

“Critical Analysis on Mathura Gang Rape Case”

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ABSTRACT:

The article looks at the changes after the heinous incident i.e; Mathura rape. Few years ago, the law relating to rape has suffered many changes, but the same question remains: has the law *really* changed? While looking at judgments of the Supreme Court to claim that the same judicial mind used in the Mathura rape case are still valid today. And also the concept of the consent or non-consent remains the same issue as the changes in law have failed to address the passive consent and medicalisation of the consent. The article contends that the goal why changes in law have not led to change in the conviction rate is because the amendments to the rape law do not move away from this circular address of consent and non-consent. The answer came is according to law and regard with the consent in cases other than the rape, which is in property and contract that is based on the sympathy of the intent. Thus, the article concludes that as the law is dynamic and changing day by day and it needs reconstruction for the development of women as subject to law and not its object.

KEYWORDS: changes, law, judgment, judicial mind, consent, issues, conviction,
Amendment, property, contract, dynamic, reconstruction.

TITLE OF THE CASE:

Tuka Ram And Anrvs State Of Maharashtra on 15 September, 1978

PETITIONER:

TUKA RAM AND ANR.

Vs.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT: 15/09/1978

Equivalent citations: 1979 AIR 185, 1979 SCR (1) 810

BENCH:

KOSHAL, A.D.

BENCH:

INTRODUCTION:

Feminist activism in India gained momentum in late 1970's. One of the most National level issues that brought women's group together was a Mathura's Gang Rape Case. The day of 26th March 1972, considered as the black day in the history of empowerment of women. On 26th March 1972, **Mathura rape case** became the episode of custodial rape in India, where Mathura, a young harijan girl, was badly raped by two policemen on the compound of Desaignanj Police Station in Chandrapur district, of Maharashtra as it led to amendments in Rape Law via The Criminal Law Amendment of 1983. The judgment is given by Justice Jaswant Singh, Kalisam and Khosal who were highly criticized by the people for their legal fallacies and the interpretation of the law for ambiguous and the sexiest tone. Then after the Supreme Court acquitted the accused, there was a huge public outcry and protests against the laws of the country.

FACTS OF THE CASE:

A young tribal girl named Mathura lived with her brother Gama She worked as the laborer at the Nushi's house for the employment. During the period of employment she developed the sexual relations with the son of Nushi's sister, Ashok. They decided to get married. Her brother filed a complaint to the police ensuring that Mathura had been kidnapped by Nushi, her husband Laxman and Ashok on 26th of March, 1972. The statements of Ashok and Mathura were recorded at about 10:30 P.M., and the head constable Baburao asked all the persons to leave with a direction to Gama to bring a copy of the entry regarding the birth date of Mathura. The appellants also asked Mathura to stay at the police station only. Thereafter closing the doors and turning off the lights inside, Ganpat, the appellant No.1 took Mathura to the washroom and raped her. After the Ganpat was done, the appellant No. 2 Tukaram, tried to rape her but failed due to highly intoxication but touched her private parts.

After the incident Mathura was examined by the doctor and found no injury on her body. The examiner did not found the symptoms of semen, even on the pubic hair. The semen however found on the girl's clothes. After examining her doctors has also estimated the age of Mathura as between 14 to 16 years.

JUDGMENT BY THE SESSION JUDGE:

The session court held that both of the accused are not liable for the offence of rape because the intercourse between the girl and accused was a “consensual sexual intercourse” as the girl was habituated to the sexual intercourse. And also she was scared of Ashok and Nushi that is why she had not made any sound. The district judge therefore acquitted both of the appellants.

JUDGMENT BY THE HIGH COURT:

The Bombay High Court has reversed the order of the Session Court and held that the sexual intercourse was a rape and not a consensual sexual intercourse. It is proved by the evidence that since, both the accused were stranger to Mathura, how she can have sexual intercourse with them to fulfill the sexual needs of her.

