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CASE COMMENT: THE STATE OF JHARKHAND V. SHAILENDRA KUMAR RAI

-Ruchita Ramisetty

CITATION: State of Jharkhand v. Shailendra Kumar Rai, 2019 SCC OnLine SC 2239¹

BENCH: Justice Hima Kohli and CJI D.Y.Chandrachud

CASE NO.: Criminal Appeal No.1441 of 2022

APPELLANT: State of Jharkhand

RESPONDENT: Shailendra Kumar Rai

APPELLANT'S ADVOCATE: Madhusmita Bora

COURT: Supreme Court of India

JUDGMENT DATE: 31 October 2022²

INTRODUCTION

In the recent case of State of Jharkhand v. Shailendra Kumar Rai, the Supreme Court division bench, composed of esteemed justices *D.Y. Chandrachud and Hima Kohli*, reaffirmed the prohibition on using the virginity test, also known as the *'two-finger test.'* Frequently, the use

¹ *State of Jharkhand v. Shailendra Kumar Rai*, (2022) 14 SCC 299.

² *The State of Jharkhand Vs. Shailendra Kumar Rai*, *The Amikus Qriae*

<https://theamikusqriae.com/the-state-of-jharkhand-vs-shailendra-kumar-rai/>, (last visited, 5th June, 2024).

of this test has proved to be a significant concern across the nation.³ The Supreme Court stated that “The use of the two-finger test or the Per-Vaginum examination has no scientific base and is an affront to a woman's dignity.”⁴

A medical professional may frequently carry out the two-finger test, which involves inspecting the vagina to determine whether or not she is habituated to sexual intercourse. This is an unscientific method that yields no conclusive data. Furthermore, the "information" in question is unrelated to any rape allegations.

A medical examination is performed on a woman who has experienced sexual assault in order to determine her condition, determine her requirements, gather evidence, etc. "There is no place for virginity (or 'two-finger') testing; it has no scientific validity," states a World Health Organization (WHO) manual on supporting victims of sexual assault.⁵

According to the Supreme Court's decision in *The State of Jharkhand against Shailendra Kumar Rai*, it is misconduct for anybody to subject a victim of sexual assault to a "two-finger test" or vaginal exam. In this case, the Jharkhand High Court's ruling was overturned by Justices D.Y. Chandrachud and Hima Kohli in an order dated 31.11.2022, finding the respondent guilty of rape and murder under the Indian Penal Code (IPC). *The Jharkhand High Court's order to overturn the respondent's conviction and life sentence under Indian Penal Code: Sections – 300, 302,307,341, 375, 376,448 Code of Criminal Procedure: Sections – 173,174 Indian Evidence Act: Sections – 32(1), 60 Constitution of India – Article 136.*⁶⁷

BACKGROUND AND FACTS OF THE CASE

³ *Analysis of Shailendra Kumar Judgement: The two-finger test ban*, [th June, 2024\).](https://pclshnl.u.wordpress.com/2023/06/19/analysis-of-shailendra-kumar-judgement-the-two-finger-test-ban/#:~:text=Therefore%2C%20in%20the%20recent%20case,be%20deemed%20to%20be%20banned.,)

⁴ *Two-Finger Test: A Bain to Women's Dignity*, <https://www.livelaw.in/articles/two-finger-test-a-bain-to-womens-dignity-259616>, (last visited, 5th June, 2024).

⁵ *Two-Finger Test*, <https://www.drishtias.com/daily-updates/daily-news-analysis/two-finger-test>, (last visited, 5th June, 2024).

⁶ *The State of Jharkhand v. Shailendra Kumar Rai*, <https://lawfoyer.in/the-state-of-jharkhand-vs-shailendra-kumar-rai-pandav-rai/>, (last visited, 5th June, 2024).

⁷ *State of Jharkhand V. Shailendra Kumar Rai (2022 Sc Online Sc 1494)*, <https://teamattorneylex.in/2023/04/17/state-of-jharkhand-v-shailendra-kumar-rai-2022-scc-online-sc-1494/>, (last visited, 5th June, 2024).

- According to the prosecution, on November 7, 2004, Shailendra Kumar Rai allegedly entered the victim's home situated in Narangi village, Jharkhand, where the accused pushed the victim and raped and threatened her.
- When she screamed for help, he poured kerosene and set her on fire.
- Her family members and a neighbor came to her aid and extinguished the fire, but the accused fled upon seeing them.
- The victim was taken to Sadar Hospital Deoghar for treatment, and her statement was recorded by the Station in charge, PS Sarwa, after receiving the incident's information.
- The victim was later taken to a hospital in Deoghar, where the 'Two-Finger Test' was performed on her.
- Initially, the defendant was charged with crimes under sections 302, 341, 376, and 448 of the Indian Penal Code by the Sessions Court on October 10, 2006, and was given a life term of solitary confinement.
- An appeal was made by the accused in the High Court of Jharkhand regarding the conviction by the Sessions Court.
- By their ruling on January 27, 2018, The High Court of Jharkhand nullified the Sessions Court's decision and exonerated the Respondent.⁸

ISSUES

- A. Whether the statement made by the deceased individual complies with Indian Evidence Act of 1872, section 32(1).
- B. Whether the respondent's guilt in relation to the charges has been established by the prosecution beyond a reasonable doubt.
- C. Does the two-finger test indicate that the victim was a regular sex partner and does it lead to the victim's consent in cases of rape?⁹

RULES UNDER THE JUDGEMENT

⁸ *State of Jharkhand V. Shailendra Kumar Rai* (2022 Sc Online Sc 1494), <https://teamattorneylex.in/2023/04/17/state-of-jharkhand-v-shailendra-kumar-rai-2022-scc-online-sc-1494/>, (last visited, 5th June, 2024).

