. The original letter dtd. 01/06/2010 was proved at Exh.64. After investigation he filed the charge-sheet against the accused. It was again directed by the Court for re-investigation. Accordingly, he investigated the

same again and submitted the charge-sheet against the accused.

13. Heard both the Ld. Counsel for the respective parties. To prove the guilt of the accused the prosecution has examined five witnesses. Mr. Kersi Irani (PW1) is the injured and informant, Hormas Irani (PW2) is the son of the informant and eye-witness, Brijesh Yadav (PW3) and Shivaji Talekar (PW4) are the doctors and Vijay Dandavate (PW5) is the Investigating Officer. Brijesh Yadav (PW3) has examined Kersi Irani (PW1) and treated him and Shivaji Talekar (PW4) Veterinary Doctor has examined the said dog. As incident is of dog bite there is very limited role of Investigating Officer and his evidence is technical one. The prosecution is mainly relying on the evidence of injured, eye-witness and two doctors. If their evidence is perused, it appears that they are coming with the specific case that the accused is the distance relative of the informant and dispute is pending between them. On 13/05/2010 he called the informant to have a talk over the dispute related to the flat. There was exchange of word between them. The dog was trying to came out of the car. Inspite of request not to open the door of the car the accused opened the door of the car due to which dog came out and directly attacked the informant. He bite on the calf i.e. on the right leg two times and on right hand. Therefore, the informant was taken to the hospital and then he lodged the FIR vide Exh.44. Similar fact was deposed by eye-witness Hormas Irani (PW2) as there was exchange of words between the informant and accused and accused had open the door of the car due to which dog of the accused bite on the calf i.e. on right leg of the informant twice and on the right hand. The evidence of both witnesses is supported with the evidence of doctor and Medico Legal Certificate Exh.55.

14. The doctor Brijesh Yadav (PW3) specifically deposed that on 13/05/2020 the informant was having two injuries on right leg and one

injury on right hand which is of dog bite. The injuries were fresh and the informant has also narrated the history of dog bite and accordingly, he has provided medical treatment. The evidence of injured witness i.e. informant and doctor is fully corroborated with the Medico Legal Certificate which shows that injury was caused on the same day on the same time. The other witness i.e. the Veterinary doctor Shivaji Talekar (PW4) was examined the dog which is of Rottweiler breed and according to him, it belongs to the accused Cyrus. Therefore, he has issued letter vide Exh.60. In short it is specific case of the informant and eye-witness that dog of the accused three times bite the informant and it is specifically deposed by doctor Shivaji Talekar (PW4) that the said dog is of Rottweiler breed and it was owned by the accused. The evidence of eye-witness and injured is fully corroborated with the FIR and also consistent on material particulars. The evidence regarding causing injuries to the informant by dog bite is also corroborated with Medico Legal Certificate Exh.55 and letter Exh.60 is filed which was issued by doctor Shivaji Talekar (PW4) showing that the said dog belongs to the accused.

15. Per contra it is necessary to see what defence is raised by the accused to show that the evidence of these witnesses is not trustworthy and cannot be acted upon. To put up the defence the accused has relied on the cross-examination of the witnesses. Therefore, for better understanding of the case it will be proper to deal with these defences one by one.

16. Firstly, it is claimed by the accused that he was not present on the spot at the time of incident. In support of this contention it is urged on behalf of the accused that no independent person was examined other than the informant and his son to show that the accused was present on the spot. In this regard, recording the statement of independent person is the

discretion of the Investigating Officer. Record shows that the informant was not happy with the investigation carried out by the Investigating Officer. Therefore, he applied for the re-investigation and matter was also re-investigated. Therefore, merely because statement of the independent person was not recorded by the Investigating Officer does not mean that the accused was not present on the spot. The informant and his son on oath deposed that the accused was present in the society with the dog and the said dog bite the informant thrice.

