

MHMM150036902018 **Form No. XXXII** Received on :- 15/06/2018
Part 'A' Registered on :- 15/06/2018
Decided on :- 21/05/2025
Duration : 6 Yrs 11 Months 6 days



(Para 44(i) of Chapter VI of Criminal Manual)

JUDGMENT

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,
(62nd COURT), DADAR, MUMBAI**
(Presided over by Suhas Vijaya P. Bhosale)

(Date of the Judgment: 21st May, 2025)

Case No. 6200569/PW/2018
CNR No. MHMM15-003690-2018

FIR/Crime No. 32/2018,
Police Station: Worli, Mumbai.

COMPLAINANT	The State of Maharashtra, through the Station In-charge of Worli Police Station, Mumbai.
REPRESENTED BY	Ld. A.P.P Mr. Enakphale
ACCUSED	Mr. Rishab Maushik Patel Age: 40 years, R/o.: Flat No. C-01, Alfa Apartment 3 rd floor, Sir Pochkhanwala road, Worli, Mumbai.
REPRESENTED BY	Ld. Adv. R.R. Mishra.

Part 'B'

(Para 44(ii) of Chapter VI of Criminal Manual)

Date of offence	01/02/2018
Date of FIR	01/02/2018
Date of charge-sheet	15/06/2018

Date of framing of Charges	20/12/2023
Date of commencement of evidence	12/08/2024
Date on which judgment is reserved	09/05/2025
Date of the judgment	21/05/2025

Accused Details

Rank of the Accused	Name of the Accused	Date of arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr. P.C.
1	Mr. Rishab Maushik Patel	Not arrested produced before the Court with charge sheet.	15/06/2018	Section 324, 289 and 506 of Indian Penal Code	Convicted	As per final order	As per final order

Part 'C'**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Mr. Ramik Kirti Shah	Informant (Exh.23)
PW2	Mr. Anuj	Witness (Exh.30)

	Sunder Singh	
PW3	Dr. Mr. Sishrut Ganesh Mukkawar	Medical officer (Exh. 32)
PW4	Mr. Navnath Mama Rupnawar	Investigating officer (Exh.35)

B. Defence witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NA		NA

C. Court witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NA		NA

LIST OF PROSECUTION EXHIBITS

Sr. No.	Exhibit No	Nature of Exhibit
1	Oral report	Exh.24/PW-1
2	CCTV footage stored in DVD along with certificate under Section 65 B	Exh. 25/PW-1
3	Medical certificate	Exh. 33/ PW-3
4	Spot Panchanama	Exh. 35/ PW-4

1] The accused is facing the trial for offences punishable under Sections 324, 289 and 506 of Indian Penal Code (Hereinafter referred to as “IPC”).

2] Prosecution case in short is as under ;

(a) The first informant Mr. Ramik Kirti Shah resides at flat No. C-2 and C-3, third floor Alfa apartment, Worli Mumbai with his wife and children.

Accused is his neighbour. He has Husky pet dog. Informant's parents reside at fourth floor in same building. He used to have breakfast at his parent's house everyday.

(b) On 01/02/2018 at about 10.00 am the informant was about to proceed towards his office. So he along with his servant and his son (one and half year old) was going down in a lift from fourth floor. The lift was stopped on third floor. That time the accused tried to enter the lift along with his pet dog. The informant requested him that, as his son is cynophobic, so let them go down first. But he was not ready to listen. Then the informant requested him to let them come outside but even he was not ready for that. Then he dragged his dog inside the lift and he sicced on him. The dog bit his left forearm. Thereafter, the informant, his servant and his son came out of the lift. The accused followed them and said do whatever he want to do. Thereafter, the informant went to hospital, after getting treatment he had lodged report about the incident.

3] On the basis of that report C.R. No.32/2018 was registered and its investigation was handed over to PSI Mr. Navnath Rupnawar. During investigation he visited the spot of incident and prepared spot panchanama in presence of panchas. Then he recorded statements of witnesses who were acquainted with the facts of case. He collected CCTV footage of spot from the first informant and also recorded supplementary statement of the informant to that regard. Then he collected medical certificate of the informant. On completion of investigation, he filed police report under Section 173 of Code of Criminal Procedure (Hereinafter referred to as Cr.P.C. in short) before the Court.

