

**CASE COMMENT**  
**Tukaram And Anr V/S State Of**  
**Maharashtra**

AIR 1979 SC 185

(Decided on 15<sup>th</sup> SEPTEMBER, 1978)

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**Introduction**

Tukaram and another v state of Maharashtra<sup>1</sup> also known commonly as the Mathura Rape Case was a case involving custodial rape. Its judgment was pronounced in all the three courts of increasing judicial hierarchy viz. a Sessions court in Maharashtra, the High Court of Maharashtra and finally the Supreme Court of India. The Supreme Court delivered the judgment of this case on September 1978 by a bench consisting of three judges. The fact that the accused were acquitted in the decision drew severe criticism from the Indian public. Further, an open letter sent to the Supreme Court pointing out the legal flaws in the judgment led to the amendment of India's rape law via **The Criminal Law (Second Amendment) Act 1983(No. 46)**.

**Analysing the judgement**

The Supreme Court's judgment, in this case was filled with numerous amount of

grammatical errors, logical flaws, unwarranted assumptions and fallacies.

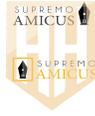
**Sexist approach**

The court was highly sexist in its judgment and showcased a double standard approach towards the case. The use of words such as 'shocking liar' in order to describe an adolescent girl who had been the victim of rape made the judgment highly prejudicial. The fact that the girl's previous sexual activities were used in order to justify the actions of the appellants goes on show the biased and sexist nature of the judgment. The bench, in the end held that both Mathura and Ganpat were habituated to sexual intercourse but went in favour of Ganpat and deemed Mathura as a promiscuous woman just on the fact that she had had pre-marital sex with Ashok and also slammed her allegation as false.

**Language used**

Most of the terms used by the Hon'ble Court were highly criticised, due to lot of unnecessary phrases that were used throughout the judgement. These phrases tend to distort the true nature of the incident. When Tukaram was present at the place of the incident and left the place as soon as the crime was over, the Court stated that it is "not inculpatory and is capable of more explanations than one", Further, the use of terms such as 'passive submission' to describe lack of consent in rape goes to show that the judgment was insensitive to the social and physical trauma that victims of the

<sup>1</sup>AIR 1979 SC 185



crime had to undergo.

### **Ambiguity and repetition**

The judgment by the supreme court was a mere repetition of that of the Sessions Court. There was no new perspective to the judgment. The ambiguity in this case arises while dealing with the age of Mathura, because as her date of birth was not recorded anywhere due to her parent's early demise, and hence she being a minor was totally disregarded.

### **Logic**

The judgment of the Supreme Court did not have a strong logical foundation. It derived its rationale from a series of unfounded evidences, the primary one being that Mathura had intercourse with Ganpat and got 'fondled' by Tukaram out of her own volition. Further, the character of Mathura was portrayed in a negative light in the judgment. The questioning of a woman's character on the basis of her sexual habits and going to the extent of using such an assumption as an evidence was logically flawed to a deep extent, in addition to being sexist. The fact that Mathura was a tribal Dalit girl may also have been of influence in the judgment. Dalits in India have long been known to be the most oppressed in the caste hierarchy. Though an evidence of such a caste-bias is not present in the judgment, the judge may have been influenced by it owing to the deep-seated and all-pervasive nature of the Indian caste system. The fact that no semen stain was found on the girl's vagina when a medical examination was conducted on her, had also played a major role in ascertaining

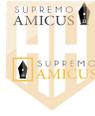
whether rape was committed or not. This fact was so erroneous in itself as the medical examination was conducted over twenty hours after the incident and the probability of finding semen on Mathura's body was minuscule. Another logical inconsistency that is present in the judgement is that just because no injury was found on Mathura's body, the assumption of use of force on her, was not taken into consideration by the judge. Numerous questions may arise with regard to whether a minor girl may have had the strength to put up such a stiff resistance as to sustain bodily injuries. In conclusion, the judgment given by the Supreme Court was logically fallacious on multiple levels.

### **Conclusion**

The Mathura Judgment drew severe criticism from all over India due to its outrageous findings that were laden with flawed logic, sexist language and a general arbitrariness in the decision. Though it went largely unnoticed after it was delivered, it caught nationwide attention after its shoddiness was exposed in an open letter by Professor Upendra Baxi and others from the Delhi Law University. This led to the Indian Government amending its rape laws and making it mandatory for courts to accept the words of a rape victim as a rebuttable presumption. In conclusion, the judgment serves to prove the deep-seated flaw in legal writing that is present in the justice-dispensing framework of India.

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