JUDGMENT BY THE SUPREME COURT:

The appellant contended for the special leave. And Supreme Court again converted the decision of the High Court and acquitted the accused. It was agreed with the decision of the Session Judge and held that this was a case of consensual sexual intercourse. On this spot the Supreme Court more added that as “no marks of injury” were found on Mathura’s body there was “no battle” on her part and since she did not “raise an alarm” for help she “consented to sex”.

ISSUES BEFORE THE COURT:

1. Whether there was consent of girl?
2. Whether the appellant No.1 and No.2 will be charged for Section 376 of Indian Penal Code?
3. Whether the act of police officer will amount to rape?
4. Whether the grounds of acquittal of the police officer by the Court are valid?

ARGUMENTS:

- **ARGUMENT NO.1:**

According to the decision of the Trial Court, in the question of consent, the intercourse had developed consensually as the girl was habituated to sex and wants to fulfill her sexual needs. But, High Court reversed the decision of the Trial Court and held that that the sexual intercourse was a rape and not a consensual sexual intercourse. It is proved that as Mathura was a minor and of 14 years of age, even if the consent given by her; how it can be considered as the valid consent. Hence, it was not the valid consent.

- **ARGUMENT NO.2:**

On the evidences presented before the Trial Court it was held that Mathura was habituated to sex and on the basis of this evidence, both of the appellants are not charged with Section 376 of Indian Penal Code and got acquitted. But, to the contrary High Court held that even though Mathura was habituated to sex and as both the accused were stranger to Mathura, how she can have sexual intercourse with them to fulfill her sexual needs.

- **ARGUMENT NO.3:**

Trial Court has acquitted both the appellant and High Court held the Police Officers liable for the offence of rape under Section 376 of Indian Penal Code.

- **ARGUMENT NO.4:**

The Trial Court held that since Mathura had not raised any alarm, her allegations of rape were untrue. Her ways humbly following Ganpat and were making allow him to have sexual intercourse with her and giving indication that the 'consent' in question was not a consent which could be kept aside as 'passive submission'¹.

According to the Trial Court police officers are acquitted on the basis that the intercourse had developed consensually and while having intercourse Mathura have not raised any alarm or did not made any sound for help. But the High Court held both of the police officers liable for the offence of rape.

ANALYSIS OF SECTION: 376; IPC, PUNISHMENT FOR RAPE:

Whoever, except in the cases provided for by subsection (2) , commits shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which extend to ten years and shall also be liable to fine unless men raped his own wife and is not under twelve years of age , in which cases , he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both . Provided that court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

- Whoever,—
 - (a) if a person being a police officer commits rape—
 - (i) in the area of the police station to which he is appointed²; or
 - (ii) in the building of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) any woman under his custody or under any subordinate police officer under him; or
 - (b) if any person being a public servant, takes benefit of his official status and commits rape on any woman under his custody as such public servant or under the custody of subordinate public servant; or
 - (d) if any person commits rape with woman knowing her to get pregnant; or
 - (e) if any person commits rape with woman under twelve years of age; or
 - (f) if any person commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

¹Tukaram v. State of Maharashtra AIR 1979 SC 185.

²Section; 376 of IPC, 1956

Provided that, the Court may, for sufficient and particular reasons which is to be highlighted in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.— Where a woman is being raped by one or more in a group of persons acting in furtherance of their common intention, every person of that group shall deemed to have committed gang rape under the definition of this sub-section

ANALYSIS OF LAWS BEFORE THE CRIMINAL LAW AMENDMENT, 2013:

Rape laws have walked through several changes before attaining the present condition through various criminal law Amendment of 2013. This amendment or a change was brought at the national anger against the cruel rape of a physiotherapist student in Delhi.

Rape is defined in Section 375 of the Indian Penal Code. In general sense rape is a sexual intercourse with a women without her consent by force or fear. In the year 1983 Section 375 has also gone through amendment, which had changed the definition of rape and also made changes in the punishments of the rape mentioned under Section 376. This was made through the Criminal Law (Amendment) Act of 1983. The amendment of 1983 brought due to the criticism of the judgment of “*Tukaram v State of Maharashtra*” i.e; Mathura Gang Rape Case³. The ratifications of the case were seen in the amendments that were brought about in the IPC and the Indian Evidence Act. Section 376 A to D is new in the IPC and section 114A was added as an introduction in the Indian Evidence Act.