4] On the basis of said police report, after taking cognizance of offence,

charge was framed against the accused (Vide Exh. 14). He pleaded not guilty. Therefore, as per provisions of Section 242 of Cr.PC trial was commenced.

5] In order to substantiate the charges, prosecution has examined in all four above mentioned witnesses out of seven listed witnesses. As per order below Exh. 01 dated 29/04/2025 evidence of prosecution side came to be closed.

6] All incriminating circumstances appearing against the accused were referred to him while recording his statement under Section 313 (1) (b) of Cr.P.C. His defence is of total denial and false implication on account of inimical terms.

7] Following points arose for determination on which findings are recorded for the reasons stated there under:

SR. NO.	POINTS FOR DETERMINATION	FINDINGS
1	Does prosecution prove that on 01/02/2018 at about 10.00 am inside the lift of Alfa Apartment, 3 rd Floor, Sir Pochkhanwala road, Worli, Mumbai the accused voluntarily caused hurt to the informant by means of his pet dog and thereby he has committed an offence punishable under Section 324 of IPC?	In the affirmative.
2	Does prosecution further prove that on above said date, time and place the accused knowingly or negligently omits	In the affirmative.

	to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal and thereby committed an offence punishable under Section 289 of IPC?	
3	Does prosecution further prove that on above said date, time and place the accused committed criminal intimidation by threatening the informant with injury and thereby committed an offence punishable under Section 506 of IPC?	In the negative.

REASONS FOR FINDING ON POINT UNDER CONSIDERATION :

8] Heard both sides at sufficient length.

POINT NO. 1

9] This point pertains to charge punishable under Section 324 of IPC. As per contention of prosecution on relevant time the accused voluntarily caused hurt to the informant by means of animal i.e his husky pet dog. In order to prove said charge prosecution has mainly relied on direct oral evidence of the informant Mr. Ramik Shah (PW-1/Exh.23) and his servant Mr. Anuj Singh (PW-2/Exh. 30). Both of them supported the contention of prosecution and in one voice deposed that when they were going down in a lift, the lift was stopped at third floor and that time the accused tried to enter the lift with his pet dog. Despite of request made by the informant he did not listen to him and dragged his pet inside the lift, the dog bit on left

hand of the informant.

10] In order to strengthen the testimony of these witnesses and to show that the informant had sustained injury at left hand, the prosecution has examined medical officer Dr. Mr. Sushrut Mukkawar (PW-3/Exh.32). His evidence goes to show that on 01/02/2018 at about 11.40 pm while he was working as casualty medical officer at Podar hospital, the first informant Mr. Ramik Shah had been to the hospital. He gave history of dog bite. Then he had examined him and found bite marks at left wrist joint. Accordingly, he had issued medical certificate (Exh. 33).

11] Prosecution has brought circumstantial evidence i.e spot panchnama (Exh. 36) on record through evidence of the investigating officer Mr. Navnath Rupnawar (PW-4/Exh. 35).

12] The prosecution has also produced electronic record i.e CCTV footage along with certificate issued under Section 65B (Collectively Exh. 25).

13] Relying on the above mentioned evidences Ld. APP argued that oral evidence of the informant and another witness of incident corroborates with the contention of prosecution. There is circumstantial evidence to strengthen their testimony. According to him there is enough evidence to prove the charge under Section 324 of IPC. He requested to convict the accused.

14] On the other hand Ld. defence counsel argued that there are material inconsistencies in the evidence of prosecution. He argued that as per contention of prosecution incident had occurred at about 10.00 am

whereas medical evidence shows that the first informant had been to the hospital at about 11.40 pm. That means after more than twelve hours the informant had been to the hospital. Medical officer has admitted in his cross examination that in such case there would not be fresh bleeding at injury site in case of dog bite. He also argued that subsequent conduct of the informant that he did not take anti rabies vaccine, this itself falsify the case of dog bite.

