

Case Name- Tuka Ram and Anr v State of Maharashtra

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

Coram- A.D. Koshal (J), Jaswant Singh(J), P.S. Kailasam (J)

Author – Sarim Fazli

Abstract

It was a curious Judgement given by the Sessions Court and the Supreme Court as Mathura was an orphan who used to work daily in order to make her ends meet and the accused were police officers who had immense power and authority which could have easily led to passive submission by Mathura.

Four people namely, Upendra Baxi (Law professor), Raghunath Kelkar (Law professor and author), Lotika Sarkar (Women's right social worker & educator), and Late Vasudha Dhagamwar (Feminist activist & academician) wrote an open letter to the Chief Justice of India criticizing the aforementioned decision. They raised several troubling points, including how the Court can expect a 14-16-year-old girl to successfully raise an alarm and resist two able-bodied police officers in a police station with locked doors in the dark.

Regarding the issue of semen stains, is it possible that if a girl who has claimed of being raped by someone be having sexual intercourse with someone, let's say her husband in the current situation? Why did the sexual habits of Ganpat gave him a benefit of doubt? It shows that Mathura was not able to achieve justice due to her social standard and being identified as a girl who was habitual of sexual intercourse.

Key Words – *Passive Submission, sexual intercourse, rape, consent, semen*

Introduction

Rape is defined as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation, or fraud, or at a time when she is intoxicated or duped, or is of unsound mental health, and in any case if she is under 18 years of age," according to Section

375 of the Indian Penal Code¹. Sexual intercourse would be termed as rape if it is conducted under the circumstances described in any of the following seven categories:

- Against her consent
- Without her consent
- With her consent, when she has given her consent by putting her or anybody she cares about in danger of death or harm.
- With her consent, when the guy is aware that he is not her husband and that she is giving her consent because she believes he is another man to whom she is or believes she is lawfully married.
- With her permission if, at the time of giving such consent, she is unable to grasp the nature and consequences of that to which she consents due to insanity or intoxication, or the administration by him directly or through another of any stupefying or unwholesome substance.
- When she is under the age of eighteen, with or without her consent.
- When she is unable to provide consent verbally.

Though “will and consent often interlace, an act done against the will of the person can be said to be an act done without consent,” the Supreme Court stated in *Deelip Singh vs. State of Bihar*² that “the Indian Penal Code categorises these two expressions under separate heads in order to be as comprehensive as possible.”

Facts of the case

1. Appellant 1, who is a Head Constable of Police, of Desai Gunj Police Station in March 1972. Appellant 2 was a police constable at the same police station. Mathura (PW 1) is the girl who had been allegedly raped. When she was a child, her parents died, and she was living with her brother, Gama (PW 3). Both of them worked as labourers to survive. Mathura used to go to the house of Nushi (PW 2) for work and there she came in contact with Ashok, who was the sister’s son of Nushi and was residing with the latter. The contact developed into intimacy and Ashok and Mathura (PW 1) decided to become husband and wife.

¹ Section 375, Indian Penal Code, 1860, LexisNexis

² *Deelip Singh vs. State of Bihar*, (2005) 1 SCC 88

2. On March 26, 1972, Gama (PW 3) lodged a report Exh P8 at Police Station Desai Gunj alleging that Mathura, had been kidnapped by Nushi, her husband Laxman and Ashok. The report was recorded by Head Constable Baburao (PW 8) at whose instance all 3 persons complained against and Mathura was brought to the police station at about 9 p.m. and recorded the statement of Mathura and Ashok. By that time, it was 10.30 p.m. and Baburao told them to go after telling Gama to bring a copy of the entry regarding the birth of Mathura and left for his house. At that time both the appellants were present at the police station.
3. After Baburao had gone away, Mathura, Nushi, Gama and Ashok started leaving the police station. The appellants asked Mathura to wait at the police station and asked the remaining to move out. The direction given by the constable were complied with. Immediately then Ganpat (appellant) took Mathura (PW1) into the latrine at the back of the main building, unfastened her underwear, ignited a torch, and examined her private parts. He then pulled her to a chhapri, which serves as the back verandah for the main building. Despite her screams and hard resistance, he felled her on the ground and raped her in the chhapri. Tukaram appellant, who was seated on a cot nearby, came to the location where Mathura (P.W. 1) was and fondled her private parts after he had satisfied his lust. He also wanted to rape her but was unable to do so due to his inebriated state because of intoxication.
4. Nunshi (P.W.2), Gama (P.W. 3) and Ashok, who had been waiting outside the police station for Mathura (P.W.1), were suspicious when the lights were switched off and the police station's entrance door was closed from within. They proceeded to the back of the police station to investigate the situation. There was no light inside, and Nunshi (P.W. 2) received no response as she called out for Mathura (P.W. 1). The uproar drew a gathering, and Tukaram appellant returned from the back of the police station sometime later, telling Nunshi (P.W. 2) that the girl had already left. He left, and shortly after, Mathura (P.W. 1) reappeared from the back of the police station, informing Nunshi (P.W. 2) and Gama (P.W. 3) that Ganpat had forced her to undress and had raped her.
5. Mathura (P.W. 1) was taken to Dr. Khume (P.W. 9) by Nunshi (P.W. 2), who informed him that the girl had been raped by a police constable and a Head Constable in police station Desai Gunj. The doctor advised them to go to the nearest police station and file a report.
6. Head Constable Baburao (P.W. 8) was brought from his home by a few people. He discovered that the crowd had become agitated and was threatening to assault Ganpat appellant as well as torch the police station. However, Baburao (P.W. 8) was successful in getting the mob to disperse, and he then took down Mathura's (P.W. 1) statement (Ex. 5), which was recorded as the initial information report.