17. Moreover, generally in the police matters people not coming forward to get their statement recorded as a witness. Therefore, people are reluctant to go to the police station even though they are witnessed to the incident. Therefore, in these circumstances it is very difficult to find the eye-witness. In the present matter also Investigating Officer has not recorded the statement of independent person. Therefore, at the most it can be termed as irregularities. But it will not fatal the case of the prosecution.

18. It is even contention of the accused that CDR and SDR are filed on record to show that the accused was not present on the spot. However, collecting CDR is also discretion of the Investigating Officer and when there is direct evidence of injured eye-witness regarding the presence of the accused, there is no need to ask for the CDR and SDR. Therefore, this defence of the accused is not sustainable.

19. It is also one of the defence of the accused that there is no evidence that the said car belongs to the accused. In this regard suggestions were given in the cross-examination that car not belongs to the accused. In this matter, there is specific allegation of opening the door of the car negligently. Due to which dog bite the informant thrice. Therefore, ownership

of the car will not affect the merit of the case. Even if car belongs to someone else it will not make any defence. Because it has nothing to do with the dog or with the accused. Anyone can take the car of family member or friend to meet someone. So this fact will not fatal the case of the prosecution even if the car not belongs to the accused. Moreover, admittedly documents of the said car is not collected by the Investigating Officer. Therefore, at the most it is irregularity but it will not affect the merit of the case. Hence, I find no force in this defence of the accused.

20. It is most important defence of the accused that the said dog not belongs to the accused. It is urged on behalf of the accused that dog is not belongs to the accused. Therefore, suggestions were given in the cross-examination that no documents were filed on record to show that dog belongs to the accused. However, in this regard the prosecution has examined Veterinary doctor Shivaji Talekar (PW4) who has specifically deposed that accused brought the dog to his clinic and he has medically examined the said dog which is of Rottweiler breed. The dog sent by the police along with the letter. The said letter is filed on record as well as certificate issued by doctor is also filed on record vide Exh.60. Both shows that dog which is of Rottweiler breed belongs to the accused. If dog is not belongs to accused there was no occasion for him to taking the dog to the doctor. But he has taken the dog to the doctor it shows that said dog is owned by the accused. There is no reason for the doctor to falsely deposed against the accused that the said dog is owned by the accused. There is no reason to disbelieve the version of the doctor Shivaji Talekar (PW4). Therefore, in my view on the basis of the evidence of Shivaji Talekar (PW4) and Exh. 60 it is proved by the prosecution that the said dog belongs to the accused and defence of the accused that he has no concern with the said dog is not probable.

21. It is also one of the defence of the accused that there is contradiction in the statement of injured and eye-witness. Therefore, their evidence is not trustworthy and liable to be rejected. It is urge on behalf of the accused that informant deposed that as soon as the accused open the door of the car dog attacked him and took two bites on right leg and one on right hand. On the other hand it is deposed by Hormas Irani (PW2) that accused directed the dog towards him and father intervened so the said dog took bite of his right leg and right hand. It is the fact that informant has deposed that the accused opened the door of the car and the dog attacked him and took bite. On the other hand it is deposed by the eye-witness that the accused directed the dog towards him. In this regard, if the statement of the informant is perused, it appears that since beginning he is coming with the case that the accused open the door of the car and dog attacked him. The evidence of the injured is on better footing. It is also corroborated with FIR so there is no reason to disbelieve him.

22. On the other hand son of the informant subsequently came with the story of directing the dog towards him. Therefore, this version of the son of the informant is not believable. However, merely because some of the testimony of one of the eye-witness is not trustworthy it does not mean that entire evidence of the prosecution is liable to be thrown away. Part of the testimony can be certainly be relied upon.

23. Here, I would like to refer the maxim :-

Maxim :- *Falsus in uno falsus in omnibus* -

Meaning :- That false in one thing is false in whole thing.

As per above maxim, false in one thing is false in whole thing. However, Hon'ble Supreme Court in the case of Appabhai and another Vs.