15] He also argued that there is delay in collecting CCTV footage. It has not been seized vide panchanama. Panch witness has not been examined. There is history of inimical terms. Therefore, evidence on record is not enough to prove the charge. He requested to acquit the accused.

16] Thoughtful consideration is given to the arguments of both sides. In order to prove the charge punishable under Section 324 of IPC the prosecution has to prove following material ingredients.

- (a) The accused voluntarily caused hurt to the informant.
- (b) Hurt is caused by means animal i.e dog.

17] In order to establish these material ingredients prosecution has relied on oral as well as documentary evidence. It is settled position of law that in a criminal trial prosecution has to prove any alleged fact beyond reasonable doubt by adducing strict proof of the same. Keeping this basic principle of Criminal law in mind we have to assess the evidence.

18] At the outset it has to be mentioned that before coming to any conclusion on the basis of version of prosecution witness in his examination-in-chief we have to test his veracity. For that purpose it can be seen how far evidence of such witness remained unshaken during the test

of cross examination. Ld. defence counsel has cross examined these prosecution witnesses at length. So far as evidence of the informant as regards to incident is concerned, it appears that defence side could not elicit anything significant through cross-examination in order to discredit his testimony. During cross examination the informant admitted that on the day of incident he did not take anti rabies vaccine, but then volunteers that he took it later on. He has denied all adverse suggestions put to him about earlier dispute between accused and his family. Even defence side could not elicit anything significant through cross-examination of another eye witness i.e Mr. Anuj Singh (PW-2). Overall it appears that evidence of the informant and Mr. Anuj Singh has remained unshaken during the test of cross-examination.

19] As per **Section 157 of Indian Evidence Act**, former statement made by a witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved. In the light of this provision, when we read evidence of informant as compared to his previous statement i.e oral report (Exh. 24) it transpires that his evidence is consistent with his previous statement. This also goes in favour of prosecution.

20] Testimony of informant is corroborated by another witness as well. Defence side has raised objection to rely on the evidence of Mr. Anuj Singh citing him as interested witness, as he is servant of the first informant. But that objection would not sustain for the sole reason that said witness has been cited in the oral report (Exh. 24). His presence inside the lift i.e spot of incident, on relevant time has not been falsified by the defence. Only because the witness is servant of first informant we cannot brush aside his evidence if it is otherwise trustworthy. Defence side has not brought

anything on record to discredit this witness. Therefore, there remains no force in the objection raised during oral argument to that regard.

ELECTRONIC RECORD

21] Moreover, prosecution has brought electronic record i.e CCTV footage (Exh. 25) on record. Ld. defence counsel raised objection to consider the electronic record, he argued that there is delay in collecting the CCTV footage, moreover it has not been seized vide panchnama.

22] Admittedly there is special provision as to evidence relating to electronic record. Admissibility of electronic record is governed by provision of **Section 65B of the Indian Evidence Act**. So in order to be part of record, any such electronic record will have to pass through the conditions enumerated in Section 65-B of the Act. Here the prosecution has brought the electronic record i.e DVD along with certificate (collectively Exh. 25) on record through the evidence of first informant Mr. Ramik Shah. His evidence shows that he had issued the certificate (Exh. 25) in which he has referred about the installation of CCTV camera inside and outside his flats. He has also referred its company as HIK Vision and further elaborated that how footage gets stored, how he collected and copied it in DVD (Exh. 25).

23] So far as delay in collecting footage is concerned evidence of investigating officer shows that initially he had issued letters to housing society to supply footage but it was answered that CCTV camera inside the lift was not operational. Then he had collected the footage of CCTV camera installed outside the house of informant. Without any other justifiable ground mere delay in collecting CCTV footage from DVR which works without human intervention cannot adversely affect the case of

prosecution. Thus, from above discussion it appears that all conditions mentioned in Section 65B of Indian Evidence Act, are satisfied in the case at hands and as such the CCTV footage becomes part of evidence over here.