7. Dr. Kamal Shastrakar examined Mathura (P.W. 1) on the 27th of March 1972 at 8 p.m. There was no visible harm on the girl's body. Her hymen showed signs of previous ruptures. The vaginal opening easily accommodated two fingers. The pubic hair was not matted in any way. The doctor estimated the girl's age to be between 14 and 16 years old. The doctor sent a sample of public hair and two vaginal-smear slides to the Chemical Examiner in a sealed packet, who discovered no signs of semen. However, semen was found on the girl's garments and the pyjama that was removed from Ganpat appellant's person.

Main Issues

- a. Is there evidence of the girl's consent to sexual intercourse?
- b. Whether the police officers' actions are equivalent to rape and can be termed compelled sexual intercourse?
- c. Are the appellants Nos. 1 and 2 liable under Section 376 of the Indian Penal Code?³
- d. Was the reversal order of the session court judgement made correctly by the high court?

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Arguments

- (1) The intercourse had progressed consensually since the girl was addicted to sex and desires to fulfil her sexual requirements, according to the Trial Court's verdict. However, the High Court overturned the Trial Court's finding, ruling that the sexual intercourse was rape and not consenting sexual intercourse. It was proved that Mathura was a minor, then even if the consent is given, how can it be valid.
- (2) Based on the evidence provided before the Trial Court, it was determined that Mathura was habituated to sex, and both appellants were found not guilty of violating Section 376 of the Indian Penal Code and were acquitted. However, the High Court concluded that, even if Mathura was habituated to sex, there was no reason why she would be having sexual intercourse with strangers.

³ Nisha Patnaik, Case Comment: Tukaram and Another V. The State of Maharashtra, 2020, <https://www.jlsrjournal.in/case-comment-tukaram-and-another-v-the-state-of-maharashtra-by-nisha-patnaik/>

(3) According to the Trial Court, the police officers were acquitted since the intercourse had progressed consensually and Mathura had not raised any alarm or made any sound for help while having intercourse. The High Court, on the other hand, found both police officers guilty of rape.⁴

Judgement of Sessions court

The learned Sessions Judge found no satisfactory evidence which proved beyond doubt that Mathura was below 16 years and he held that her testimony was a tissue of lies. He further held that the farthest one can go is into believing that she had sexual intercourse with Accused 2. He added however that there is a world of difference between “sexual intercourse” and “rape”, and the burden to prove the latter is on the prosecution. In addition, he held that when Mathura saw Nunshi angry and suspecting something fishy, she (Mathura) couldn't say that she willfully had sexual intercourse with the accused 2 and that too in front of her husband. This could be the reason why she made up the narrative of being imprisoned at the Police Station and being raped by accused No. 2. Further observations were made on the character of Mathura. It was stated that Mathura was habituated to sexual intercourse, and the same was backed by the testimony of Dr Shastrakar. Accused 2 is “no novice” was determined by the examination. There could be a situation where he might have stained his pyjama with semen while having sexual intercourse with persons other than Mathura. The learned Sessions Judge concluded that the prosecution had failed to prove its case against the appellants.

Judgement by the High Court

The High Court took note of the findings by the learned Sessions Judge and it proceeded to sift the evidence for the reversal of the acquittal but with the views and the interpretation of evidence by the trial court, it wouldn't be justified.

