



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 237 OF 2019**

The State of Maharashtra

...Applicant

**Versus**

Tulshiram Mahada Nagargoje

...Respondent

.....  
Mrs. S. N. Deshmukh – APP for applicant/State  
None for the Respondent  
.....

**CORAM : R. G. AVACHAT  
AND  
NEERAJ P. DHOTE, JJ.**

**DATED : 17<sup>TH</sup> APRIL, 2024**

**PER COURT : -**

1. This application is filed by the State seeking leave to file Appeal for enhancement of punishment.

2. We have heard learned Assistant Public Prosecutor for the State and perused the papers on record.

3. Respondent No. 1 – accused was tried and convicted by the learned Additional Sessions Judge, Beed in Spl. (POCSO) Case No. 15/2015 vide Judgment and Order dated 04.07.2019. The operative part of the said Judgment and Order is as follows : -

1. Accused Tulshiram Mahada Nagargoje, R/o. Sonesawargaon, Tq. Patoda, Dist. Beed, is convicted for the offence punishable U/sec. 8 of the Protection of Children from Sexual Offences Act, 2012, 354-A, 363 and 506 of the Indian Penal Code, vide section 235 (2) of the Code of Criminal Procedure.
2. Accused Tulshiram Mahada Nagargoje, R/o. Sonesawargaon, Tq. Patoda, Dist. Beed, is convicted for the offence punishable U/sec. 8 of the Protection of Children from Sexual Offences Act, 2012, vide Section 235(2) of the Code of Criminal Procedure and he shall suffer rigorous imprisonment of five (05) years and to pay fine of Rs.10,000/- (Rs. Ten Thousand only). In default of payment of fine, he shall undergo Simple Imprisonment for two (02) months.
3. Accused Tulshiram Mahada Nagargoje, R/o. Sonesawargaon, Tq. Patoda, Dist. Beed, is hereby convicted for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012, therefore, in view of provisions of Section 42 of the Protection of Children from Sexual Offences Act, 2012, there is no need to punish him separately for the offence punishable U/Sec. 354-A of the Indian Penal Code.
4. Accused Tulshiram Mahada Nagargoje, R/o. Sonesawargaon, Tq. Patoda, Dist. Beed, is hereby convicted for the offence punishable under Section 363 of the Indian Penal Code and he shall undergo rigorous imprisonment for two (02) years and to pay fine of Rs. 5,000/- (Rs. Five Thousand only). In default he shall undergo simple imprisonment for one (01) month.
5. Accused Tulshiram Mahada Nagargoje, R/o. Sonesawargaon, Tq. Patoda, Dist. Beed, is hereby convicted for the offence punishable under Section 506 of the Indian Penal code and he shall undergo rigorous imprisonment for two (02) years and to pay fine of Rs. 5,000/- (Rs. Five thousand only). In default he shall undergo simple imprisonment for one (01) month.

6. Accused Tulshiram Mahada Nagargoje, R/o. Sonesawargaon, Tq. Patoda, Dist. Beed, is hereby acquitted for the offence punishable under Section 376(2)(i) of the Indian Penal Code and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, vide Section 235(1) of the Code of Criminal Procedure.
  7. The Accused shall surrender his bail bonds.
  8. The period of inquiry, investigation and trial undergone by the accused Tulshiram Mahada Nagargoje, since 16/02/2015 to 29/04/2015, be set off vide Section 428 of the Code of Criminal Procedure.
  9. The substantive sentence of the accused shall run concurrently vide Section 31 (1) of the Code of Criminal Procedure.
  10. On realization of fine amount, the compensation of Rs.15,000/- (Rs. Fifteen Thousand only) be paid to the victim, vide Section 357(1)(b) of the Code of Criminal Procedure after appeal period is over or subject to finality of appeal if any.
  11. Muddemal property i.e. muddemal No. 24/2017, being worthless be destroyed after appeal period is over or subject to finality of the appeal.
  12. A copy of the Judgment be given to the accused in gratis and forwarded to District Magistrate, Beed, vide section 353 (4) and 365 of Code of Criminal Procedure respectively.
  13. The accused is apprised of provision of appeal.”
4. We have perused the testimony of the victim, who was 3½ years at the time of incident. There is nothing in her evidence that there was any penetrative attempt. Her evidence shows that the applicant

removed her nicker and he slept over her and some sticky substance found on her legs. The medical evidence does not support the case of the prosecution.

5. Though learned APP submits that considering the age of victim the medical evidence regarding torn hymen would not be available. Even if such submission is accepted, the evidence of victim does not show that the act of respondent would fall within aggravated offences. We see that learned trial Court has rightly appreciated the evidence on record and convicted the respondent no. 1. We see no merit in the application filed by the State seeking leave to file appeal and we proceed to pass the following order : -

**ORDER**

[i] Leave to file Appeal is declined.

[ii] Application is disposed of.

**[NEERAJ P. DHOTE]**  
**JUDGE**

**[R. G. AVACHAT]**  
**JUDGE**

SG Punde