24] DVD (Exh. 25) goes to show that footage is not directly related to the incident which allegedly occurred inside the lift, on the contrary it appears that the footage covers the outside premises of the lift, it shows what had happened outside the lift before and after incident. The circumstances appearing in the CCTV footage that lift was stopped on that floor, accused was waiting there with his servants and pet dog, then he pulled his dog inside the lift, within couple of seconds all of them came outside the lift and then episode occurred thereafter. The circumstances appearing in the CCTV footage, though to some extent, corroborates with the contention of prosecution.

MEDICAL EVIDENCE

25] Ld. Defence counsel argued that as per contention of prosecution alleged incident had occurred at about 10.00 am and medical evidence shows that informant had been to the hospital at about 11.40 pm. This leaves room for doubt of false implication.

26] In the light of arguments when we go through record it appears that there might be an error in medical certificate with respect to time of examination of informant, because in oral report it has been mentioned that informant had been to Podar hospital earlier and he was treated there as OPD case No. C/558. This has been mentioned in FIR which was reduced into writing at about **12.45 pm on 01/02/2018**. If the informant would have been to the hospital at about **11.40 pm on 01/02/2018** it's

reference would not have been there in oral report. Casualty number mentioned by the informant (i.e 558) in his oral report and number mentioned on the medical certificate (Exh. 33) is one and same. Therefore, this Court is of view that time of examination might have been inadvertently mentioned as 11.40 pm instead of 11.40 am.

27] Medical certificate (Exh. 33) is consistent with the contention of prosecution. History narrated to the medical officer when the informant immediately had been to the hospital is consistent with the case of prosecution. Medical certificate also strengthens the testimony of the informant as regards the injury such as bite marks on left wrist.

28] Thus, above mentioned evidence shows that accused sicced his dog and it bit the left hand of the informant. Now it has to be seen whether said effect was caused voluntarily. In order to understand this we have to consider the definition of term voluntarily as provided in Section 39 of the Indian Penal Code. For ready reference said provision is reproduced here;

Section 39 Voluntarily:- A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

29] When we consider the facts of case in hands and entire episode as is brought on record through oral, documentary and circumstantial evidence it appears that act of accused was certainly voluntarily. Evidence on record shows that though the informant resisted him to take his dog inside the lift he dragged him, the dog sicced and bit on the left hand of the informant. It

is pertinent to note that all incriminating evidences were referred to the accused, but merely denial he could not probabalies his defence. Oral evidence of material witnesses remained unshaken during cross examination, it is consistent with the case of prosecution. Moreover, circumstantial evidences like medical certificate (Exh. 33), spot panchanama (Exh. 36) and electronic record (Exh. 25) corroborates with oral testimony of the informant. Therefore, it appears more reliable and trustworthy. Prompt FIR, after medical treatment, leaves no room for doubt of afterthought implication. Overall from the facts on record the prosecution has successfully proved all material ingredients of Section 324 of IPC. Hence, point No. 1 is answered into affirmative.

POINT NO. 2.

30] This point pertains to charge punishable under Section 289 of Indian Penal Code. As per contention of prosecution on relevant time the accused knowingly omitted to take order with his dog in his possession. In order to prove said charge prosecution has relied on the evidence of above mentioned witnesses and electronic record. On perusal of evidence on record it is clear that the informant resisted the accused from taking his dog inside the lift, but he did not listen to him and dragged his dog inside the lift. Evidence on record such as oral evidence of the informant Mr. Ramik Shah, Mr. Anuj Singh, coupled with medical evidence and electronic record (Exh. 25) shows that accused knowingly omitted to take such order with his pet dog as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from his pet to the informant, his son and Mr. Anuj Singh. Thus, there is sufficient evidence to prove all material ingredients of charge punishable under Section 289 of IPC. Therefore, point No. 2 is answered into affirmative.

