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TUKARAM AND ANOTHER V. STATE OF MAHARASHTRA (1979): WOMANHOOD AND ITS CONSTRAINTS

~ Anju Atom

COURT

Supreme Court of India

CASE NAME

Tuka Ram and Anr. v. State of Maharashtra (1978)

BENCH

Full Bench: Justice Jaswant Singh, Justice P.S. Kailasam and Justice A.D. Koshal

DATE

September 15, 1978

APPELLANT

Appellant No.1: Ganpat, Police Head Constable

Appellant No.2: Tuka Ram, Police Constable

PROSECUTION

State of Maharashtra

STATEMENT OF FACTS

Appellant No.1 and Appellant No.2 serving at Desai Gunj police station raped Mathura, who was estimated to be around the age of 14-16. When Mathura was a child, both of her parents passed away which left her and her brother, Gama to earn a living on their own. Mathura worked at the house of Nunshi, while working there, she met Ashok (Nunshi's sister's son). This contact with

Ashok eventually culminated into an intimate relationship, leading towards the decision of becoming husband and wife.

On 26th March 1972, Gama filed a report at Desai Gunj police station stating that Mathura was kidnapped by Nunshi, Laxman (Nunshi's husband), and Ashok. Baburao – Head Constable – recorded the report, and all the three persons mentioned along with Mathura were asked to come to the police station at about 9 p.m. After which, the statements of Ashok and Mathura were recorded, and around 10:30 p.m. Baburao had informed all the persons concerned to leave the police station accompanied by a direction to Gama to bring a document that stated the date of birth of Mathura. After Baburao had left the premises of the police station, Mathura, Nunshi, Gama and Ashok eventually started to leave the police station. During this process, Ganpat stopped Mathura by her wrist and asked her to wait at the police station, while simultaneously informing her companions to move out.

After her companions left the police station, Ganpat took Mathura to a nearby latrine and loosen her underwear to look at her private parts with the help of a torch. After the said act, Ganpat took her to the rear of the police station and raped her, fulfilling his lustful desires. Ganpat further dragged Mathura to a Chhapri on the backside repeating the offence. Furthermore, Tuka Ram sexually assaulted her by fondling her private parts but could not rape her due to his highly intoxicated condition.

Mathura's companions who were waiting outside grew anxious as a lot of time had passed, and they started shouting which attracted a crowd. Following the commotion, Tuka Ram emerged from the rear of the police station stating that Mathura had already left. Shortly after, Mathura emerged from the same rear and alerted Nunshi and Gama that Ganpat had raped her. After hearing this, Nunshi took Mathura to Dr. Khume, who informed them to file a report at the police station. In the meanwhile, Baburao had successfully persuaded the crowd to disperse and took down the statement of Mathura, registered as the First Information Report.

On 27th March 1972, Mathura was again examined by Dr. Kamal Shastrakar at 8 p.m. It was revealed that Mathura had no injuries on her body while her hymen revealed old ruptures, the vagina admitted two fingers – easily. No matting of the pubic hair was found. A sample of the pubic hair accompanied by two vaginal-smear slides were sent by the doctor to the Chemical Examiner via a sealed package, which revealed no traces of semen. Although, semen was detected on the girl's clothes and Ganpat's pyjama. Additionally, the doctor estimated Mathura's age to be around 14 and 16.

PROCEDURAL HISTORY

Due to lack of satisfactory evidence that proved Mathura's age to be below 16 years (on the date of occurrence), the Sessions Court acquitted both the accused. The judgement was appealed under Criminal Appeal 193 of 1974 in Bombay High Court (Nagpur Bench) which reversed and

convicted the accused under Section 354 & 376 of IPC (Judgment and Order dated December 12/13, 1978). The accused then challenged the judgement of the High Court before the Supreme Court via a Special Leave petition.

ISSUES RAISED

- a. Did Mathura give consent as indicated by the evidence presented before the court?
- b. During the time of the incident, was Mathura below the age of 16?
- c. Did Ganpat and Tuka Ram rape and sexually assault Mathura, respectively?

JUDGMENT

The appeal was successful, and the High Court's judgment was reversed, leading the conviction and sentence to be set aside.

HOLDING

Due to the lack of evidence presented before the court which proved Mathura was below the age of 16 years while she was raped by Ganpat and sexually assaulted by Tuka Ram, accompanied with the lack of injury, cry for help, fear of death or hurt, the court assumed that Mathura's consent was involved in the act.

REASONING

The Supreme Court of India states that the lack of injury accompanied by the failure to alarm her companions when she was caught hold of by Ganpat (at the police station), makes the court believe that there was consent involved on Mathura's part. Under Section 375 of Indian Penal Code, at that time, rape was defined under certain clauses i.e. with consent, without consent, forcefully obtained consent and consent obtained by impersonating someone. Sub-clause 3 of Section 375 was invoked by the court, since Mathura did not alarm her companions when Ganpat held her hand, the Court considers the allegation of rape to be void.

Furthermore, the court highlights the fact Mathura had alleged Tuka Ram as the person who took her to the latrine and examined her private parts with a torch in the First Information Report, this very allegation was shifted to Ganpat in the trial. Considering the change in statement of Mathura, the court finds the charges against Tuka Ram to be falsified.

CRITICAL ANALYSIS

The judgement of the Supreme Court in ‘Tuka Ram and Anr. v. State of Maharashtra (1978),’ highlighted the male-centered orthodox mentality deeply embedded within Indian society.

The depiction of Mathura as someone who was habituated to sex and had lied to act "virtuous" in front of her lover (Ashok), acts as a way to protect the patriarchy at the expense of a woman's agency. Crucially, the presence of semen found on Ganpat's pyjama was used to claim that he had engaged in sexual intercourse with a person other than Mathura.

Furthermore, the Court's conclusion of consent on Mathura's part due to the fact that she had not alarmed her companions when Ganpat held her hand fails to consider the fact that during the act Ganpat was a person in authority which implied that refusal/non-compliance could have incurred dire consequences for Mathura and her companions. To add to this, Mathura was a tribal girl who had lost her parents at a young age and was working to earn a living. Does a young girl know about the ways of law?

Looking from a feminist perspective, the Supreme Court's acceptance of the appeal and revoking the sentence of the accused, i.e. Ganpat and Tuka Ram restrained women's agency. The question the Supreme Court now faces: Was the Court being judicious when delivering the verdict? Did the Court consider the impact of its judgment on similar future cases? What about Mathura's right to live with dignity?

REFERENCES

Case

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