



# Jus Corpus Law Journal

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## Case Comment: Tukaram and Ors. vs State of Maharashtra

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### INTRODUCTION

RAPE, a horrifying term with which we all are familiar and unfortunately, we come across this term now and then. There have been a lot of horrific rape cases in our country which shook the entire nation, one of which is the Mathura Rape Case. Not only the incident itself was horrific but the subsequent judgments were also shocking. The case exemplifies the male chauvinist side of Indian society. The subsequent protests and movements led to the historic amendments to our statutes. This case is significant to understand the social and legal perspective revolving around rape, rape victims, and rapists

### FACTS

Mathura, was a 14- to 16-year-old orphan tribal (Adivasi) girl, used to live with her brother Gama. Mathura worked as a housekeeper for a woman named Nunshi. She met Nunshi's relative Ashok and formed a relationship with him, and wanted to get married to him but her brother did not agree to the relationship and filed a complaint at the Desai Gunj, Gadchiroli, Maharashtra police station on March 26, 1972, stating that Nunshi, her husband Laxman, and Ashok kidnapped Mathura, a minor. Head Constable Baburao took note of the report. The

police authorities brought Ashok and his family members to the police station about 9 p.m. after receiving the complaint. Mathura, her brother Ashok, and his family members were allowed to return home after a general investigation. However, while they were leaving, Mathura was instructed to stay behind while her relatives were instructed to wait outside. And what transpired next is best summarized by Justice Koshal, who penned the Court's decision:

*"Immediately thereafter Ganpat... took Mathura...into latrine 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... In the chhapri he felled her to the ground and raped her in spite of her protests and stiff resistance on her part. He departed after satisfying his lust and then Tukaram....who was seated in the 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."*<sup>1</sup>

Her relatives were waiting outside, and their uneasiness was growing with each passing minute; also, the police station's lights were turned off, and the doors were shut, exacerbating their concern. They called "MATHURA" several times but to no avail, as a crowd gathered outside the police station compound to hear their cries. After a short while, Tukaram arrived to inform the crowd that Mathura had already left the station, but Mathura soon returned to inform them that she had been raped by Ganpat. Head constable Baburao was called to the police station, and after witnessing the crowd's rage, which threatened to burn down the police station if an FIR was not filed, an FIR was lodged.

## JUDGEMENTS & THEIR ANALYSIS

### Session Court

The session court's one judge bench, in the course of pronouncing the judgement made some contentious and shocking remarks. The Sessions Judge ruled that there was insufficient evidence to indicate that Mathura was under the age of 16 on the day of the incident. He went

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<sup>1</sup> 'An Open Letter to the Chief Justice of India' (1979)

<<https://aud.ac.in/uploads/1/admission/admissions2014/open%20letter.pdf>> accessed 27 November 2021

on to say that she was a "shocking liar" whose testimony was "riddled with falsehood and improbabilities. Further, he noted:

*"The farthest one can go into believing her and the corroborative circumstances, would be the conclusion that while at the Police Station she had sexual intercourse, and that in all probability, this was with Ganpat."*<sup>2</sup>

He emphasized, however, that there was a huge difference between "sexual intercourse" and "rape." He went on to say that Mathura made up the rape narrative after having sexual relations with Ganpat because she was scared Nunshi would be suspicious of her, so she wanted to appear virtuous in front of her lover, Ashok. He went on to say that Mathura was habituated to sex, as evidenced by Dr. Shastrakar's testimony, who administered a two-finger test on her. And hence, decided to have sexual intercourse with Ganpat. When asked about the semen found on both Mathura's and Ganpat's pajamas, Ganpat replied that it was due to nightly discharge, to which the session judge opined that Ganpat's involvement in sexual intercourse with persons other than Mathura cannot be ruled out. The judge held the same views for Mathura that the likelihood of the sperm belonging to someone other than Ganpat could not be ruled out because she had a boyfriend with whom she was living. Then, concluded that the prosecution had failed to prove its case against the appellants and hence, acquitted the policemen. The decision of the session court was then challenged by the appellants in the High court.

The session court's reasoning was flawed, as the judge inferred that because Mathura had sex in the past, she was "habituated to sex," so she chose to have sex with two strangers to satisfy her needs. The judge based his reasoning entirely on the past conduct of the victim, as she had sex with her lover, pre-marital sex, basically the judge got himself involved in the characterization of the victim. Also, even after Dr. Shastrakar's report that the victim was of the age of 14-16 years, the judge rejected this outrightly. The judge's opinion that Mathura had to frame the rape narrative to keep her identity and character sacred in front of her lover exemplifies the male-chauvinist tone of Indian society.

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<sup>2</sup> *Tukaram and Ors. v The State of Maharashtra* AIR 1979, SC 185

## High Court

The high court took a different, but valid, stance than the district court. Ganpat and Tukaram were sentenced to 5 years and 1 year for rigorous imprisonment, respectively. It distinguished "consent" from "passive submission." In the words of the high court, it held that:

*"Indeed she could not have resisted the same on account of the situation in which she had found herself especially on account of a complaint filed by her brother against her which was pending inquiry at the very police station. If these circumstances are taken into consideration it would be clear that the initiative for sexual intercourse must have come from the accused or any of them and she had to submit without any resistance... 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 desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition...."*<sup>3</sup>

The High Court took a very valid stance by convicting the offenders and also made out the distinction between "consent" and "passive submission" on which the session court erred. The high court was correct when it held that consent amounts to submission but the converse needs not to be necessarily true. The court also held that the absence of semen in the vagina and pubic hair of the victim was due to the delayed examination for the same, she was examined after 20 hours of the incident. But the high court was also wrong when it agreed with the session court and rejected the reports of Dr. Shastrakar in the issues concerning the age of the victim. The fight against Mathura did not end here as this judgement of the high court was challenged in the Supreme Court by the defendants.

