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CASE ANALYSIS: TUKARAM AND OTHERS V. THE STATE OF MAHARASHTRA
1979 2) SCC 143

MATHURA RAPE CASE

The Mathura rape case in the late 1970's caused a lot of controversy among the people and was considered and proven to be one of the biggest flaws in the Indian law and judicial system. This incident in 1972 place in a small town near the city of Nagpur, where a sixteen-year-old girl, Mathura was inhumanly raped in a police station by officers of law Baburao and Tukaram while they were intoxicated.

The first hearing at the sessions court gave a verdict saying that the plaintiff (Mathura) was familiar and habituated with sexual activities and had given consent to the policemen, who were intoxicated. Therefore, the defendants were not guilty and it cannot be said that the incident of rape has occurred.

As the case moved on to the Bombay high court, the Bombay high court gave a verdict where they found the two policemen (Baburao and Tukaram) guilty and gave them a prison sentence. The court stated that the plaintiff quietly and passively submitted her body as she was feared by the threats made by the defendant, and it was ruled in the plaintiff's favor as such factors will be grounds for committing rape.

This case was reopened in 1979 in the supreme court for the final verdict which caught the media's attention and caused a lot of controversies. The supreme court verdict cleared the two policemen of all the charges on the grounds of that the plaintiff (Mathura) didn't raise any alarm when the incident was taking place and as per the tests there were no bodily injuries seen on her body after the incident had occurred. These factors indicated that the plaintiff did not go through any struggle and hence the act of intercourse of consensual.

The section 375 of IPC (Indian penal code) explain that “rape is an unlawful intercourse done by a man with a woman without her consent”¹ and the subsection of the same act states that “women of unsound mind and below the age 16 are not taken to be lawful consent”², as its assumed that women of this age are not in the condition of making their own life decisions.

Initially the district court didn't hold the police men liable and in fact blamed the victim to provide lack of evidence for her age proof as Mathura wasn't able to provide her birth certificate because of which the court couldn't determine her age and couldn't apply the section 375.

Another reason because of which this case caused a lot of controversies is that the court took into account that Mathura had already taken part in sexual intercourse and therefore she was “habituated” with the act and hence had given voluntary consent. The judgement given can also be considered stereotypical of women, as the court conveniently considered as Mathura was involved in sexual activates prior to her rape she must've given consent. It is seen as a woman might be involved in a sexual activity once she might be used to it and hence only has herself to blame for it even though there might be no consent. It can almost be considered by the courts verdict that a woman who has engaged in pre-martial intercourse before a rape incident should be the one who is at fault. This shows that what a narrow-minded and male ego dominated society we live in.³

The second verdict by the Bombay high court ruled in favor of the plaintiff and held the defendants guilty by giving them jail time. The judge bench stated in their order that the plaintiff “passively” surrendered herself to the policemen as she was feared by their threats.

This judgement was questioned by legal scholars and activists nationwide as they talked about abnormal attitude of the Indian society towards pre-martial intercourse. They blamed the courts as the portrayed it in this way in their judgement as if a woman has to sexually submit herself to the male member of the society. Such a judgement should be marked as socially and morally wrong.

¹ Section 375 of the Indian penal code

² Subsection of 375 IPC

³Tukaram and Anr v State of Maharastra1979 2) SCC 143 (Sessions Court Judgment)

The final judgement by the supreme court of India proved to be one of the biggest disasters in the Indian judiciary of all time. The final judgement cleared the defendants of all the charges and stated that Mathura didn't scream and raised any alarm during the act. She wasn't even found with any major bodily injuries that might show her struggle and therefore on lack of evidence the defendants were free to go. As the judge concluded that Mathura didn't raise any alarm or didn't struggle during the incident didn't take into account the various factors. Firstly, it can be assumed that Mathura was going through mental trauma because of the incident that was taking place which hadn't assumed and that caused her not to speak out as she wasn't expecting it. Secondly it is quite possible that Mathura might be screaming as the facts show that the people who came with her were asked to wait outside the police station, and there were only 2 policemen present during the incident who intoxicated and a part of the incident.

The court passed their major judgements on the basis vaginal laxity or the two finger test which were conducted by the doctors as appointed and ordered by the courts. The doctors gave a report stating that Mathura had an active sexual lifestyle and hence was judged on that basis.

Another major issue of this case was whether Mathura's incident was with consent or not. In the given case the supreme court reduced the prison time for the defendants stating that the intercourse was peaceful. They assumed that it had Mathura's consent as she did not scream due to fear.

As it was seen that the courts regularly stated that Mathura was habituated to sex and that the semen found on the clothes could be due to her ongoing sexual activities. At the same time the courts showed double-standards with regards to Ganpat's s clothes. This shows the sexist approach of the courts where the stains on Ganpat's clothes gave him the benefit of doubt whereas the stains on Mathura's put her in jeopardy.

Another violation of this case was that the plaintiff (Mathura) was called and detained in the police station which would be going against the criminal procedure code section 160(1). Under the given section the police cannot call a woman to the police station for any matters related to the ongoing investigations.

It can be understood that our society still follows the patriarchal mindset they used to follow back in the old times. As again and again the courts in their judgements have explained that

Mathura was habituated to the intercourse she might have incited the cops to have intercourse with her. As the doctor's initial reports stated that Mathura was not a virgin before the incident occurred the courts ruled in the favor of the cops saying therefore that there might have been consent. This shows that the case has been hastily generalized by the courts to reach the verdict on the basis of assuming that Mathura was sexually active and might have incited the cops. Mathura has faced the stigma of "that kind of girl" which this patriarchal society thinks of immoral.

The case also saw some very strong terms and phrases which were used in the verdict as Mathura's testimony in the district court was highly ridiculed by the court and terms like "shocking liar" were used in return as she was not able to submit any valid age verification proof to the court. It is highly possible that Mathura might not be in the possession of her birth certificate or might be unsure about her age as people in rural areas don't keep a proper track of these legally binding documents, but ridiculing her testimony on the basis of lack of evidence and then ruling in the favor of the policemen was highly unnecessary. Secondly The courts repeated the phrase "habituated to sexual intercourse" which shows their doubts on her character and ruled against for having and active sex life.

Conclusion of the Judgement (Mathura Rape Case)

The judgements and the facts presented in this case shows the deficiency of the Indian judiciary how they think and act according to their set patriarchal mindset. This case covers various loopholes of the Indian legal system where the wrong doers get acquitted as the law permits them to. The respect for women with proper education should be instilled in the minds of children from the beginning in order to decrease the number of such cases. The patriarchal mindsets of people should change according to the modern times where pre-martial intercourse shouldn't lead to people judging the character of a person. It is a matter of shame that how the courts forget right to equality when a woman has had pre-martial intercourse

Thus after understanding and analyzing the cases it can be concluded that if the Indian judicial system does not change it will keep on acquitting guilty men which will give them the power to attempt such atrocities again which will cause the society a lot of problems and shame.

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