

**CASE COMMENT ON TUKA RAM AND ANR. V. STATE OF  
MAHARASHTRA**- M. Kowsalya Devi<sup>1</sup>**Abstract:**

This case of Tuka Ram and Another v. State of Maharashtra, more commonly known as Madhura Rape Case has brought many uncurbed conflicts. This case was regarding the custodial rape of a young girl Madhura, where she was allegedly raped by two policemen. The judgment of this case which was highly condemned for its logical and legal fallacies. This case highlights the violence against women in the public domain in India. Thus this case lead to many amendments in the rape laws governing India.

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**CASE NAME:**TUKA RAM AND ANR V. STATE OF MAHARASHTRA

**CITATION:**1979 AIR 185 1979 SCR(1)810 1979 SCC(2)143

**DECIDED ON:**15 SEPTEMBER 1978

**BENCH:**KOSHAL,A.D SINGH,JASWANT KAILASAM,P.S

**APPELLANT:**TUKA RAM AND ANR

**RESPONDENT:**STATE OF MAHARASHTRA

**PROVISION:**SECTION 375 OF IPC

**STATUTES INVOLVED:** INDIAN PENAL CODE, 1860.

THE CONSTITUTION OF INDIA.

EVIDENCE ACT.

## **BACKGROUND OF THE CASE:**

A young girl named Madhura was living with her brother Gama, as her parents died in her childhood. Madhura worked as a maid in the house of Nunshi and came in contact with Ashok ( son of Nunshi's sister).They developed a relationship and decided to get married. When the victim's brother found her missing, he lodged a complaint against Ashok and his family for kidnapping his sister. When all the concerned persons were about to leave the police station, the victim was caught hold and she was raped at the police station by two policemen.

In "*The Criminal law Amendment Act 1983 (No.43)*made statutory provision in the Section 114(A)of the Evidence Act made 25 December 1883, which states that if the victim says that she did not consent to the sexual intercourse, the court shall presume that she did not consent as a rebuttable presumption". Due to this incident news laws were enacted and the Indian Rape laws were amended. Section 376-punishment for rape was enacted.Section 376(A), 376(B), 376(C), 376(D) were included as custodial rape punishments.

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This amendment has also transferred the burden of proof from the accuser to the accused once the intercourse was established. This also prohibited victim identity disclosure, tougher sentences and also added provision for in-camera trials.

## CONCERNED PROVISIONS :

### SECTION 375 OF IPC:

RAPE- A man is said to commit a rape if he has sexual intercourse with a woman under any circumstances of the following six descriptions:

- Firstly-Against her will
- Secondly-Without her consent
- Thirdly-With her consent, when the consent has been obtained by putting her on fear of death or hurt.
- Fourthly-With her consent, when the man knows he is not her husband but she believes herself to be lawfully married.
- Fifthly-With her consent, at the time of consent by reason of unsoundness or intoxication, she is unable to understand the consequences and gives consent.
- Sixthly-With or without her consent, when she is under age of sixteen.

### PUNISHMENT FOR RAPE:

Whoever commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years but extends to imprisonment for life and also liable to fine.

- a) Whoever, being a police officer commits rape
  - i. Within the limits of police station
  - ii. In the premises of any station house
  - iii. On a woman in such police officer's custody or in custody of sub-ordinate police officer
- b) Being a public servant commits rape on a woman in such public servant's custody or in custody of a public servant sub-ordinate to that public servant

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but may extend to imprisonment for life and is also liable to fine.

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**FACTS OF THE CASE:**

Madhura (P.W.1), a young girl aged between 14 to 16 years lived with her brother Gama. Both worked as laborers to earn living. Gama lodged a complaint at the Desai Gunj police station alleging that she had been kidnapped. Madhura was working on house of Nunshi (P.W.2) where she got in contact with Ashok (son of Nunshi's sister). When it turned into intimacy, they decided to get married.

<b>26 MARCH, 1972</b>	
9.00pm	On 26 <sup>th</sup> March Gama, registered a report on Desai Gunj police station complaining that his sister had been kidnapped by Nunshi, her husband Laxman and Ashok. By 9 pm Mathura as well as the three persons were brought to the police station and the statements of the lovers were recorded by head constable Babu Rao.

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10.30pm	<p>Babu Rao asked all the persons to leave the police station by 10.30 pm and he asked Gama to bring a copy of age proof of Mathura and he left for his home for evening meal. When everybody started to leave, the appellants asked Madhura to stay at the police station and insisted her companions to leave.</p> <p>Thereafter appellant-Ganapat took Madhura to the washroom, loosened her underwear, lit a torch and stared at her private parts. He then took her to the latrine and raped her and again dragged her into chhapri on the back side and raped her again. Eventually, appellant- Tuka Ram also sexually assaulted her by fondling with her private parts but couldn't rape her as he was in a highly intoxicated condition.</p> <p>As Mathura's companions were waiting outside, they grew suspicious and Nunshi shouted for Madhura which attracted a crowd. Some people brought constable Babu Rao from his house and he somehow dispersed the crowd and thereafter took down the statement of Madhura.</p> <p>A complaint was filed against the appellants by Madhura and it was registered as FIR. on advice of Dr.Khume who initially examined her.</p>
8.00 pm	<p style="text-align: center;"><b>27 MARCH 1972</b></p> <p>Mathura was examined by the doctor and the report was as follows:</p> <p><i>“The girl had no injury on her person. Her hymen revealed old ruptures. The vagina admitted two fingers easily. There was no semen found on the pubic hair and vaginal-smear slides. However semen was detected on her clothes and on Ganapat. The age of the girl was estimated to be between 14 and 16 years.”</i></p>

### SESSIONS JUDGE OBSERVATION AND JUDGMENT:

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The learned Sessions judge found that there was no proper evidence to prove the age of Mathura to be below 16 years on the date of occurrence of the incident. He held that she was a “shocking liar” whose testimony “is riddled with falsehood and improbabilities”.

