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## Case Comment: Tuka Ram and Anr vs State of Maharashtra

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### INTRODUCTION

The case of Tukaram and Anr v State of Maharashtra<sup>1</sup> also referred to as the Mathura rape case holds a special position in the history of the Indian Judicial System. In this case of custodial rape, the verdict by the Honorable Supreme Court to overturn the judgment of the Nagpur Bench of The Bombay High Court and set forth the acquittal of the accused from the charges of the rape led to a widespread protest in various parts of the country and set ablaze the controversy of difference between Consensual and Submissive Sex. This judgement also set the motion for a number of questions like “How safe are the women in the country” or “Whether Pre-Marital Sex provides a license for the rape of a woman?” This protest full of questions played a crucial role and pressurized the parliament to introduce the much-needed reforms in the Laws dealing with rapes and charges in The Country.

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<sup>1</sup> *Tuka Ram And Anr v State of Maharashtra* (1979), AIR 875

## **FACTS OF CASE**

1. Mathura, a young orphan of age 14-16, lived with her brother Gama. Mathura worked as a labour at the house of Nushi, to earn for living.
2. On the 26th of March, 1972, Gama reported at the police station of Desai Gunj, that Mathura was kidnapped by Nushi, her husband Laxman, and Ashok who was the lover of Mathura.
3. The report was recorded by Head Constable Baburao. Mathura was found and brought to the police station and the statement of the other two was also recorded within a few hours of registration of the report.
4. Age of the girl was not conclusive because of the lack of proof of her age. Baburao asked Gama to bring a copy of the entry regarding the birth of Mathura, which he left at his place.
5. Mathura was asked to wait at the police station by head constable Ganpat and her companions were directed to move out. He took Mathura to the washroom raped her and then also dragged her to the chhapri in the backside and raped her again.
6. Tukaram, another constable, the petitioner, came to the place where Mathura was and fondled her private parts. He couldn't rape her because of his highly intoxicated condition.
7. Gama, Nushi, and Ashok found the lights being switched off and the entrance door closed at the police station, Nushi shouted for Mathura, and the noise attracted a crowd.
8. After some time Mathura came outside the police station and informed Nushi that she had been raped by Ganpat and compelled her to undress.
9. Mathura was then taken to Dr. Khune by Nushi where it was informed that the girl was subjected to rape and asked to file a report in the police station where the FIR was lodged.
10. Mathura was examined by a doctor on 27th March 1972 and found that she had no injury marks on her body, her hymen revealed old ruptures and no matting of the pubic hair. Vagina courses two fingers smoothly. No traces of semen over pubic hair and vaginal smear slides

therein but semen was detected on the girl's clothes and the pyjama which was taken off. Doctors conjecture the age of a girl is 14 to 16.

11. The judge at the sessions court acquitted all the charges from the accused as he believed this was not a case of rape but one of "consensual sexual intercourse". According to the sessions judge, the logical evidence implies that Mathura being "habitual to sex" might have invited Ganpat to satisfy her sexual needs and it was consensual. Mathura fabricated a story of being raped. Mathura was held as, "a shocking liar whose testimony was riddled with falsehood and improbabilities". He added, "really speaking finding Nushi angry, Mathura could not tell that she freely did it and she had surrendered her body to the constable."

12. The Bombay High Court overturned the Sessions Court's decision and gave the defendants Ganpat and Tukaram five and one year in prison, respectively. According to the Court, passive submission brought on by fear brought on by serious threats cannot be interpreted as permission or willing sexual activity.

13. The Apex Court overturned the High Court's decision and once more found the police officers innocent. The court ruled that Mathura had not caused any alarm and that there were no obvious wounds on her body, indicating no resistance and, hence, no rape. "Because she was used to sex, she might have incited the cops (who were intoxicated on duty) to have intercourse with her," the court observed.

## JUDGEMENT

### *Sessions Court:*

The judge in the Sessions court had acquitted both the accused as he believed the incident to be of "consensual sexual intercourse" rather than a forceful rape. He also concluded that Mathura might have allured Ganpat to meet her sexual needs as she was "habituated to sexual intercourse". The judge also mentioned that because of the presence of the crowd and her lover Ashok being a part of that crowd, Mathura had to sound virtuous in front of him, and hence she might have made up the story of rape. The judge held that Mathura was "A shocking liar whose

testimony is riddled with falsehood and improbabilities.” The judge also held that keeping all the circumstances in view it could be concluded in all probability while in the Police station Mathura had sexual intercourse with the accused Ganpat.

Though the Medical examination was done and Mathura was estimated to be between the age of 14 to 16 by the Medical Examiner. The Sessions judge ruled that “There was no satisfactory evidence to prove that Mathura was below 16 years of age on the date of the occurrence.” (As per Section 375(6) of the Indian Penal Code<sup>2</sup>, sexual intercourse with a woman below the age of 16 whether with or without her consent qualifies as rape.) The judge also implied that between the hours of the alleged rape and her medical examination Mathura might have had sex with someone other than the accused Ganpat as she was so “habituated to sexual intercourse”. Which could account for the stains of semen on her clothes. In the meantime, the Sessions judge also said that the stains on the cloth of the accused Ganpat could also be a result of nightly discharge or of sexual intercourse with someone other than Mathura.