It agreed with the learned Sessions Judge in respect to his findings in regard to the age of Mathura but held that the deposition of the girl with whom Ganpat had had sexual intercourse as reliable, as it was supported by circumstantial evidence, especially that of the presence of stains of semen on the clothes of the girl and Ganpat. The fact that the semen wasn't found on the pubic hair and the vaginal- smears taken from the girl was considered to be of no value because the girl was examined by the lady doctor about 20 hours after the event, and between that time there is a probability that she had taken a bath.

⁴ Suchi Jain, Critical Analysis on Mathura Gang Rape Case, 2018, <http://www.penacclaims.com/wp-content/uploads/2018/08/Suchi-Jain.pdf>

The High Court proceeded to observe that although there is a world of difference between sexual intercourse and rape, there is also a difference between “consent” and “passive submission”. In addition to the sexual intercourse being concluded as rape, the High Court said Mathura didn’t know any of the accused before the said incident and it is highly unlikely that she invited the accused to satisfy her sexual desire. It was indirectly accepted that a girl whose brother had filed a complaint which involved her, be making such overtures or advances. The initiative must have come from the accused. And the girl couldn’t resist the same as she was in midst of a pending enquiry on account of a complaint filed by her brother in the very same police station. If these circumstances are taken into consideration, then mere passive or helpless surrender of the body and its resignation to other’s lust cannot be termed as consent, not a free one. And her subsequent conduct in making statement immediately of the same, to her relatives and members of the crowd left no doubt that she was subjected to forcible sexual intercourse. In relation to Tukaram (appellant), the High Court didn’t believe that he had many any attempts to rape the girl but he fondled her private parts after the act of sexual intercourse by Ganpat (appellant). The High Court convicted and punished the two appellants based on the above-mentioned facts.⁵

Judgement by the Supreme Court

The judgement of the High Court is reversed as well as the sentences imposed upon the appellants by it are set aside. The Supreme Court agreed with the Sessions Judge that this was a case of consensual sexual intercourse. On this point the Supreme Court further added that since “no marks of injury” were found on Mathura’s body there was “no resistance” on her part and since she did not “raise an alarm” for help she “consented to sex.”

In terms of the claims levelled against Tukaram, the girl's first information report contained significant allegations, which she refuted at the trial, and the acts covered by which she assigned to Ganpat instead in her deposition. Where is the assurance that the girl's word is true in connection to what she currently says about Tukaram if she may change her mind about these severe claims at will? As a result, the charge against Tukaram appellant remains unproven.

Analysis of the Judgement

⁵ Judgement of Tukaram and Another V. The state of Maharashtra, <https://indiankanoon.org/doc/1092711/>

The appellants were acquitted by the Supreme Court, which overturned the High Court's decision. The Court concurred with the Sessions Court's decision and determined that the case involved consenting sexual intercourse. The court ruled that the prosecution bore the burden of proof, and that because they were unable to prove the components under Section 375, it was not considered rape.

The Supreme Court disagreed with the High Court's judgement of "passive submission." The Supreme Court also decided that because the girl did not cry for aid, it was a consented sexual encounter. However, the evidence shows that when the appellant Ganpat led the girl to the room, the station's doors were closed. In addition, the session court's decision in this case was based on judgments formed from the victims' personalities. The insinuation that she is of a promiscuous nature, that a girl still in her teenage years accepted a sexual act invitation from complete strangers while her brother and the man she was in love with were nearby, clearly shows that the judges' opinion of her was skewed by her previous sexual activity. The Court neglected to take into account the fact that the incident occurred late at night, making it difficult for the girl to identify the perpetrator.

Conclusion

The Mathura rape case was one of the first rape cases after independence which attracted a great deal of criticism, leading to the development of criminal law amendments. This case sparked strong emotions and animosity among society's citizens. It was necessary to establish a law that was more sympathetic to the victims' feelings and protected their human rights and dignity. The Criminal Law Amendment Act was passed in 1983 as a result of this. This statute changed Section 114(A) of the Indian Evidence Act, which stated that if a victim does not consent to sexual intercourse, the court will assume she did not consent.

In addition, Section 376 of the IPC was changed to make custodial rape a crime punishable by at least seven years in prison. Once sexual intercourse is proved, the burden of proof is shifted from the victim to the perpetrator in this section. The amendment also prohibited the disclosure of victims' identities and stated that rape trials should be held in secret. Even though India's rape laws were altered in the aftermath of the Mathura case, rape cases continue to rise every year. These crimes have major psychological implications, such as depression, relapses, sleep difficulties, and more, in addition to causing serious bodily harm to the victim.