For analyzing the laws of the Amendment act 2013, it is important to know how thee rape and its punishment is defined at former. Before the amendment act 2013, rape involves nonconsensual sexual intercourse between man and woman.

There are the six essential elements that defines rape. The first condition necessary for the commission of the rape to be the sexual intercourse between a man and a woman. It was strongly believed that the rape can be committed only if the sexual intercourse had taken place without the consent of the victim, but this is not always he case, rape can be committed even after the consent has been obtained if the women is below the age of sixteen years. On a closing part at which the situation necessarily required for the commission of rape, majorly divided into three parts. The starting two clauses deals with sexual intercourse with a woman ‘against her will’ and ‘without her consent’. This means that the women is passively capable of giving consent or not.

The rest two clauses again deals with, the consent given by women woman in fear by putting her family members into threat or the consent obtained through misconception. The last two situation deal with the situation consensual sex takes place with the underage woman.

³ AIR 1979 SC 185

RAPE LAWS AFTER THE AMENDMENT OF 2013:

Lok Sabha on 19th March 2013, and Rajya Sabha on 21st March 2013, the Criminal Law Amendment Act was passed and also provides for the amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The Bill received President's assent on 2nd April 2013. Widespread protest of the society forced the legislature to change the prevalent rape laws. The basic aim was to formerly implementing the cruel punishment of the rape rather than broadening the definition of the rape.

Late Justice J.S.Verma, GopalSubramaniam and Ex-Justice Leila Seth comprised with the famous 'Justice Verma Committee' which was made to accumulate suggestions and make recommendations for the legislature to make a law to combat rape and other crimes against women.

A law is only as good as the systems and individuals that implement them. Thinking and attitudes of the society need to be changed so that women can be treated equally and can truly be respected without any discrimination and what are their value in society.”⁴

The offence of rape has now been amended and got a huge ambit which is enough to include all kind of penetration in any part of the body of a girl. The fact that the new suggestions added that any penetration would be considered as rape was the most capable tool in widening the domain of the term rape which was demanded on the grounds of suggestions of the fifth law commission report. Registering complaints and medical examination are also the part of this recommendation. The report surely mentioned, “Any officer, who do not register a case of rape complained or reported to him, or attempts to avoid its investigation, commits an offence which shall be punishable as prescribed⁵”.

CRITICAL COMPARISON OF THE TWO LEGISLATIONS:

As the view of the societal view changes time to time the law also changes frequently with the advent of new technologies. But it will be fair only when the matter which is regulating the law and the prevailing in the society changes timely. The chief rape and sexual assault cases, for example the '*Shopian Rape Case, the ArunaShanbaug Case, Nirbhaya Rape Case, Priya Patel⁶, the Mathura Rape Case*, etc. all the above cases had an effect for functioning the rape laws and also for their interpretations as well as reformations and their changes. Rape was included in the Indian Penal Code, 1860 in its original form since 1924.

On occasions of rape the evidences related to consent is on the basis of the past conduct of the woman. In the previous cases prostitutes are also get raped but their rights are not secured as a victims and always create a chaos in the mind of the judiciary. The only reason to include this

⁴“UN Women welcomes India's Criminal Law (Amendment) Act as a deterrent to violence against women” available at <http://www.unwomensouthasia.org/2013/un-women-welcomes-india%E2%80%99s-criminal-law-act-as-a-deterrent-to-violence-against-women>; accessed on 13.06.2018

⁵Report of the Committee on Amendments to Criminal Law Pg416 . last accessed 03 July 2018

⁶Priya Patel v. State of Madhya Pradesh, AIR 2006 SC 2639

amendment was to prevent the breach of privacy of victim's life by preventing it to be included as a piece of evidence in court.