State of Gujrat [AIR 1988 SC 696] specifically held that the maxim *falsus in uno falsus in omnibus* is not applicable in India. Therefore, merely because small part of the testimony of any witness is false does not mean that his entire deposition/testimony is false. If the major part of the evidence is trustworthy it can be relied upon. Certainly one or two false sentence knowingly or unknowingly made by the witnesses does not mean that entire testimony is not reliable. It is necessary to mentioned one more thing that eye-witness may not have deposed this fact. Therefore, he was under impression that accused have directed dog.

24. In the present matter also even if it is assumed that son of the informant is falsely deposed that the accused has directed the dog towards him, even then entire testimony of the informant and his son is not liable to be discarded. Though there is some contradiction between the statement of the informant and his son regarding directing towards him or negligently open the door. But one thing is sure that dog was in the car and the accused open the door of the car due to which dog attacked the informant and took bite three times. This evidence is supported with the Medico Legal Certificate Exh.55. Therefore, much important should not be given to this contradiction and this will not fatal the case of the prosecution.

25. As discussed above, none of the defence of the accused is sustainable. However, the prosecution is not escaped from proving the liability of the accused beyond reasonable doubt. To prove the guilt of the accused the prosecution has examined the informant and his son. Both of them deposed that black colour Rottweiler dog of the accused was in the car of the accused. There was exchange of words between the accused and the informant. However, the accused have open the door of the car. Though informant was asking him not to open the door of the car inspite of that

ignoring him the accused has open the door due to which dog attacked the informant and took two bite on right leg and one bite on right hand of the informant. The evidence of these witnesses is supported with the Medico Legal Certificate Exh.55. There is no effective challenge to the fact that injury was caused to the informant due to dog bite. As per the evidence of doctor Brijesh Yadav (PW3) injuries were fresh and of dog bite. The evidence of the informant regarding the injury is corroborated with the FIR Exh.44. There is promptness in lodging the FIR. Therefore, there is no reason to disbelieve the version of the informant that dog of the accused took bite thrice to the informant.

26. The Ld. Advocate of the accused has relied on the judgment in the case of Harbeer Singh Vs. State of Rajasthan reported in (2016) 16 Supreme Court Cases 418 wherein it was held that if two views are possible, Court should relied on the view which favours the accused. However, in the present case no other view is possible. Therefore, with due respect facts of this judgment is different from the present case.

27. Now here it is necessary to see whether this act of the accused can be termed as negligent act. The dog which was sitting in the car was of Rottweiler dog and is known for their aggressiveness. The Rottweiler dog is also famous for powerful and having forceful bite. They are capable of generating upto 328 PSI (Pound Per Square Inch) bite. They are one of the strongest breed of dogs. The accused is the owner of the said dog. Therefore, he was certainly having knowledge about the aggression of the said dog. It is specifically deposed by Kersi Irani (PW1) that the dog was trying to come out of car it means that at the time of opening the door of the car the accused knows that the dog was angry. In spite of that without taking reasonable care he has open the door of the car due to which the said dog bite the informant.

When such type of aggressive dog was taken to the public place it is the duty of the owner of the dog to take reasonable care for the safety of others. The accused while opening the door not taken reasonable care due to which the dog bite the informant and caused simple hurt to him. Therefore, in my view the prosecution beyond reasonable doubt proved that the accused has not taken reasonable care while opening the door of the car, having knowledge of the aggression of the dog.

28. The accused is charged for the offence punishable under Section 289 of the IPC. The Ld. Advocate of the accused has relied on the judgment in the case of *Sanjeev Kaushal Vs. State of Himachal Pradesh reported in criminal appeal no. 520 of 2015* wherein following ingredients are mentioned which read as under :-

- (a) That the animal (dog) was in possession of the accused;
- (b) That the accused omitted to take sufficient order therewith to guard against probable danger to human life or of grievous hurt therefrom;
- (c) That such omission was negligence, or with knowledge of such possible danger.

As per above ingredients the dog must be in possession of the accused and the accused omitted to take sufficient order to guard against the probable danger to human life without knowledge of such possible danger. In the present matter dog was in possession of the accused, the accused is having knowledge about the aggression of the dog. In spite of that he has not taken sufficient care or order therewith to guard against public danger to human life. Therefore, he has committed the offence punishable under Section 289 of the IPC.