POINT No. 3

31] This point pertains charge punishable under Section 506 of Indian Penal Code. As per contention of prosecution the accused committed criminal intimidation by threatening the informant of injury, however informant Mr. Ramik Shah has not uttered a word about the same in his evidence. It is true that his servant Mr. Anuj Singh has deposed that accused said to the informant do whatever he want to do. But overall it appears that evidence on record is not sufficient to prove the charge punishable under Section 506 of IPC. Therefore, point No. 3 is answered into negative.

32] Considering findings of point Nos. 1 and 2 accused is held guilty for the offences punishable under Section 324 and Section 289 of IPC. Here, I pause to hear the accused on the point of quantum of punishment.

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Date:- 21/05/2025

(Suhas P. Bhosale)
Judicial Magistrate First Class,
Court No. 62nd Dadar, Mumbai

33] The accused in person said nothing. He just put his head down, to show repentance. Whereas Ld. defence counsel argued that there are no criminal antecedents. Having regard to the facts of case, lenient view be taken. He also requested to extend the benefits of The Probation of Offenders Act, 1958.

34] Ld. APP requested to convict the accused with harsh punishment.

35] While quantifying the punishment several factors need to be taken

into account such as nature of offence, character of accused, impact of offence on the victim of crime. It is settled position that the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as well as the society has the satisfaction that justice has been done to it. The Court has not only to keep in view the rights of criminal but also the rights of victim of crime while imposing appropriate sentence.

36] In the light of submissions record is thoroughly perused and thoughtful consideration is given to arguments. The defence side contended that there are no antecedents at the credit of accused. Even it is not contention of prosecution that accused has criminal record. Record shows, accused has faced the trial, he never tried to protract the same. All these are the mitigating circumstances appearing in favour of the accused.

37] Looking at aggravating circumstances it appears from record that at the time of incident one and half year old son of the informant was with him inside the lift. The way in which the accused dragged his pet inside the lift as is visible from CCTV footage (Exh. 25) shows that he is not compassionate towards his own pet. He did not care about the informant, his son and dragged his own pet inside the lift which is normally meant for use by the human. The act of accused resulted in injury to the informant. Considering punishment prescribed for the offences proved and facts of case, the accused is certainly not entitle to too much leniency.

38] While quantifying sentence sufferings of victim cannot be overlooked. The informant who is victim of crime, might have suffered after incident both physically and mentally. Certainly, for his sufferings the informant cannot be compensated in terms of money but imposing fine

and its payment to the informant towards compensation would give him some kind of relief. Therefore, following amount of fine is quantified, which shall be paid to the informant as compensation vide Section 357 of Cr.PC. In the result, following order is passed.

ORDER

[1] The accused is convicted of offences punishable under Section 324 and Section 289 of IPC vide Section 248 (2) of Cr.PC.

(a) On account of offence punishable under Section 324 of IPC, he is sentenced to rigorous imprisonment for the period of four months and also pay fine of Rs. 3,000/- (Three thousand).

(b) On account of offence punishable under Section 289 of IPC he is sentenced to rigorous imprisonment for a period of three months and pay fine of Rs. 1,000/- (One thousand).

[2] Substantive sentences shall run concurrently vide Section 31 (1) of Cr.PC

[3] In default of payment of fine accused shall undergo further imprisonment for a period of fifteen days vide Section 64 of Indian Penal Code.

[4] On realization of fine amount, on expiry of appeal period and on confirmation that no appeal is pending the amount of fine be paid to the first informant towards compensation vide Section 357 of Cr.PC.

[5] Period of detention, if any, undergone by the

accused during the course of investigation, inquiry and trial shall be set off against the term of imprisonment imposed on him, vide Section 428 of Cr.P.C.

[6] Accused is acquitted of offence punishable under Section 506 of IPC vide Section 248 (1) of Cr.P.C.

[7] Copy of judgment be given to the accused immediately, free of cost.

[8] Pending application, if any, be treated as filed.

(Accused is made aware of his right to prefer appeal against this judgment.)

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(Suhas P. Bhosale)

Place : Mumbai.
Date : 21/05/2025

Judicial Magistrate First Class,
62nd Court Dadar, Mumbai.