Last but not the least and very essentially, Sexual Harassment at Work Place Act, 2013 has also introduced with addition to the IPC and the modern definition has been provided for the rape.

REASONS FOR THE ENACTMENT:

The brutal gang rape and the consequent death of the physiotherapy student in New Delhi was the reason of the origin of the Criminal Law Amendment Act, 2013 that came to amend the already existing laws related to the sexual offences in the country. The act has mainly implemented the IPC, Code of Criminal Procedure and the Indian Evidence Act.

THE DELHI RAPE CASE: 2012:

This incident has generated widespread protest not only in India but also in Abroad. The government of India somewhere failed to provide the protection and security to the women of the country. And the protest was taking place all over the country by forming the Candle March or various types of criticism.

SUGGESSTIONS OR RECOMMENDATIONS:

After researching on the *Mathura Gang Rape Case* the loopholes which should have to be taken into consideration while declaring the judgment are given below:

- That the acquittal granted to both the appellant by the Supreme Court on the ground that there is no injury on the body of a minor girl that is why the offence was not amount to rape but will be considered as consensual intercourse.

For taking the opinion against this judgment, that if the girl do not have any injury on her body, it is not the valid ground of proving that the offence was not of rape but of consensual intercourse.

- This is also considered as the invalid ground that the girl has not raised any alarm for help, so there might be the consensual intercourse between police officers or a girl.

In the contrary statement, might the girl was unable to raise the alarm or to make a call for help, that is why the acquittal given to the accused on this ground was also not correct.

- In the judgment by the Session Court the consent of a minor was also not considered as the invalid consent.

Consent plays an important role in the act of sexual intercourse with a girl whether she is minor or major, if the consent is not there for intercourse how it can be considered as the consensual intercourse. Therefore, the consent is must.

- The major loophole is that the Criminal Law Amendments shall provide for the harsher punishment to the accused of this offence.
- Judiciary should take a corrective measure for minor or major as soon as possible for the same offences.
- ✓ So, for improving the status of women as well as of judiciary in the society Criminal Law Amendment should be furnished timely, and new provisions should get implemented into the act.
- ✓ Rigorous punishment for life shall be awarded to the offender.
- ✓ Even if the juvenile is also committing the offence of rape, he shall also be punished with the rigorous punishment.
- ✓ 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.

CONCLUSION:

To conclude the *Mathura gang rape case* in which both the victims got acquitted from the appellate court as with the comparison between the legislations of before 2013 and 2013 has been discussed above. The amendment in the rape cases are always came up with the different aspect or definition of the offence. *Mathura gang rape case* was as the one of the former rape case after the independence which took a lot of criticism in his hands, which ultimately results in the development of criminal law amendments. 1998 was the year of the various changes in the laws related to rape in form of guidelines from *Vishaka gang rape case* which is sexual harassment at workplace i.e; laws of rape before 2013. And then came the major change in the laws of rape in the year 2013 which had not only altered the rape laws but also has changed the definition of rape and widened its scope through *Delhi gang rape case* from The Criminal Law Amendment Act has furiously amended in the year 2013.

The 2013 Act should be viewed as a important place holder in the fight against the sexual assault and gender violence in the country. The most awesome outlook is the service of prevailing attitudes to rape and sexual offenses in the population apparently in coping with moral “confusion,” as economic transformation necessitates far-reaching changes in gender roles while social attitudes stay drenched in moral conservatism and misogyny.

There are various laws prescribing deterrent punishment for offences against women. What is actually requirement of a concrete legislation, this was however, partially achieved through the passing of the Criminal Law (Amendment) Act, 2013; to infuse sensitivity, understanding and more significantly, the mindset among police, executives to implement the laws more in spirit than in letter. Only then deterrent punishment can be awarded in crimes against women.

On 15 march 2014, in the Delhi Gang Rape Case Death sentence upheld by the High court of Delhi. Fell into the rarest of rare category.