29. The accused is also charged for the offence punishable under Section 324 of the IPC. However, the act of the accused was not intentional but negligent. Therefore, Section 324 of the IPC is not attracted. However, simple injury was caused due to negligent act of the accused which is endanger to human life. Thus, the accused has committed the offence punishable under Section 337 of the IPC. As offence is punishable under Section 337 of the IPC is minor offence. Therefore, there is no need of framing the charge and accused can be convicted. In my view the accused has committed the offence punishable under Section 337 of the IPC.

30. The accused is also charged for the offence punishable under Section 352 of the IPC. However, nowhere it is the case of the prosecution that accused has assaulted or used criminal force to the informant other than grave and sudden provocation. Therefore, is also not attracted and accused is liable to be acquitted. Hence, I answer point no. 1 in affirmative and point no. 2 and point no. 3 in accordingly.

AS TO POINT NO.4 :-

31. As discussed above, the prosecution has proved beyond reasonable doubt that the accused has committed an offence punishable under Sections 289 and 337 of the IPC. Therefore, it is necessary to hear the accused on the point of sentence. Hence, I stop here to hear the accused on point of sentence.

Dt. 03/02/2023.

(*Nadeem A. Patel*)
Metropolitan Magistrate,
40th Court, Girgaon, Mumbai.

32. I heard the accused on the point of sentence. The accused kept mummed. The Ld. Advocate of the accused Mr. Madan Gupta submitted that accused be released on fine only. The Ld.A.P.P. on the other hand prayed for maximum sentence as accused has not taken reasonable care. Therefore, he prayed for maximum sentence.

33. While awarding the sentences the Court has to see fact and circumstances of the case and age of the accused and victim. The gravity of the offence. In the present matter dog of the accused took three bites to the informant. At the time of the incident age of the informant was 72 years old. The dog which belongs to the accused was of Rottweiler breed. The doctor Shivaji Talekar (PW4) specifically deposed that the dog of Rottweiler breed are very aggressive. The accused who is the owner of the said dog was aware that this dog is very aggressive dog. Therefore, reasonable care was expected from him. The age of the informant is 72 years at such old age the strong and aggressive dog attacked him and took three bites. When the person like accused who is grown up man was going in the public place with such aggressive dog, if reasonable care not taken then certainly it is harmful for the public. Therefore, in such type of cases where there is question of public safety leniency is unwarranted. Hence, looking to the circumstances, and age of the informant i.e. victim, sentence coupled with fine will meet the ends of justice. In answer to point No. 4, I pass the following order -

:- ORDER :-

1. Accused **Cyrus Percy Hormusji** is hereby convicted for the offence punishable under Section 289 of the IPC vide Section 248(2) of the Code of Criminal Procedure and he is sentenced to suffer simple imprisonment for three months and he is directed to pay a fine of Rs.1000/- (Rs. One Thousand Only). In default of payment of fine the accused shall suffer simple imprisonment for eight days.

2. Accused is further convicted for the offence punishable under Section 337 of the IPC vide Section 248(2) of the Code of Criminal Procedure and he is sentenced to suffer simple imprisonment for three months and he is directed to pay a fine of Rs. 500/- (Rs. Five Hundred Only). In default of payment of fine the accused shall suffer simple imprisonment for eight days.

2A. The accused is acquitted for the offence punishable under Sections 352 and 324 of the IPC vide Section 248(1) of the Code of Criminal Procedure.

3. Both substantive sentence passed against the accused be run concurrently.

4. The copy of the judgment be given to the accused free of cost forthwith.

(*Nadeem A. Patel*)
Metropolitan Magistrate,
40th Court, Girgaon, Mumbai.

Date:- 03/02/2023.

Dictated on : 03/02/2023.
Transcribed on : 03/02/2023.
Signed on : 03/02/2023.
PPK.