
CASE ANALYSIS: TUKARAM & ANR. V STATE OF MAHARASHTRA

Kunjal Sarda, O.P. Jindal Global University

Court

In the Supreme Court of India

Bench

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

Date

15/09/1978

Citations

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

Statement of Facts

Mathura was a young girl about the age of 14-16 years and lived with her brother Gama as her parents died. Both were labourers and Mathura used to work at Nunshi's house. While working she developed an intimate relationship with Nunshi's nephew Ashok, and they decided to marry each other. Gama lodged a report on 26th March 1972 at police station Desai Gunj alleging that Mathura had been kidnapped by Ashok, Nunshi, and Laxman who was Nunshi's husband. At about 9 pm all of them were called and the police station and Head Constable Baburao recorded their statements. At about 10.30 pm Baburao asked all of them to leave and he left the police station. However, as Mathura was leaving Constable Ganpat asked Mathura to come inside with him and took her to a latrine nearby and loosened her underwear, and looked at her private parts with the aid of a torch. Thereafter, he took her to the rear of the police station and raped her. After raping her Ganpat left, and Constable Tukaram sexually assaulted her by fondling her private parts but was unable to rape her as he was in an intoxicated condition. Mathura later filed an FIR on the advice of Dr. Khume who initially examined her.

She was examined by Dr. Kamal Shastrakar at 8 pm on 27th March 1972 who found no injuries on her body and semen was found both on the clothes of Mathura and Ganpat.

Procedural History

Sessions court acquitted both the accused as there was no satisfactory evidence to prove that Mathura was below 16 years of age on the date of occurrence - High Court convicted both accused and sentenced them under section 354 & 376 of IPC. 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.

Issues

1. Was there consent on Mathura's part for sexual intercourse that took place as indicated by the circumstantial evidence presented before the court?
2. Was Mathura below the age of 16 years at the time of incidence?
3. Was Mathura raped by Ganpat and sexually assaulted by Tukaram?

Judgement

In the judgement given by the Apex Court, the appeal was successful and accepted. High Court's judgement was reversed and the conviction and the sentence against both the appellants were set aside.

Holding

The Apex Court concluded free consent on Mathura's part based on the absence of injury on her body, failure to raise alarm and cry for help, and no fear of death or hurt. It also found no satisfactory evidence to prove that she was below the age of 16 years and therefore concluded that she was not raped by Ganpat or sexually assaulted by Tukaram.

Rule of Law or Legal Principle Applied

Indian Penal Code - Section 34,

Indian Penal Code - Section 354,

Indian Penal Code - Section 375,

Indian Penal Code - Section 376.

Reasoning

The Supreme Court stated that according to the findings of the court there were no injuries on Mathura's body which led to the determination that intercourse was a 'peaceful affair'. Also, she made no attempt of stiff resistance at all when Ganpat caught hold of her in front of her brother Gama while leaving the police station, and her natural impulse when a stranger caught her hand in front of her dear ones should have been a cry for help. 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 also put forward the fact that while in the FIR the girl had mentioned that it was Tukaram who took her to the latrine and lit a torch and looked at her private parts in the trial she ascribed these allegations to Ganpat instead and if she can alter her position with respect to such serious allegations her deposition with respect to Tukaram cannot be trusted and the charges against him remain wholly unproved.

Critical Commentary

This case is a clear depiction of the orthodox mentality our society has with respect to women and their rights and how people in power abuse them. Firstly, I would like to begin my criticism by bringing to light the fact as to how the Sessions Court in its verdict has made multiple derogatory statements on the character of Mathura as a young girl and how the Apex Court has reinstated its stance and agreed with the Sessions Judge. The Sessions Court in its verdict called Mathura a 'shocking liar' whose testimony was just a 'tissue of lies' and further said that she must have 'invented' the story of rape to not upset her lover, Ashok. The court also goes to an extent of making the point that Mathura was 'habituated' with sex and dismisses the presence of semen with the mere fact that she was examined 20 hours after the incident and in the meantime could've had sex with Ashok who she was 'very much in love with'. However, the court uses the presence of semen on Ganpat's pants as being beneficial to him because he could've had sex 'with persons other than Mathura'. While the court clearly condemns Mathura's character as a habitual of sex it does not quite label Ganpat as so. Moving to the Apex Court, it quite conveniently calls Mathura's part testimony that she raised alarms and shouted for help as a 'concoction' on her part but chooses to believe the other half that she was leaving the police station with her brother Gama and calls out on her for not resisting when the 'person in authority' caught hold of her in front of her brother. The court also states the intercourse to be a 'peaceful affair' because there were no injuries on Mathura's body but did

not take into consideration that they should've medically examined Ganpat too. Moreover, the court believes that there was no fear of death or hurt to Mathura so there was free consent on her part as per Section 375, but does it really expect a poor labourer who is not even aware of her rights to understand if there was a threat to her life or not. She was merely complying with the so-called 'authorities' of the country because she **feared** them but only because this fear was not of death it can vitiate her consent? The court also does not consider that Mathura was estimated to be about 14-16 years by Dr. Kamal Shastrakar, but this wasn't enough evidence for the court to apply section 375 (5) of IPC which states that sexual intercourse with persons under the age of 16 years with or without her consent amounts to rape. The Apex Court merely agrees with the Sessions Court that it is not enough to prove that the girl is underage and does not make an attempt to further examine the matter. Lastly, my main contention is that how can a person serving the country have sexual intercourse in a public place or be intoxicated in the first place? Does this not raise a question on their duties as well?