## Supreme Court

The honorable Supreme Court, shockingly, reversed the High Court Decision and restored the session court decision in 1979, made such remarks which still gives the shiver in the spine even after 42 years of the horrific judgement.

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<sup>3</sup> *Tukaram and Ors. v The State of Maharashtra* AIR 1979, SC 185

*“As pointed out earlier, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help are also a tissue of lies.”<sup>4</sup>*

The Supreme Court’s reasoning that there were no signs of injury on the victim's body that could establish "stiff resistance" on her part is flawed. If the court believed the presence of injury was required, how could it rule out the possibility that she was unable to stiffly resist, resulting in "resistance injury," in front of two well-built constables? Furthermore, the court determined that if she had shouted loudly, as the victim claimed, she would have been heard by her relatives waiting outside the police station. Hence, called her a liar. But, even if she had shouted, she might not have been heard because the police station's door was bolted, and what if, after raising an alarm, she was choked by the perpetrators? Does the fact that she did not shout for help necessarily imply that she consented to have sexual intercourse? Isn't it possible that she didn't shout because she was afraid of being hurt? What would have been the supreme courts’ reasoning if the victim had been verbally challenged?

Mathura was called a liar because she shifted the claims, she made against Tukaram in her initial testimony to Ganpat. As a result, the court determined that if she could lie in her testimony, then everything she knew about the incident could be a lie as well. However, they failed to consider Mathura's circumstances, as the lights were turned off inside, making it impossible for her to clearly see the appearance of the rapist. The Supreme Court agreed with the session judge in its opinion when it held that Mathura was “habituated to sex” and thus, made up this fake rape narrative to appear “virtuous” in front of Ashok. The supreme court also got into the characterization of the victim, as in its opinion it was clear that the court felt that Mathura was so flirtatious that she could not let go any chance of having sexual intercourse, to satisfy her needs, even with two complete strangers, even if her brother and other relatives were waiting for her outside the compound of the police station.

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<sup>4</sup> *Tukaram and Ors. v The State of Maharashtra* AIR 1979, SC 185

The judgement relied on section 375(3), which vitiates the consent for sex when it is obtained by putting the victim under fear of death and injury. The Supreme Court ruled that the victim was not in any such fear. However, the judges ignored Section 375(2), which states that having sex without consent is rape, and putting a victim under any kind of pressure be it the fear of death or injury is not a necessity under this sub-section. This section asserts that "**no means no.**" The Supreme Court's decision was riddled with errors and sexist remarks. It very well described the type of mindset that women had to adjust to. This is one of the most contentious decisions in the Supreme Court of India's history. But what happened after this decision is still remembered by Indians as one of the most significant social movements in Indian history.

## AFTERMATH

In September 1979, a couple of days after the decision was set forth, law Professors Upendra Baxi, Raghunath Kelkar, and Lotika Sarkar of Delhi University and Vasudha Dhagamwar of Pune framed an open letter to the Supreme Court, fighting the idea of assent in the judgment. "*Consent involves submission, but the converse is not necessarily true*"<sup>5</sup>. From the facts of the case, all that is established is submission and not consent. There was a fierce roar in public and media against the judgment. There were many protests held by various women's organizations who demanded the review of the judgment. Several other women organizations were formed amidst all this.

In Jan 1980, the first feminist group was formed in India against rape named "Forum against Rape" which was later renamed "Forum against Oppression of Women" (FAOW). A public conference was organized by FAOW which began the discussion for lawful changes that featured the issues of brutality against women and the trouble of looking for legal assistance in sexual crimes in India. However, the court said that there was no legal backing in the present case to favor Mathura. Consequently, this led to the amendment in rape laws by the Government of India.

## Legal Reforms: The Criminal Law (2nd Amendment) Act, 1983

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<sup>5</sup> 'An Open Letter to the Chief Justice of India' (1979)

<<https://aud.ac.in/uploads/1/admission/admissions2014/open%20letter.pdf>> accessed 27 November 2021

1. Insertion of Section 114 (A) to the Evidence Act made on 25 December 1983, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent (as a rebuttable presumption of law).<sup>6</sup>
2. Section 376 (Punishment of Rape under Indian Penal Code) changed with the enactment and addition of Section 376(A), Section 376(B), Section 376(C), Section 376(D) IPC, which made custodial rape punishable (which were further amended in 2013 after Nirbhaya Rape Case).<sup>7</sup>
3. The amendment moved the burden of proof from the victim to the accused once the sexual intercourse was identified; also, provisions for in-camera trials, restricting on the disclosure of the name of a victim, strict punishments, etc. were added. <sup>8</sup>

## CONCLUSION

The Mathura Rape case was one of the most significant cases which simultaneously changed both legal and social perceptions regarding rape laws in the country. After the amendments in the rape laws, there was a ray of hope among the women regarding their rights against sexual harassment and brutality. This movement led to awareness between the masses to support women and many organizations came forth to raise their voice for women which was indeed a victory. We must recognize that just because some necessary changes were made to our laws does not imply that Mathura received justice, her perpetrators went scot-free. Yes, I appreciate the changes brought about, but India needs to recognize that it takes a woman to have her soul scarred for eternity to bring about such changes, whether in the case of Nirbhaya or Mathura.

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<sup>6</sup> 'CRIMINAL LAW (AMENDMENT) ACT, 1983' (1983)

<[https://www.indiacode.nic.in/bitstream/123456789/5429/1/criminal\\_law\\_%28amendment%29\\_act%2C\\_1983.pdf](https://www.indiacode.nic.in/bitstream/123456789/5429/1/criminal_law_%28amendment%29_act%2C_1983.pdf)> accessed 28 November 2021

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*