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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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CASE REVIEW: TUKARAM v. STATE OF MAHARASTRA

AUTHORED BY - SHROTAPANNA MISHRA

Introduction: Facts of Case

- 1) Mathura was an Adivasi orphan (although Mathura's precise age was not known at the time, she was thought to be between 14 years to 16 years) and lived with her brother, Gama. Mathura and Gama worked as physical laborers in the town of Desaiganj in the State of Maharashtra.
- 2) She often visited Nunshi and Laxman's home for work. During the course of her visits, she met Nunshi's nephew, Ashok, and both of them developed an intimate relationship and ultimately decided to marry each other.
- 3) On Sunday, 26th March 1972, Gama lodged a report at Desaiganj police station alleging that Ashok, Nunshi, and Laxman had kidnaped Mathura. Head Constable Baburao recorded the complaint and instructed Mathura and her husband Ashok, and Nunshi, and her husband Laxman, to be brought to the police station.
- 4) The four of them arrived at the police station for giving their statements at 09:00 p.m. on the same day. By the time statements were taken it was 10:30 p.m. When Baburao was leaving for his house to take his evening meal, he asked all of them to leave and also directed Gama to bring a copy of the entry regarding the birth of Mathura recorded in the relevant register.
- 5) As those at the police station proceeded to leave, two constables – Ganpat and Tukaram – requested Mathura to wait inside and asked the others to leave. When Mathura was inside, Ganpat took her to the latrine towards the back of the police station and removed her undergarments. Thereafter, he dragged Mathura to a veranda, towards the back of the building, and raped her.
- 6) Tukaram sexually assaulted her by fondling her private parts and also attempted to rape her. But he was so intoxicated that he was unable to do so.
- 7) Nunshi, Gama, and Ashok were waiting outside the police station for Mathura and grew increasingly suspicious when they found the lights of the police station had been switched off and its entrance door was locked. They shouted for Mathura, but there was no

response. By this time, a crowd had gathered around the police station. Mathura appeared shortly thereafter and recounted the events that took place at the police station to Nunshi and Gama.

- 8) As word about the incident at Desaignuj police station spread, Head Constable Baburao was contacted to register an FIR, Mathura gave a detailed statement on the incidents that occurred of how the men raped and assaulted her.
- 9) Within twenty-four hours after the incident (on 27th March 1972), she was examined by Dr. Kamal Shastrakar who found no injuries on her body and no signs of intercourse either. However, semen was present on the clothes of both Mathura and Constable Ganpat.

Provisions of the Law Involved:

Section 354 of Indian Penal Code, 1860 – *Assault or criminal force to woman with intent to outrage her modesty* — whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.¹

Section 375 of Indian Penal Code, 1860 – *Rape* — A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions —

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation.—

¹ Indian Penal Code, 1860 | <https://indiankanoon.org/doc/203036/>

Penetration is sufficient to constitute the sexual intercourse necessary to the offense of rape. (Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.²

Section 102 of Evidence Act, 1872 – On whom burden of proof lies —The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustration: A sues B for the land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.³

In *Tukaram v. State of Maharashtra*: Mathura accused Ganpat and Tukaram of rape and sexual assault, which both of the accused denied. If no evidence is provided affirming each ingredient of the offense it seeks to establish, the accused, Ganpat and Tukaram would be entitled to acquittal. Therefore, the burden of proof is on Mathura.

Issues

Identified:

- 1) Whether the prosecution proved all the ingredients of the above-mentioned offenses?
- 2) Whether the girl submitted to the act of sexual intercourse out of fear or was it of free will?
- 3) Whether the decision of the High Court convicting the appellant was justified?
- 4) Whether the appellants were guilty under Sections 354 and 376 of the Indian Penal Code, 1860?

Line

of

Arguments:

Point of arguments advanced for the Petitioners – Tukaram and Another Advocate who appeared in this case for the Petitioner/Appellants – M.W. Phadke, Senior Advocate (S.V. Deshpande, V.M. Phadke and N.M. Ghatate, Advocates with him);

A) The defense version was a bare denial of the allegations of rape, but it could not be accepted at its face value.⁴

B) Mathura was examined by Dr. Kamal Shastrakar at 8 p.m. on March 27, 1972. *The girl had*

² Indian Penal Code, 1860 | <https://indiankanoon.org/doc/623254/>

³ Indian Evidence Act, 1872 | <https://indiankanoon.org/doc/1505766/>

⁴ *Tukaram v. State of Maharashtra* (1979) 2 SCC 143 [Para 10]

*no injury on her person. Her hymen revealed old ruptures. The vagina admitted two fingers easily. There was no matting of the pubic hair. A sample of the pubic hair and two vaginal-smear slides were sent by the doctor in a sealed packet to the Chemical Examiner who found no traces of semen therein.*⁵

Point of arguments advanced for the Respondents – State of Maharashtra Advocate who appeared in this case for the Respondents – H.R. Khanna and M.V. Shroff, Advocates;

It has to be borne in mind that in this case, the onus was on the prosecution to prove affirmatively each ingredient of the offense it seeks to establish and that such onus never shifts. It was, therefore, necessary for the prosecution to make sure that all the ingredients of Section 375 of the Penal Code, 1860 (Rape) were present in the case of the sexual intercourse attributed to Ganpat (appellant).

