

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 5

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Tukaram and ors. V. State of Maharashtra (Mathura Rape Case)

SHAURYA AGGARWAL¹ AND RAHUL RATHEE²

ABSTRACT

Rape is a sexual assault which involves but not limited to sexual intercourse and other forms of sexual penetration without the consent of the person or against the will of the person. It can be carried out by physical force, abuse of authority, coercion or against someone who is incapable of giving a valid consent, in the meaning that the person is unconscious, has a disability or has not attained the legal age for consent.

In 2019, India recorded an average of 87 rape cases and a total of 4,05,861 crime cases against a women, which showed approximately over 7% rise in the cases from 2018. Laws are being amended on regular basis to protect women in India but every law made seems to be ineffective when women get raped in India. Various schemes and policies were also im-plemented to provide safety and security at places where women feel unsafe. From minor to aged no women is safe, there are various instances where a toddler has been raped by someone and at the same time it is not shocking that a 70+ years old women is raped somewhere in India.

Reasons may be numerous but the whole nation failed to protect safety of women in India.

In November 2019, a 27 year old girl was raped by various drug addict youngsters and was burnt to get away with the crime they committed. In August 2020, a 13 year old minor was raped and killed by 2 men of her own village. The very recent Hathras Rape case was the latest case where a girl was raped and it resulted in her death. The case is under investigation but the issue remains the same "RAPE". The Researchers in this paper are focusing on the very famous Mathura Rape case which forced the all 3 organs of India to act and come up with new legislations.

Key words: *Rape, Sexual Harassment, custodial rape, rape laws.*

¹ Author is a student at Amity University, Noida, India.

² Author is a student at Amity University, Noida, India.

I. INTRODUCTION

“They are all innocent until proven guilty. But not me. I am a liar until I am proven honest.”

- **Louise O’Neill-**

The case commonly known as Mathura Rape case rightly portrays this quote and the attitude and mentality of men like the Supreme Court Judges in this case. This case led to radical changes in the sphere of rape laws in India. The judgement was delivered by Justice Jaswant Singh, Kailasam and Koshal and was criticised for logical, legal and linguistic fallacies along with a sexist tone.

II. FACTS OF THE CASE

Mathura, a young tribal girl, lived with her brother named Gama, and worked as a labourer at Nushi’s house. During the period of employment she developed a sexual relationship with the son of Nushi’s sister, Ashok, and thereafter they decided to get married. However, on 26th of March, 1972, Mathura’s brother filed a police complaint stating that Mathura has been kidnapped by Nushi, her husband Laxman and Ashok. The statements were recorded and the head constable Baburao asked everyone to leave also directing Gama to bring a copy of Mathura’s birth proof. Mathura was asked to stay at the police station. Thereafter, closing the doors and turning off the lights, Ganpat (1st appellant) took Mathura to the washroom and raped her. After that Tukaram (2nd appellant) tried to rape her but failed due to being highly intoxicated but touched her private parts.

Afterwards, Mathura was examined by a doctor and no injury was found on her body, and no semen on her pubic hair. However, semen was found on her clothes. The estimated age of Mathura was examined to be between 14-16 years.

III. JUDGEMENT BY SESSIONS JUDGE

The accused were acquitted because the sessions judge believed that this was not a rape case and was a “consensual sexual intercourse.” The wrong-headedness of his logic was evident when he implied that Mathura was “habitual to sex” and therefore might have invited Ganpat to satisfy her sexual needs.

He further utilized this line of contention to legitimise the presence of semen on her garments to have originated from her demonstration of having sex with some individual other than Ganpat.

By this announcement, the Judge is suggesting that Mathura was anxious to such an extent that she had sex with 'somebody' between the hours of this occurrence and her clinical assessment. However, in defending the semen on Ganpat's garments he said it was because of "nightly releases". It is confounding with regards to why the Court had such twofold principles dependent on gender roles.

According to Section 375(6) of the Indian Penal Code, sex with a woman underneath the age of 16 whether with or without her assent qualifies as assault.

Even after Dr. Shastrakar introduced proof that Mathura was between the ages of 14-16, the Sessions Judge held that the proof deciding Mathura's age was lacking.

He further held that, to sound "virtuous before Ashok" Mathura created an account of being assaulted. The chauvinist tone in this judgment is frightening as the Judge allots a particular function to Mathura by suggesting that she needs to compose a story to demonstrate her virtuousness to her lover. In his words, Mathura was "a stunning liar whose declaration was loaded with lies and impossibilities."

IV. BOMBAY HIGH COURT JUDGEMENT

The Bombay High Court properly recognized aloof accommodation and assent. It held that since the charges were aliens to Mathura and her sibling had recently recorded a case in a similar police headquarters, the odds of her making advances on them were exceptionally doubtful.

Further, they were in a place of power and any protection from them could demonstrate unfavorable to her or her sibling.

The way that the constables restricted her to the police headquarters alongside her demonstration of immediately portraying the episode to her family shows a lack of assent.

The Court again appropriately held that the "absence of semen on the vaginal smears and pubic hair" was a direct result of being inspected 20 hours after the episode and it is probably for her to have cleaned up meanwhile.

Although the High Court appropriately indicted the blamed, there were a few sections of the judgment that was dumbfounding.

Initially, the Court concurred with the Sessions Judge on the record of Mathura's age. If both the Courts were certain that Dr. Shastrakar's assessment was wrong then for what reason didn't they direct any further assessment into her age?

