

Critical Analysis of the Mathura Rape Case

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Introduction

The infamous case of *Tukaram and Another v. State of Maharashtra*¹, more commonly known as the *Mathura Rape Case*, sparked off vehemence and uncurbed conflicts, leading to radical changes in the sphere of rape laws governing India. This case witnessed the problem of custodial rape of a young girl named Mathura. The Judgment of this case delivered by Justice Jaswant Singh, Kailasam and Koshal was highly condemned and criticized for its logical, legal and linguistic fallacies along with its ambiguous and sexist tone. This case gained widespread recognition after four distinguished professors Upendra Baxi, Raghunath Kelkar, Lotika Sarkar and Vasudha Dhagamwar wrote an open letter to the Chief Justice of India to have the case re-heard.

Brief Facts

Mathura, a young orphan, lived with her brother Gama. She worked as a labourer at the house of Nushi. During the course of employment, she developed sexual relations with Ashok, the son of Nushi's sister. Thereafter, they decided to get married. On the basis of a report filed by Gama on March 26, 1972 stating that Mathura had been kidnapped, all the concerned parties including Ashok, Nushi and other relatives were brought before the police station. After their statements were recorded, everyone began walking out at about 10:30 pm. The first appellant Ganpat asked Mathura to wait inside the police station. After closing the doors and turning off the lights inside, he took her up to the latrine and raped her in spite of her resisting. After he was done, the second appellant Tukaram came and fondled with her private parts. He tried to rape her too but failed, as he was heavily intoxicated. After being reunited with her family and friends, Mathura narrated this incident to them. On being medically examined it was asserted that Mathura was between the age of 14-16 years and her hymen revealed old ruptures but there was no injury on her person. She was examined by Dr. Shastrakar on March 27, on whose advice an FIR for the same was filed. After a long battle The Supreme Court acquitted the appellants in 1979.

Sessions Judge

The Sessions Judge acquitted the accused, as he believed that this was not a case of rape but one of "consensual sexual intercourse". The perversity of his logic is evident when he implies that Mathura being "habitual to sex" might have invited Ganpat to satisfy her sexual needs and thus her consent was voluntary. He further used this line of argument to justify the presence of semen on her clothes to have come from her act of having sexual intercourse with some person other than Ganpat. By this statement the Judge is implying that Mathura was so eager that she had sexual intercourse with 'someone' between the hours of this incident and her medical examination. However, in justifying the semen on Ganpat's clothes he said it was due to "nightly discharges". It is enigmatic as to why the Court had such double standards based on gender roles. As per Section 375(6) of the Indian Penal Code, sexual intercourse with a woman below the age of 16 whether with or without her consent qualifies as rape.² Even after Dr. Shastrakar presented evidence that Mathura was between the ages of 14-16, the Sessions Judge held that the evidence determining Mathura's age was inadequate. He further held that in order to sound "virtuous before Ashok" Mathura fabricated a story of being raped. The sexist tone in this judgment is startling as the Judge assigns a specific role to Mathura by implying that she needs to concoct a story in order to prove her chastity to her lover. In his words Mathura was "a shocking liar whose testimony was riddled with falsehood and improbabilities."

High Court

The Bombay High Court rightly distinguished between passive submission and consent. It held that since the accused were strangers to Mathura and her brother had just filed a case in the same police station, the chances of her making advances on them was highly improbable. Further, they were in a position of authority and any resistance to them could prove detrimental to her or her brother. This is a clear case of passive submission caused by the threat of injury. The fact that the constables confined her to the police station along with her act of instantly narrating the incident to her family shows a clear lack of consent. This 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 presumable for her to have taken a shower in the meantime. Although the High Court rightly convicted the accused there were some parts of the judgment that were paradoxical. Firstly, this Court agreed with the Sessions Judge on the account of Mathura's age. If both the Courts were confident that Dr. Shastrakar's examination was incorrect then why didn't they direct any further examination into her age? Secondly, while quashing the acquittal of the accused, the High Court stated that these two "gentlemen" were absolute strangers to Mathura and it is extremely unlikely that she'd approach them to satisfy her sexual

¹ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143

² Section 375(6), Indian Penal Code, 1860

needs. It is perplexing that while convicting the accused for rape, this Court has referred to them as gentlemen.

Supreme Court

Finally in 1979, the Supreme Court overturned the conviction of the High Court and acquitted the accused. 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.” Firstly, it is astonishing that this Court has equated the lack of resistance to consent. Even if Mathura tried to resist she would be powerless in front of two well-built, strong constables and thus impossible for “marks of injury” to be carved onto her body. While this Court read into Section 375(3) of the IPC to hold that her consent was not obtained by putting her in fear as she didn’t object when she was taken away from her family, it excluded Section 375(2), which states that rape is sexual intercourse with a woman without her consent.³ Mathura repeatedly stated that she did not consent but all this Court did is call her a liar.