A) After Baburao had gone away, Mathura, Nunshi, Gama, and Ashok started leaving the police station. *The appellants, however, asked Mathura to wait at the police station and told her companions to move out.*

B) The direction was complied with. *Immediately thereafter Ganpat (appellant) took Mathura into a latrine situated at the rear of the main building, loosened her underwear, lit a torch, and stared at her private parts. He then dragged her to a chhapri which serves as the main building as its back verandah. In the chhapri he felled her on the ground and raped her in spite of protests and stiff resistance on her part. He departed after satisfying his lust and then Tukaram appellant, who was seated on a cot nearby, came to the place where Mathura was and fondled her private parts. He also wanted to rape her but was unable to do so for the reason that he was in a highly intoxicated condition.*⁶

C) *Nunshi, Gama, and Ashok, who had been waiting outside the police station for Mathura grew suspicious when they found the lights of the police station being turned off and its entrance door being closed from within. They went to the back of the police station in order to find out what the matter was.*⁷

D) *Mathura was examined by Dr. Kamal Shastrakar at 8 p.m. on March 27, 1972. The girl had no injury on her person. Her hymen revealed old ruptures. The vagina admitted two fingers easily.*

⁵ Tukaram v. State of Maharashtra (1979) 2 SCC 143 [Para 9]

⁶ Tukaram v. State of Maharashtra (1979) 2 SCC 143 [Para 5] (reference for argument A) and B))

⁷ Tukaram v. State of Maharashtra (1979) 2 SCC 143 [Para 6]

There was no matting of the pubic hair. *The age of the girl was estimated by the doctor to be between 14 and 16 years. The presence of semen was however detected on the girl's clothes and the pyjama which was taken off the person of Ganpat appellant.*⁸

Judgment passed and Evaluation of the Decision:

Session Court's Judgment (including Ratio Decidendi and Obiter Dicta)

The Sessions Judge acquitted Ganpat and Tukaram as there was no satisfactory evidence to prove that Mathura was between the ages of 14-16 years of age on the date of the occurrence. He further held that she was a '*shocking liar*' whose testimony was '*riddled with falsehood and improbabilities*'.⁹

The Judge stated that '*in all probability*' Mathura had '*sexual intercourse*' with Ganpat. The doctor's testimony confirmed that she was '*habituated to sexual intercourse*'. This is why in the Court's view, Mathura had chosen to engage in sexual intercourse with Ganpat. The court believed that Mathura '*invented the story of rape*' in order to '*sound virtuous*'. After all, the crowd gathered outside the police station '*included her lover Ashok*' as well as her employer Nunshi, who was '*angry*' and would have suspected '*something fishy*'. Other important pieces of evidence were cast aside on assumptions – the stains on Mathura's pyjamas were accounted for as having likely been caused by Ashok, as '*she was after all living with Ashok and they very much in love*'. The court noted that Ganpat himself was '*no novice*', and therefore stains on his pyjamas could have arisen from other previous sexual encounters.¹⁰ He concluded that the prosecution had failed to prove its case against the appellants.

Bombay High Court's Judgment (including Ratio Decidendi and Obiter Dicta)

In October 1976, the High Court took a different view of the facts and evidence. It found Mathura's account credible, and noted that there was a difference between *consent* and '*passive submission*.' All of the surrounding circumstances indicated that this may have been an instance of passive submission, but certainly was not consent: '*Mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats or fear cannot be equated with the*

⁸ Tukaram v. State of Maharashtra (1979) 2 SCC 143 [Para 9]

⁹ Tukaram v. State of Maharashtra (1979) 2 SCC 143 [Para 10]

¹⁰ Tukaram v State of Maharashtra (1979) 2 SCC 143 [Para 10]

desire *or* *will.* 11

The High Court agreed with the Sessions Judge in respect of his finding with regard to the age of Mathura but held that the allegations made by her towards Ganpat were reliable due to circumstantial evidence, especially that of the presence of stains of semen on the clothes of Mathura and Ganpat (appellant). The Court again rightly held that the '*absence of semen on the vaginal smears and pubic hair*' was because of the fact that she was examined 20 hours after the incident and it is probable that she might have taken a shower in the meantime.¹² The High Court concluded that the sexual intercourse in question was forcible and amounted to rape. In relation to appellant Tukaram, the High Court did not believe that he had made any attempt to rape the girl but took her word for granted insofar as he was alleged to have fondled her private parts after the act of sexual intercourse by appellant Ganpat.¹³ It was on these premises that the High Court convicted and sentenced appellant Tukaram to one year of imprisonment under Section 354 of the Indian Penal Code and appellant Ganpat to five years of imprisonment under Section 376 thereof.