Also, while suppressing the exoneration of the denounced, the High Court expressed that these two "honorable men" were supreme strangers to Mathura and it is unlikely that she'd approach them to fulfill her sexual needs. It is confusing that while indicting the denounced for rape, this Court has alluded to them as courteous fellows.

V. SUPREME COURT JUDGEMENT

At last in 1979, the Supreme Court toppled the conviction of the High Court and vindicated the charged. The Supreme Court concurred with the Sessions Judge, this was an instance of consensual sex. On this point, the Supreme Court additionally included that since "no characteristics of injury" were found on Mathura's body there was "no opposition" on her part and since she didn't "raise an alert" for help she "assented to sex."

Initially, it is astonishing that this Court has linked the absence of resistance to assent.

Regardless of whether Mathura attempted to oppose she would be frail before two solid constables, and thus impossible for "signs of injury" to be cut onto her body.

While the Court read into Section 375(3) of the IPC to hold that her assent was not acquired by placing her in dread as she didn't protest when she was detracted from her family, it barred Section 375(2), which expresses that rape is sex with a women without her assent.

Furthermore, it is sketchy concerning how the Courts are sure that Mathura didn't yell for help.

The entries were bolted all through when Ganpat took Mathura up to the washroom to rape her.

Regardless of whether she shouted out for help, all things considered, she probably won't have been heard. At this stage, it is relevant to scrutinise this Court with regards to what their judgment would be if the casualty for this situation were verbally handicap?

The Supreme Court additionally concurred with the Sessions Judge that Mathura was "constant to sex" and this whole story was prepared to sound "virtuous before Ashok".

In such a manner, two false notions ordinarily utilized in the English language have been submitted, 'Argumentum ad Hominem' and 'Hasty Generalisation'.

This implies that instead of choosing this case on its merits, the Court continually assaulted the character of the person in question and reached resolutions with no connection to its reason.

It accepted that Mathura was promiscuous to the point that she was unable to relinquish any opportunity of having sex in any event, when her kin Gama, boss Nushi and dearest Ashok were sitting tight for her privilege outside the police headquarters.

Mathura's mix-up to bring up the specific litigant who had raped her, further neutralised her because the Court expressed that on the off chance that she could conflict with her underlying declaration by changing the denounced from Tukaram to Ganpat, it was conceivable that she had lied about everything else as well.

No respect was paid that these men were strangers to her and she had never observed them before this incident or that it may be hard for her to see their appearances plainly as the lights were turned off.

The truth of the matter is Tukaram stayed an onlooker while Ganpat was raping her like it was an obscene film or that he was drunk on the job was likewise viewed as incidental in choosing the destiny of this little girl.

The Supreme Court vindicated both the blamed expressing this supposed intercourse was a "peaceful affair".

VI. CHANGES IN RAPE LAWS AFTER THIS CASE

This case worked up extraordinary interests and disdain among individuals in the general public. A law delicate to the sentiments of the victims must be drafted, that secured their basic liberties and dignity.

This brought about the Criminal Law Amendment Act being passed in 1983. This demonstration changed Section 114(A) of the Indian Evidence Act, which expressed that the victim doesn't agree to sex, at that point the Court would assume that she didn't assent.

Section 376 of the IPC was additionally changed, making custodial rape an offence punishable with at least 7 years detainment. This segment moved the burden of proof from the victim to the guilty party, when sexual intercourse is established.

The change additionally prohibited the distribution of victims' identities and held that assault trials ought to be led as in-camera procedures.

Although the Parliament has revised rape laws to serve equity, legal translation of these laws has done the exact opposite.

While there are a few decisions post the 1983 Amendment Act that has been effective in serving justice to the people in question, there is an equivalent number that is unreasonably drafted like the Mathura Rape Case.

VII. CASES UNREASONABLY DRAFTED EVEN AFTER THE AMENDMENT

- In *Mohd. Habib v. State (1989)*³, 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 by 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.”

VIII. SUGGESTIONS AND RECOMMENDATIONS

After thoroughly researching on Mathura rape case the loopholes which should have been taken into consideration are:

- That both the appellants were granted acquittal by the Supreme Court only on the ground that there were no injury marks on the body of the girl. This is not a valid ground of proving that the offence was not of rape but of consensual intercourse.
- Another ground which was used for acquittal was that the girl didn't raise any alarm for help. However, maybe the girl was unable to call for help and raise alarm or maybe she did raise alarm and since all the entrances were closed she was left unheard. Therefore, this is also not a valid ground.
- The consent of minor was also not considered invalid consent. Consent plays an important role in the act of sexual intercourse with a girl whether minor or major, without consent it can't be consensual intercourse.
- The Criminal Law Amendments shall provide for stricter and harsher punishments to the accused of this offence.
- Rape can only be stopped by educating the individuals and creating awareness among them about the harsh after effects on the rape victims. As far as the laws are concerned proper implementation of rape laws should be looked into.
- The concept of reformation home for the offence of rape shall not be considered for juveniles and they shall also be punished with the same.

³ 1989 CriLJ 137.

IX. CONCLUSION

Despite the fact that rape laws in India have been transformed from time to time, the events of rape continue expanding each year. Other than making enormous physical injury to the person in question, this wrongdoing has pulverising mental impacts also, for example, PTSD, depression, flashbacks, sleeping disorders and more. One step towards end of this wrongdoing is improve wellbeing and security for women in the State. More than severe laws to punish the miscreants, it is the disposition and mindset of men, similar to the Supreme Court Judges in the Mathura Rape Case that requires reformation.
