

Vishwanath
S. Sherla

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.1775 OF 2019

ABC

... Appellant

Vs.

1) State of Maharashtra
2) XYZ

... Respondents

Mr.Sachin H. Deokar for the Appellant – ABC
Mr.V.B. Konde-Deshmukh, APP for Respondent – State
Ms.Priyanka Chavan, Advocate appointed, for Respondent No.2

**CORAM: S.S. SHINDE &
MANISH PITALE, JJ.**

DATED: FEBRUARY 8, 2021

ORAL JUDGMENT (PER S.S. SHINDE, J.):

1. Rule. Rule made returnable forthwith with the consent of the parties and heard finally.

2. At the outset, it is required to be noted that since the allegations against the appellant are in respect of the alleged sexual assault, the identity of the first informant as also the appellant needs to be concealed and hence, the appellant is referred to as “ABC” and the first informant is referred to as “XYZ”.

The Registry is directed to maintain the record accordingly.

Note: This order is modified as per the order for speaking to the Minutes dated 3rd March, 2021

3. Heard the learned Counsel appearing for the appellant. He invites our attention to the grounds taken in the appeal and submits that as a matter of fact, the sexual act of the appellant – ABC was after consent from the respondent – XYZ. He submits that the appellant is languishing in jail since March, 2019. There is no possibility of commencement of trial in near future and, therefore, he submits that the appellant may be released on bail.

4. On the other hand, the learned Counsel appointed to represent the cause of Respondent No.2 submits that at the relevant time, on the date of the incident, Respondent No.2 was minor aged 14 years. She belongs to scheduled caste and her statement gets corroboration from the medical report. Therefore, she submits that there is no question of giving consent by Respondent No.2 since she was not competent to give consent being a minor.

5. Learned APP appearing for the State adopts the arguments advanced by the learned Counsel appearing for Respondent No.2.

6. Upon appreciating the rival contentions and perusal of the statement of the victim so also the other evidence collected by the

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prosecution, we are of the considered view that Respondent No.2 was not competent to give consent in law. Apart from it, prima facie, the material collected by the prosecution supports the prosecution case.

7. In that view of the matter, no case is made out to entertain the appeal. Hence, the Appeal is dismissed. We direct the Special Judge, Baramati to expedite the hearing of the Special Case No.61 of 2019 and conclude the same as expeditiously as possible, however, within six months from the receipt of the copy of the order passed by this Court.

8. We appreciate the sincere efforts taken by Ms.Priyanka Chavan, learned advocate appointed to argue the appeal for Respondent No.2. She has rendered able assistance to this Court during the course of hearing. We quantify her fee at Rs.7,500/- which is to be paid by High Court Legal Services Committee, Mumbai, within one week from the receipt of the copy of this order.

9. Criminal Appeal stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)

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