Supreme Court's Judgment (including Ratio Decidendi and Obiter Dicta)

The Supreme Court stated that the nature of the consent of the victim had to be determined by the circumstances and the circumstances made it clear that the consent was not '*passive*'. There was no injury on the person of the girl, it could not be deduced that the girl had been subjected to or was under any fear or compulsion such as would justify an inference of any '*passive submission*.' It only indicated that what took place within the police station was a '*peaceful affair*' and that Mathura's story was '*all false*'.¹⁴ As for the allegations made against Tukaram, the First Information Report (FIR) Mathura had filed against Tukaram had serious allegations on which she had gone back during the criminal trial and the acts covered by which she attributed in her deposition to Ganpat instead. If Mathura could alter her position in regard to these serious allegations at will, where is the assurance that her word is truthful in relation to what she now says about Tukaram? Thus, the charge remains wholly unproved against Tukaram appellant.¹⁵ In 1979, the appeal succeeds and is accepted. The judgment of the High Court is reversed and the conviction recorded against the appellants as well as, the sentences imposed upon them by the

¹¹ Tukaram v State of Maharashtra (1979) 2 SCC 143 [Para 11]

¹² Ibid. [Para 11]

¹³ Tukaram v State of Maharashtra (1979) 2 SCC 143 [Para 12]

¹⁴ Tukaram v State of Maharashtra (1979) 2 SCC 143 [Para 14]

¹⁵ Tukaram v State of Maharashtra (1979) 2 SCC 143 [Para 19]

High Court are set aside. The appellants are thus acquitted.

Critical Evaluation of the Judgment

The Mathura case is one of many such cases that perfectly sums up the social attitude towards rape and other violent crimes against women and how the focus is almost always on the victim rather than the perpetrator. The Mathura case showcases how public institutions – including not just the police and the lower judiciary, but also the Supreme Court failed Mathura. The court's judgment overlooked important factual considerations – Mathura was wrongfully confined by the police and the fact that Tukaram was intoxicated on duty. The decision made was based on chauvinistic assumptions and double standards – Mathura's sexual history demonstrated that she was likely to have consented; Ganpat's sexual history was considered evidence of the absence of rape. Ganpat's sexual habits give him the benefit of doubt of having raped Mathura; her sexual habits were “*a reflection on her chastity*” and made the Court disbelieve the story of the rape altogether. The method of medical examination reeked of social prejudices by focusing wholly on the sexual history of the victim. Doctors at the time conducted the ‘two-finger’ test on the rape victims – it includes inserting two fingers into the vagina in order to determine ‘laxity’ of the vagina, and whether the hymen had already been ruptured.¹⁶ After 11 years, three judgments, dozens of protests, and a Law Commission report, the Mathura Case ultimately prompted legislative amendments – the Criminal Law Amendment Act was passed in 1983. This act amended *Section 114(A) of the Indian Evidence Act, 1872* which stated that if the victim does not consent to sexual intercourse then the Court would presume that she did not consent to it. *Section 376 of the Indian Penal Code, 1860* was also amended, making custodial rape an offense punishable with not less than 7 years imprisonment. This section shifted the burden of proof from the victim to the perpetrator, once sexual intercourse is established. The amendment also banned the publication of victims' identities and held that rape trials should be conducted as in-camera proceedings. As the author of this Case Review, I would like to leave you with a statement to ponder over, very rarely if, at all instances of such crimes stir strong public opinion and drive reform, but is it still enough? All those years ago, Mathura did what most other women of her time would not have had the courage to do for the fear of social backlash, risking the danger of being ostracized,

¹⁶ Chintan Chandrachud, *The Cases that India Forgot* [Page 70]

and a host of other reasons. Mathura's case did become a step toward necessary amendments in law and social reform but her resolute quest for justice was in vain.

REFERENCES *Judgments*

[1] Tukaram v State of Maharashtra (1979) 2 SCC 143

Books

[1] Chintan Chandrachud, "The Cases that India Forgot", Juggernaut Books (2019), E-ISBN: 9789353450830

Web

[1] <https://indiankanoon.org/>

[2] <https://blog.ipleaders.in/>

[3] <https://lawplanet.in/>

[4] <https://lawlex.org/>

[5] <https://www.yumpu.com/en/document/read/37451123/open-letter-to-cji-in-the-mathura-rape-case>

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

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