

A LEGAL TRAGEDY OF CUSTODIAL INJUSTICE: A CASE ANALYSIS OF TUKARAM AND ANOTHER VS STATE OF MAHARASHTRA (1979)

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ABSTRACT

This case comment examines the landmark judgement of supreme court of India in Tukaram & Anr. Vs State of Maharashtra commonly known as Mathura Rape case. The case was significant because it raised important questions about consent, burden of proof and Sexual violence in Custodial This case is important because it led to the amendment of rape law in India and the legislative reforms that followed. Studying this case law helps in understanding how judicial decisions can influence the development of criminal law and protection of victims of sexual violence. This comment critically examines the judgement in context of consent, victim protection, and evolving approach of Indian Criminal law towards sexual offence

Court

Supreme Court of India

Bench

Koshal, A.D Singh, Jaswant Kailasam, P.S.

Date of Judgement

15/09/1978

Citations

1979 AIR 185 ;1979 SCR (1) 810, 1979 SCC (2) 143

Facts of the case

Mathura was a 14 -16 year old (minor) Harijan girl. She was an orphan and lived with her brother Gama. He lodged a report on 26 March 1972 at police station Desai Gunj, alleging that Mathura had been kidnapped by Nushi, her husband Laxman and Ashok. In Real, Mathura was in an intimate relationship with Ashok and they decided to marry each other. During the investigation of the case, Mathura, along with others were detained in police custody. The report was recorded by Head constable Baburao at 9:00 pm . After he left, when Mathura who was about to leave with others, Ganapat a constable on duty asked Mathura to wait at police station and told her companions to move out with a direction to Gama to bring a copy of the entry regarding birth date of Mathura. In the late hours of night Ganapat had taken her to latrine nearby where he loosened her underwear and stared her private parts with aid of torch and raped her then again he dragged her to the Chhapatri and raped her in spite of protest and stiff resistance on her part. After Ganapat left another constable Tukaram assaulted her by fondling in her private parts and tried to rape her but being heavily drunk he did not succeed . Her companions who were waiting outside grew suspicious so they gathered the crowd. Then later Mathura came outside and informed Nushi about the incident happened inside. She took her to Dr Khume for primary examination and he asked her to report the incident in police Station Constable Baburao recorded Mathura's statement which was registered as FIR. Mathura was examined by Dr Kamal Shastrakar at 8:00 pm on 27th March 1972 who reported that there were no injuries on her body but traces of semen was present on clothes of both Mathura and Ganapat.

Legal Trajectory and procedural History

The case passed through three levels of Indian judiciary each offering drastically different conclusions. On the trial the Sessions Judge of Chandrapur freed the allege rapist as he found Mathura as a 'shocking liar' because there were no physical injuries or marks of struggle hence the court presumed that the intercourse was consensual. On Appeal Bombay High court (Nagpur Bench) reversed the finding of Sessions Judge and found Ganapat guilty of rape and sentenced him to five years of rigorous imprisonment under section 376 IPC rape. The other constable Tukaram was sentenced to one years rigorous imprisonment for molesting women under section 354. The High court held that Mathura could hardly have consented to intercourse in the circumstances of threats from policemen and sexual intercourse in question was forcible and amounted to Rape.

Appeals by Special Leave from the Judgment and Order dated December 12/13, 1978, of Bombay High Court (Nagpur Bench) in Criminal Appeal 193 of 1974.

Core Legal issues

1. Does a victim's passive submission, due to psychological fear and intimidating environment of a police station legally amounts to free consent ?
2. Can a court legally assume that the sexual intercourse is consensual simply because there is no physical injuries or marks of struggles in their body ?
3. Should the law treat a sexual encounter between a citizen in police custody and a police officer the same way it treats the encounter between two citizens?
4. Can a victim's prior sexual history or socio economic background be used to determine their credibility or to infer consent in a rape trial ?
5. Does the element of fear of injury under section 375 IPC require a verbal threat or can it be understood from the circumstances?
6. How to prove Mathura was below the age 16 years, when precise birth document is unavailable, and how heavily should the court rely on medical age estimates in determining statutory rape?