***Bombay High Court (Nagpur Bench):***

The high court overturned the judgment given by the sessions judge and convicted both the accused Ganpat and Tukaram with the charges of rape and sentenced them to imprisonment of five years and one year respectively. The court held that it is highly improbable that Mathura had invited the accused to satisfy her sexual desire as both the accused were strangers to her. She did not know any of them since or before the time of occurrence. The court set forth the Concept of Passive Submission caused by threat or fear. The fact that a police investigation was going against Mathura in the same police station cannot be ignored and must be kept into account. The court further held that the initiative must have been from the side of the accused as a complaint was filed against Mathura in the same police station by her brother. She had to submit without any resistance because she believed that the denial could result in something unfavourable.

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<sup>2</sup> Indian Penal Code, 1860, s 375

The court added that passive or helpless surrender of the body induced by fear or threat cannot be equated with the desire of will. Mathura must not have been a willing party to the act of sexual intercourse. The court also held that the lack of semen on the public hair and on the vaginal smears could be because of the time difference of 20 hours between the occurrence and examination by the lady doctor. It was highly probable that Mathura had taken a bath during this time period. Though the court overturned the decision of the Sessions judge it agreed to it on some points as well. The court agreed that there was no satisfactory evidence regarding the age of Mathura. The high court also held that though Sessions judge was right to mention “A world of difference between sexual intercourse and rape” but also believed that he somehow failed to appreciate the difference between consent and “Passive Submission”.

***Supreme Court:***

The verdict of The High Court was further challenged by the convicted side in the Honorable Supreme Court where the apex court decided to go against the verdict of the Bombay High Court and went ahead to reinstate the original judgement by the sessions judge to acquit both the convicts of all charges. The apex court agreed with the views of the Sessions judge that the alleged intercourse could not be ruled as rape due to the absence of a mark of injury on the body of Mathura further it could not be concluded if there was any resistance from her side at all.

The court also concluded that the intercourse was very much consensual and was in fact a very “Peaceful affair” as no one heard Mathura shout neither did she shake off the accused hand or asked for help from her companions, which should have been her natural reaction when the accused held her back. To explain the meaning of consent in Clause 2 of Section 375 of the Indian Penal Code<sup>3</sup> the court referred to Clause 3 and Clause 4 of The Indian Penal Code<sup>4</sup>, the apex body brushed aside the possibility of “Passive Submission” and ruled out any possibility of the occurrence to be rape. As the court had not enough ground to believe that consent from Mathura was taken under any threat, fear, or misrepresentation.

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<sup>3</sup> Indian Penal Code, 1860, s 375

<sup>4</sup> *Ibid*

The apex court also question Mathura`s allegation on Tukaram as she had already changed her stance on the allegations over Tukaram and keeping this in view, the court cannot give a verdict against Tukaram either as they believed Mathura was capable enough to lie. The honourable court rightly referred that the Onus of proof was on the prosecuting side to prove all the ingredients of Section 135 of IPC<sup>5</sup> and it never shifts. Failure to do so was one of the major reasons for the verdict to be against the prosecuting side.

### **AFTER EFFECTS**

This verdict was followed by a lot of criticism throughout the country and a number of valid questions were asked about the law related to sexual crime against women in the country. The laws were called out to be misogynistic. An open letter<sup>6</sup> was addressed to The Honorable Supreme Court referring to the concept of consent in the eyes of law. Following the judgement women in the country came together and started to form a number of groups. These women support group raised their voices for legal reforms for sexual crimes against women in the country. These groups also demanded justice for Mathura. Though these protests were unable to shake off the judgment of the apex court they were successful to pressurize the parliament to bring reforms in the Laws dealing with rape, consent, and crimes against women. In 1983 Criminal Law Amendment act was passed resulting in an amendment of Sec 114(A) of the Indian evidence act<sup>7</sup> which provided further clarity about consent during sexual intercourse. Section 376 of the Indian penal code<sup>8</sup> was further added with four new clauses dealing with the sexual abuse of women in police custody. The reforms were also introduced shifting the burden of proof from accusing to accused in the case intercourse was established and a complaint of rape has been filed against the accused. Major steps were taken into consideration to protect the identity and image of the rape victim.

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<sup>5</sup> Indian Penal Code, 1860, s 135

<sup>6</sup> An Open Letter to the Chief Justice of India, 1979, 4 SCC (Jour) 17

<sup>7</sup> Indian Evidence Act, 1872, s 114A

<sup>8</sup> Indian Penal Code, 1860, s 376

## CONCLUSION

The Mathura rape case brought a pivotal change in the condition of women in the country. Soon after the case, women got better aware of legal rights and remedies. This case forced much-needed reforms in the long-practised law dealing with women's sexual harassment and crime against them. This case sparked a chain reaction and empowered women to fight and protest for their rights. Though the wrong done with Mathura can never be reversed but the way women of the country came together to support her was really appreciable. We may never know what the actual truth in the Mathura rape case was. But it could be said that the way Mathura had to go through all the humiliation and allegations against her was definitely not very humane. Mathura was a brave lady to come forward and the modern women of the country owe a lot to her. Ever since a lot of necessary reforms have been brought to the laws dealing with sexual crimes against women but unfortunately, we cannot say that we have put a stop to these crimes.