

CASE COMMENT ON “A (MOTHER OF X) VS STATE OF MAHARASHTRA & ANR”

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INTRODUCTION

Even after so many developments in the Law field, Indian courts still lack proper judgment at times. On an average, around 90 rapes are reported per day in India in 2022, according to the National Crime Records Bureau (NCRB) ¹, and many of them are committed towards minors. This may at times lead to their pregnancy. There are laws in the MTP Act 1971, that allow termination of pregnancy up to twenty weeks, then in 2021, an amendment changed the duration to twenty-four weeks. But, what about cases where the gestational age of the pregnancy has led to more than that due to delay in court’s judgements or unawareness of the pregnant person?

FACTS OF THE CASE

X aged fourteen years was a victim of sexual assault in September 2023 and was unaware of the fact that she was about twenty-five weeks pregnant until 20 March 2024. On the very same day, an FIR was registered, and X was taken to the hospital for termination of her pregnancy it was declared that she was mentally and physically fit for the termination of her pregnancy if the High Court gave permission. On 3rd April 2024, the Appellant sought the termination of X’s pregnancy in the High Court of Judicature at Bombay, and a “clarificatory opinion” was prepared by the Medical Board denying the termination of her pregnancy and lacked re-examination of “X”.² Relying on this report, the High Court dismissed the appeal as the report indicated that the pregnancy was approximately twenty-eight weeks along instead of twenty-four weeks allowed by statute. The Appellant filed a Special Leave Petition under Article 136 of the Indian Constitution because they were unhappy with this ruling. Thus, on 19th April 2024, the High Court Bench reassembled after the usual working hours for the hearing of this case. The Court gave its hearing that the report issued on 3rd April 2024 lacked the mental and

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¹ ‘India lodged average 86 rapes daily, 49 offences against women per hour in 2021: NCRB data’ *THE HINDU* (New Delhi, 31 August 2022)

² *A (Mother of X) vs State of Maharashtra* [2024] Indian Kanoon 5194 of 2024.

physical evaluation of X. Following this, the Court directed a new Medical Board to be made by the Doctors of the Sion Hospital.

LEGAL ISSUES

Whether the previous judgement given on 4th April 2024 was correct keeping in mind the health, consent and rights of X.

If the full term of the pregnancy is carried by the victim who is fourteen years old, will it affect the physical and mental health will there be a threat to the life of the minor if termination of pregnancy is carried out?

OBSERVATION OF THE COURT

In this case, the Court observed through a medical report prepared by the Medical Board of Sion after examining “X” that if the pregnancy is carried out to its fullest term, it will certainly affect her mental and physical health. In addition to this, it also was carried out that abortion of the fetus can be carried on “X”, and the danger to the life of “X” if abortion is carried out is not higher than the risk of full-term delivery. Further, the team showed to the Court that if the pregnancy is carried out to the fullest term, it could cause psychological trauma to her, and the minor is currently 29.6 weeks pregnant. Thus, on 22nd April 2024, the Court set aside its previous judgment given on 4th April 2024 and gave the judgment that X has the right to terminate her pregnancy.

DECISION

The Court gave the judgement on the basis that the mother of X who is seeking medical termination of her child’s pregnancy is barely fourteen years, old and was not aware of the fact that she was pregnant until the gestational age of the fetus was around 24-25 weeks. The Court stated that the previous judgement passed by the court on 4th April 2024 was not correct as there was no medical report made examining the current health condition of “X”, and the new medical report prepared clearly stated that if “the pregnancy is continued against the will of the minor, it will negatively impact the physical and mental well-being of the minor who is barely 14 years old.” In addition to this, the State has agreed to cover all the expenses in relation to the medical procedure and expenses and also regarding the transportation charges and if required for post-termination.

ANALYSIS

This case has importance in accordance with cases of sexual assault on minors leading to pregnancy, as the MTP Amendment Act 2021, requires abortion of the fetus can be done until 24 weeks. Afterwards is considered illegal, however, this Act has allowed for exceptions. In this case, the minor was not aware of her pregnancy until 24-25 weeks and this pregnancy was caused by sexual assault.

The right to abortion is a right guaranteed under Article 21 of the Indian constitution and it is a right consisting of reproductive choice, autonomy and dignity. Whether or not to terminate pregnancy is completely on the individual bearing the pregnancy and is therefore important that such fundamental right is not taken away from any individual and it shall also safeguard the physical and mental health of the person.³

This case also mentions the lack of medical evaluation, as when on the 3rd of April the Medical Board prepared a report on X without examining her, and the reason they cancelled her termination of pregnancy was completely based on the fact that the fetus is above twenty-four weeks. The Court also gave judgement based on this which was wrong as the report had failed to show the effect of pregnancy on the mental and physical health of the pregnant minor. Therefore, a medical board or High Court can not simply reject termination of pregnancy based on the fact that the fetus has passed the prescribed twenty-four weeks.⁴ This judgement provided was wrong as this would have prevented a lot of such minors from receiving medical termination of pregnancy especially when they have been sexually assaulted. And, if a person who has completed the gestational age of 24 weeks seeks termination, medical evaluation of them is of utmost importance. Giving birth to the baby of a rapist could inflict the most anguishing form of injury on a pregnant person. Stating such judgement itself could cause trauma or distress to the pregnant person. Also, the perspective of the pregnant person regarding their pregnancy should be completely given utmost priority. There is also the importance of time sensitivity as recognized by the court in the case of “Z vs State of Bihar”⁵ as the Court realized that the termination of the pregnancy which was possible under the period of twenty weeks was failed by the State authorities. Similarly, in this case, X’s fetus’ gestational age had reached twenty-nine weeks, but when she was first examined it was twenty-four weeks.

³ *X v. State (NCT of Delhi)* [2023] 9 SCC 433

⁴ *XYZ V. State of Gujarat* [2023] SCC 1573

⁵ *Z vs State of Bihar* [2018] 11 SCC 572

There was a delay in giving judgement by the High Court because of the previous incorrect assessment which augments the risk associated with the termination of the pregnancy.

CONCLUSION

To conclude, here in this case it has been shown that even if the pregnant person crosses the prescribed period of twenty-four weeks, the Law shall provide exceptions as here, the case was that of a rape to a minor. This case also highlights the grave responsibility of the medical field in handling out right judgement through their accurate evaluation. Law has to keep in mind the exceptions and uncertainties that arise in society and provide justice accordingly.