The Supreme Court's Judgement and specific findings

The Apex Court allowed the appeal there by set aside the conviction handed by the Bombay High court, and fully acquitted Tukaram and Ganapat. The Apex court addressed the legal issue through a strict literal reading of the statutory framework at that time. The court held that the Mathura's failure to scream or alert her companions was a clear indication of her consent. The bench ruled that her passive compliance did not indicate fear, but rather constituted peaceful cooperation. The court highly relied on medical reports, showing no scratches, bruises, or torn cloths. It reasoned that a genuine refusal of consent would surely result in a physical struggle and such struggle would result in "marks of struggle" which pointed directly towards consent. The court refused to infer that the setting of police station or their uniforms acted as an implied threat. The court used her past sexual history to conclude the fact that she was a women of loose morals who likely consented and later made false rape allegation. Further, the court believes that as mentioned in sub-clause 3 of section 375 there was no fear of death or hurt to Mathura, so it does not invalidate the presence of consent on behalf of her. The court rejected

prosecution's claim for statutory rape. It ruled that the radiologists bone age report carried a standard margin years of 1-2 years. The court gave this benefit of margin to accused hence Mathura was treated as an adult. It was concluded that she was not raped by Ganapat or sexually assaulted by Tukaram.

Act

Indian Penal Code– Sec 34

Indian Penal Code – Sec 354

Indian Penal Code – Sec 375

Indian Penal Code – Sec -376

Critical commentary

This case remains as a profound structural stain on Indian legal History. It was a deep systemic betrayal. Here The Indian Judicial system put a woman to the point where she was not only denied of justice but to a point where her character was only questioned because she fought for justice. According to my personal analysis, this case is the ultimate reflection of our society's views about a women. The court infamously branded Mathura as a women of loose morals by heavily relying on the fact that she was not a virgin. It was absolutely disgusting and disturbing to believe that even the supreme court believed that a women having sexual history would probably give a false rape allegation. Here the court clearly chose to focus on virginity rather than core aspect of consent. A woman's past choice to have sex does not mean she says yes to everyone, for all time. Hence every man should ask for permission every time even if it is a prostitute or a wife.

The court treated the lack of physical injuries or broken bangles as proof of consent, failing to realize that true terror paralyses the body. When a young girl is trapped by armed authorities in a protected room, a lack of overt resistance is not "willing cooperation". It is the survival response of a terrified child. But nowadays absence of physical injuries is not an indication of consent by Supreme court's ruling in State of Himachal Pradesh Vs Mango Ram

Furthermore, the court's evaluation of physical evidence showed a sickening double standard. The bench reasoned that the semen stains in the clothes of Mathura could be from her partner

Ashok and stains on clothes of Ganapat could have been of sexual encounter with another women. By reasoning this court actually shielded the perpetrators. The court clearly violated Art 15 of Indian constitution by twisting the semen stains of different genders to completely erasing gender equality, treating one side as an inviting liar and letting the other walk free.

The institutional injustice shocked the nation's conscience, forcing the legislature to pass the criminal law (Amendment) act 1983, which introduced Section 114 A to Indian evidence Act. This amendment completely flipped the script by shifting the onus of proof. Previously the burden of proof lay heavily on the prosecution to prove a lack of consent; with 114A if the women says there was no consent the burden of proof lies on the accused to prove there was a consent explicitly or implied.

But nowadays under Bharatiya Nyaya Sanhita 2023, consent is clearly codified as an unequivocal agreement, demonstrated with words, gestures etc. under the explanation of this provision the key factor to be proved is will and consent. Custody means care keeping. When a woman is under the guard or confinement or care or charge of a man and that man commits intercourse with her with or without her consent, is called Custodial rape. Under Section 64 Custodial rape is treated as a more serious offence hence the punishment of these are mentioned in Sec 64 clause 2.

The recent 2024 Malappuram Sexual exploitation scandal in kerala exposed three high ranking officials who were alleged of exploiting a vulnerable women who came for help. This incident itself proves that the ghost of Mathura still haunts our system. Even though all the statutory leaps are corrected the legal definitions, but the mindset of the society is deeply broken. Even though the accused were acquitted in that case is but that judgement permanently rewrote the law to ensure that no other women is ever told that her survival is her consent. Her legacy proves the truth in the famous words of Maya Angelou: 'Each time a woman stands up for herself, without knowing it possibly, without claiming it, she stands up for all women.'