The court concluded that, “she had sexual intercourse while at the police station but rape had not been proved”. While differentiating rape and sexual intercourse, he said that Madhura was habituated to sexual intercourse and she sounded virtuous to get escape from Nunshi and Ashok. Further concluded that, “Really speaking she would have surrendered her body to the constable.”

And then concluded that the prosecution had failed to prove its case and exculpated the appellants.

### **HIGH COURT OBSERVATION AND JUDGMENT:**

The High court reversed the order of acquittal. The High Court proceeded that although the sessions judge was right in saying that there was difference between sexual intercourse and rape, he stated that there is difference between consent and “**passive submission**”. The High court concluded that the intercourse was forcible and amounted to rape.

The court further stated that since both the appellants were strangers to Madhura, it was highly improbable that she would invite the accused to satisfy her sexual desire. It is impossible that a girl who was involved in a complaint would take that advances. If the initiative have come from the appellant, she could not have resisted the same.

In regards with the presence of semen is neither on the pubic hair nor on the vaginal-smears, the hon’ble HC observed that since Madhura was examined after 20 hours of the incident, there might be chances of Madhura had taken bath in the meantime. In *Mohd.Habib v. State*<sup>2</sup>, the Delhi high court acquitted the accused for 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 barks on her body and there was an eyewitness to this entire incident was also considered inconsequential to the court.

In regards with appellant Tuka Ram, the High Court did not believe that he had made any attempt to rape the girl but took her word for granted and fondled her private parts after the sexual intercourse done by appellant Ganapat.

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<sup>2</sup> *Mohd.Habib v. State*, 1989 Cri Lj 137

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On judgment dated on 12<sup>th</sup> October,1978, has reversed the judgment of the sessins judge, Chandrapur, on 1<sup>st</sup> of June 1974, and held that appellant- Tuka Ram was guilty under Section 354 and the appellant-Ganapat was guilty under Section 376 therof and sentenced the two appellants rigorous imprisonment for a year and 5 years respectively.

### **ISSUES RAISED :**

1. WHETHER MATHURA GAVE CONSENT TO SEXUAL INTERCOURSE?
2. WHETHER THE INTERCOURSE WAS A PASSIVE SUBMISSION?
3. WHETHER THE GIRL WAS PUT UNDER THREAT TO OBTAIN CONSENT?

### **ARGUMENTS ON BEHALF OF APPELLANTS :**

1. There was no direct evidence about the girl's consent and it cannot be decided from the circumstances that the girl had been put on fear or compulsion and set aside the concept of "passive submission."
2. The learned counsel on behalf of the appellants contended that the alleged intercourse was a peaceful affair since no marks of injury found and stated that the incident was put forth by Madhura.
3. The sayings that the girl shouted loudly for help were also a "tissue of lies."
4. The reasoning of the High Court that the girl must have submitted to sexual intercourse because of her fear doesn't amount to consent.

### **ANALYSIS AND JUDGMENT :**

The Hon'ble Supreme court observed that the whole incident was a false story put forth by Madhura. As she could change her initial testimony by changing the accused for Tukaram to Ganapat, then entire statement could also be a false one.

The Supreme court for the appeal overturning his sentence, said that as relatives were outside the court did not believe that she would have resisted the act and voiced for help describing that as a false tissue.

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Finally in the year 1979, the Supreme Court reversed the High Court's judgment and acquitted the appellants. It was concluded that the appeal was succeeded and accepted. The conviction set against the appellants and the sentences were also set aside.

### **WAY FORWARD:**

It is shocking how the Supreme court has measured the missing of refusal to consent for what has happened. Even if the young girl had tried to resist, she would have felt helpless and couldn't have defended those strong men and had caused no injury as she couldn't fight them. The fact that Madhura did not scream for help is doubtful, that how the courts assured it as the doors were closed by the appellants. It is likely that she must not have been heard for the people outside.

Even though rape laws have been reformed over- time, the occurrence of rape keep increasing all over the country. Beside causing physical injury to the victim, it also causes psychological effects as well as PTSD, depression, flashback, sleep disorders and more. A step to reduce this crime would be to improve safety for women in the state. More than the laws to punish the wrong doers, it is the attitude of those culprits like the Supreme court judges in Madhura case requires information. This case gained widespread recognition after four distinguished professors namely, Upendra Baxi, Ragnath Kelkar, Lotika Sarkar, Vasudha Dhagamwar wrote an open letter to the Chief Justice of India to have the case rehard.

All the women, not just Madhura, no matter what their reputation is, have the right to receive all the protection they need for their safety in order to deal with any form of harassment.

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