Secondly, it is questionable as to how the Courts are certain that Mathura did not shout for help. The doors were bolted all throughout when Ganpat took Mathura up to the latrine to rape her. Even if she did cry out for help, it’s very likely that she might not have been heard. At this stage, it is pertinent to question this Court as to what their judgment would be if the victim in this case were verbally handicap?

The Supreme Court further agreed with the Sessions Judge that Mathura was “habitual to sex” and this entire story was concocted to sound “virtuous in front of Ashok”. In this regard, two fallacies commonly used in English language have been committed, ‘Argumentum ad Hominem’ and ‘Hasty Generalization’. This essentially means that rather than deciding this case on its merits, the Court constantly attacked the character of the victim and came to conclusions without any link to its premise.⁴ It believed that Mathura was so promiscuous that she could not let go of any chance of having sexual intercourse even when her sibling Gama, employer Nushi and beloved Ashok were waiting for her right outside the police station.

Mathura’s mistake to point out the exact appellant who had raped her further worked against her because the Court stated that if she could go against her initial testimony by changing the accused from Tukaram to Ganpat, it was possible that she had lied about everything else too. No regard was paid to the fact that these men were strangers to her and she had never seen

them before this incident or that it might be difficult for her to see their faces clearly as the lights were switched off. The fact that Tukaram remained a spectator while Ganpat was raping her as though it was a pornographic film or that he was drunk on duty was also considered extraneous in deciding the fate of this young girl.⁵ The Supreme Court acquitted both the accused stating that this alleged intercourse was a “peaceful affair”.

Aftermath

This case stirred up great passions and resentment amongst people in the society. A law more sensitive to the feelings of the victims had to be drafted; one that protected their human rights and dignity. This resulted in the Criminal Law Amendment Act being passed in 1983. This act amended Section 114(A) of the Indian Evidence Act⁶, which stated that if the victim does not consent to sexual intercourse then the Court would presume that she did not consent. Section 376 of the IPC⁷ was also amended, making custodial rape an offence punishable with not less than 7 years imprisonment. This section shifted the burden of proof from the victim to the offender, once sexual intercourse is established. The amendment also banned publication of victims’ identities and held that rape trials should be conducted as in-camera proceedings. Even though the Parliament has amended rape laws in order to serve justice, judicial interpretation of these laws has done the exact opposite. While there are several judgments post the 1983 Amendment Act that have been successful in serving justice to the victims, there are still an equal number that are perversely drafted like the Mathura Rape Case. In *Mohd. Habib v. State* (1989)⁸, the Delhi High Court acquitted the accused for the rape of Aruna Kumari. The court again equated no “marks of injury” on his genital parts to lack of resistance by the victim. The facts that Aruna was between 7-10 years, her hymen was ruptured, there were bite marks on her body and there was an eyewitness to this entire incident was also considered inconsequential to this Court. In *Bhanwari Devi* (1992), the court held that the accused couldn’t be held guilty of rape even after the semen of five different men were found in her vaginal swab and on her clothes since the victim was a Dalit while the accused was from an upper caste and would “not stoop so low to have sexual relations with a Dalit”⁹

Conclusion

Even though rape laws in India have been reformed over time, the occurrences of rape keep increasing every year. Besides causing tremendous physical injury to the victim, this crime has devastating psychological effects as well such as PTSD, depression, flashbacks, sleep disorders and more. One step towards elimination of

³ Section 375(2) and 375(3), Indian Penal Code, 1860

⁴ *Logical Fallacies*, Available at: <https://www.learn.lexiconic.net/fallacies/index.htm> [Accessed 15 Oct. 2017].

⁵ Dube, D. (2008), *Rape laws in India*, LexisNexis Butterworths India, pp.88-98

⁶ Section 114(A), Indian Evidence Act, 1872

⁷ Section 376, Indian Penal Code, 1860

⁸ *Mohd. Habib v. State*, 1989 CriLJ 137, Paragraph 2, 3, 6, 16

⁹ *Indianhomemaker.wordpress.com*. (2012), *Sakina from Ernakulam | The Life and Times of an Indian Homemaker*, available at: <https://indianhomemaker.wordpress.com/tag/sakina-from-ernakulam/> [Accessed 15 Oct. 2017]

this crime would be to improve safety and security for women in the State. More than stringent laws to penalize the wrongdoers, it is the attitude and mentality of men, like the Supreme Court Judges in the Mathura Rape Case that requires reformation.

“THEY ARE ALL INNOCENT UNTIL PROVEN GUILTY. BUT NOT ME. I AM A LIAR UNTIL I AM PROVEN HONEST.”

- LOUISE O' NEILL