

STATE OF JHARKHAND v. SHAILENDRA KUMAR RAI

Shashi Pandey***INTRODUCTION**

The decision in this case is the most significant ruling in the history of women's dignity. The two-finger test has been prohibited under several circumstances, despite the fact that it has been used for a long time. This time, the court issued various instructions for better results in addition to setting a bar on this exam for rape survivors. This two-finger test is a cruel and inhumane approach to determining whether the victim has been sexually assaulted or not. Science has successfully demonstrated that sex can also take place orally or anally in addition to being vaginal. This test was still ongoing even after the Supreme Court's ruling. This test included the rape survivor as a victim.

TWO FINGER TEST

This particular test is used to determine whether the victim has been raped or not. In this technique, a medical petitioner inserts two fingers into the victim's vagina to see if the victim was sexually assaulted as a result of the finger penetration. The main deterrent to women reporting rape cases was their fear of the two-finger test.

FACTS OF THE CASE

The prosecution, in this case, alleges that the respondent broke into the victim's home in the Village of Narangi on the afternoon of November 7, 2004. The victim was allegedly pushed to the ground by the respondent, who then allegedly raped her. In addition to engaging in unwanted sexual activity with the victim, the respondent has threatened to murder her if she raises the alarm. She requested assistance out of pain and fear. At this moment, the respondent doused her in kerosene oil and burned her. Her grandmother, mother, and a villager came to her due to her calls for assistance. It is claimed that the respondent left the area at that point.

The victim's family members put out the fire right away and brought her to the Sadar Hospital in Deoghar, which is close by. She received many treatments for the wounds after being admitted there.

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The station in charge at PS Sarwana arrived at the hospital and recorded the fact began after receiving the event report. The investigation was started after filing FIR No. 103 of 2004. Lallan Prasad first conducted investigations, but Suresh Yadav later took over such duties. For offences that fall under sections 307¹, 341², 376³, and 448⁴ of the IPC, a charge sheet was produced in accordance with Section 173 of the CrPC. The victim later passed away on December 14 and an additional charge sheet was filed under Section 302. The respondent refuted the aforementioned accusations.

On October 10th, 2006, the Session court found the respondent guilty of violating Sections 302, 341, 376, and 448. On October 11th, 2006, a judge sentenced the respondent to life in prison under Section 302 of the IPC and ten years in prison under Section 376 of the IPC. It was intended for these sentences to flow together. The defendant challenged the session court's decision to the High Court on June 27, 2018, and the High Court granted him acquittal based on the following facts:

- Dr. RK Pandey stated that the dying declaration was recorded in his presence. He did, however, contradict himself and say that he was seeing another patient in another statement. Therefore, his last will and testament were not written in his presence.
- The appellant invoked the jurisdiction of HC in the supreme court of India under Article 136 of the Indian Constitution.

ISSUES RAISED

- Whether the statement of the deceased recorded before the station in charge relevant under Section 32(1) of the Indian Evidence Act 1872?
- Whether the prosecution has proved the charges which are made against the respondent beyond a reasonable doubt?

CONTENTIONS

Arguments from the petitioner

Mr. Vishnu Sharma made the following arguments in front of the court:

¹ Indian Penal Code, sec. 307

² Indian Penal Code, sec. 341

³ Indian Penal Code, sec. 376

⁴ Indian Penal Code, sec. 448

- The evidence was not appreciated by the High Court correctly. Dr RK Pandey was attending to the patient on the bed next to the deceased not in the adjacent room. Hence the dying declaration was recorded in front of Dr RK Pandey.
- Post-mortem was conducted less than 12 hours of the time of death. According to the report post-mortem, the cause of death of the victim was septicemia due to burn injuries which were sustained by her.

ARGUMENTS OF RESPONDENT

Mr. Braj Kishore has made the following argument from the side of the respondent:

- The medical board report states that they found no definite opinion regarding whether the victim was raped or not.
- There is no evidence other than a dying declaration to show that the victim was raped.
- The victim died after one month of the incident.

RATIONALE

Whether the statement of the deceased recorded before the station in charge relevant under Section 32(1) of the Indian Evidence Act 1872?

According to the post-mortem report, the victim died of septicaemia as a result of fire-related injuries. The case of *Moti Singh v. State of Uttar Pradesh*⁵ was heard by the High Court, and it was decided that the victim's statement was inadmissible as a dying declaration. In this case, the accused shot the victim. The victim received hospital care and was later released. He died after a few weeks, and his post-mortem could not be performed because he had previously been cremated. As a result, no evidence as to the cause of death was documented.

The High Court's reliance on this decision is inappropriate because, in this case, a post-mortem was performed, and the deceased died as a result of septicaemia induced by burn injuries, according to the post-mortem report. So, under Section 32(1) of the Indian Evidence Act⁶, the victim's confession was admissible as a dying declaration.

Furthermore, there is no rule that the dying declaration is inadmissible if it is recorded by a police officer rather than a magistrate under Section 32(1)⁷. Although it should ideally be documented by a Magistrate.

⁵ *Moti Singh v State of Uttar Pradesh*, AIR 1964 SC 900

⁶ Indian evidence act , sec 32(1)

⁷Ibid

Whether the prosecution has proved the charges which are made against the respondent beyond a reasonable doubt?

The dying declaration makes it very evident that the respondent raped the deceased, poured kerosene on her, and set her on fire. The victim died of septicemia as a result of the burn injuries, according to the post-mortem report. There is nothing on the record that gives rise to reasonable doubt about the respondent's guilt since all of the evidence clearly supports the respondent's guilt. The absence of medical proof cannot suggest that no rape occurred with her. Her deathbed declaration states unequivocally that she was raped and then set on fire with kerosene. There is no solid evidence to support the dying declaration.

JUDGEMENT

- The two-finger test or pre-vaginum test should not be performed. This so-called test has no scientific basis and neither confirms nor denies the claim of rape or assault. In the cases of *Satbir v. Surat Singh* and *State of Punjab v. Ajaib Singh*, it was claimed that this test re-traumatizes sexually attacked women.
- "Anyone who performs the "two-finger test" will be held liable for misconduct: Supreme Court."
- The court ruled in *Lillu v. State of Haryana* that the two-finger test infringes on the right to privacy, integrity, and dignity. Proper precautions must be made to protect the women's safety and that no unwanted interference with their privacy occurs.
- Recognising the fact, the legislature modified the Evidence Act by inserting section 53A. In sexual crime prosecutions, Section 53A provides that evidence about a victim's character or previous sexual experience with any individual shall not be relevant to the issue of consent or the quality of consent.⁸

The SC issued the following guidelines⁹:

- a) Ensure that the Ministry of Health and Family Welfare's instructions are distributed to all government and private hospitals.
- b) Workshops for medical petitioners should be held to communicate the appropriate procedure to be used when assessing survivors of sexual assault and rape victims.

⁸ Indian Evidence Act, 1872, sec 53A

⁹ *State of Jharkhand v Shailendra Kr. Rai*

c) In medical schools, review the curriculum to ensure that the "two-finger test" or per-vaginum examination is not prescribed as one of the methods to be used when assessing survivors of sexual assault and rape victims.

CONCLUSION

The two fingers test is brutal and unscientific, and no rape survivor should be subjected to it in order to substantiate their allegation of rape. According to medical experts and social workers, it amounts to the re-rape of the victim. It not only infringes on her right to privacy, but it also has an impact on her mental, bodily, and ethical well-being. The directives of the Ministry of Health and Family Welfare should be communicated to both private and public hospitals. The problem can be remedied by sensitizing and training medical and law enforcement workers extensively.