⁹ *The State of Jharkhand v/s Shailendra Kumar Rai*, <https://theamikusqraie.com/the-state-of-jharkhand-v-s-shailendra-kumar-rai/>, (last visited, 5th June, 2024).

According to the Post-Mortem Report made by Dr. R Mahto, he came to the conclusion that the victim's profound burn injuries led to septicemia, which ultimately resulted in the victim's death. The High Court invalidated the victim's dying statement, citing a previous ruling, *Moti Singh and Another v. State of Uttar Pradesh*¹⁰, where there was no evidence in the file regarding the victim's cause of death. As a result, under **Section 32(1)** of the Evidence Act, his comment was not regarded as a declaration. However, in this case, the post-mortem report confirms the victim died from septicemia due to burn injuries. The victim's statement implicates the respondent in dousing them with kerosene, setting them on fire, and sexually assaulting them. Therefore, the victim's statement qualifies as a dying declaration under Section 32(1) of the Evidence Act and is pertinent to the circumstances of their death.

Regarding the accusations, the prosecution has shown the respondent's guilt beyond a reasonable doubt. The victim was sexually molested by the respondent, who then doused him in kerosene and lit him on fire, as is evident from the dying declaration. The patient died as a result of septicemia, which was triggered by the burn injuries. Thus, the victim's injuries from the response directly contributed to her demise. The file contains no information that would cast doubt on the respondent's guilt.

The Medical Board conducted the outdated and invasive "*two-finger test*" to determine if the victim had a history of sexual activity. This Court has repeatedly condemned the use of this scientifically unsupported test in rape and sexual assault cases. The test does not prove or disprove allegations of rape. In the cases of *Satbir v Surat Singh*¹¹ and *State of Punjab v Ajaib Singh*¹², the Court ruled that the two-finger test should not be used.

The presence of the elements of **Section 375 of the IPC** does not depend on whether a woman is "*habituated to sexual intercourse.*" The assumption that a sexually active woman cannot be raped is both patriarchal and sexist. Performing the "*two-finger test*" on an alleged sexual assault victim, contrary to this Court's directives, constitutes misconduct.¹³

¹⁰ 1964 AIR 900, 1964 SCR (1) 688.

¹¹ AIR 1997 SUPREME COURT 1160.

¹² 1953 AIR 10, 1953 SCR 254.

¹³ *Case Analysis: The State of Jharkhand v. Shailendra Kumar Rai*, Jus Corpus Law Journal, <https://www.juscorpus.com/case-analysis-state-of-jharkhand-v-shailendra-kumar-rai/>, (last visited, 5th June, 2024).

JUDGEMENT OF THE CASE

The "two-finger" test was outlawed because it was considered degrading and lacked scientific backing. Section 32 of the Indian Evidence Act of 1872 states that, even if the magistrate should preferably record a dying declaration made in front of the police, it wouldn't be inadmissible for that reason alone. It will remain an accepted admittance. Section 375 of the Indian Evidence Act of 1872, When determining if a case meets the requirements of Section 375 of the Indian Penal Code (IPC), it is irrelevant whether the woman in question is used to or habitually engages in sexual activity.¹⁴

IMPACT OF THE JUDGEMENT

In their final remarks, the court reiterated its condemnation of the "*two-finger*" test as a method to determine rape, highlighting its harmful impact on victims by blaming, humiliating, and questioning their chastity. This test has faced repeated calls for a ban in India, including from the *Verma Committee*, which was established under former CJI JS Verma following the *Nirbhaya case*. The committee recommended banning the test, asserting that the laxity of the vagina, measured by the test, cannot conclude that a sexually active woman cannot be raped. Similarly, a *WHO handbook on sexual harassment* stated, "*There is no place for virginity (or 'two-finger') testing; it has no scientific validity.*" In 2014, the *Union Health Ministry* issued guidelines titled "*Medico-legal care for survivors/victims of sexual violence,*" which deemed the "*two-finger test*" unacceptable for determining rape or sexual violence.¹⁵

CONCLUSION

The two-finger test is scientifically invalid. The test undermines the victim's right to privacy and harms their emotional, bodily, and ethical well-being. The Ministry of Health and Family Welfare's orders must be communicated to both private and public hospitals. The problem may

¹⁴ *State of Jharkhand V. Shailendra Kumar Rai (2022 Sc Online Sc 1494)*, <https://teamattorneylex.in/2023/04/17/state-of-jharkhand-v-shailendra-kumar-rai-2022-scc-online-sc-1494/#:~:text=The%20Supreme%20Court's%20ruling%20in,be%20considered%20guilty%20of%20misconduct> ., (last visited, 5th June, 2024).

¹⁵ *State of Jharkhand V. Shailendra Kumar Rai (2022 Sc Online Sc 1494)*, <https://teamattorneylex.in/2023/04/17/state-of-jharkhand-v-shailendra-kumar-rai-2022-scc-online-sc-1494/#:~:text=The%20Supreme%20Court's%20ruling%20in,be%20considered%20guilty%20of%20misconduct> ., (last visited, 5th June, 2024).

be handled by increasing awareness and training doctors and police officers. The two-finger test philosophy has been judged extremely useless in the medical world. It breaches people's rights to privacy, dignity, and the rule of law, as well as their right to know what their doctor is doing with their body fluids or functions.¹⁶

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¹⁶*State of Jharkhand V. Shailendra Kumar Rai (2022 Sc Online Sc 1494)*, <https://teamattorneylex.in/2023/04/11/state-of-jharkhand-v-shailendra-kumar-rai-2022-scc-online-sc-1494-2/>, (last visited, 5th June, 2024).

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