

2. We have since perused the charges that have been framed. The charge was not only under Section 376(1) of the Indian Penal Code, as was sought to be argued by Mr. R. Basant, but was under Section 376, which includes Section 376(2).

3. Be that as it may, we find that there is a concurrent finding of fact that the victim, who was only 6 years old, was raped by the petitioner. Quite apart from the victim's testimony, there is also the testimony of her mother, who was an eye witness to the incident.

4. It was found that the petitioner is over 18 years old and was found to be potent. His *lungi* was recovered and he himself absconded, having been captured after 15 days of the incident. Both courts have recorded the argument of the accused that he has only one hand, as a result of which it would be physically impossible to have committed an act of rape. Both courts have dealt with this aspect of the case and we agree with them - there is no such impossibility. However, considering that the State has not filed an appeal and that the incident has taken place 20 years ago, we dismiss the special

leave petition, without going into Section 376(2) and whether a case is made out on facts for reducing the minimum punishment of 10 years.

5. The special leave petition is, accordingly, dismissed.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(NAVIN SINHA)

..... J.
(K.M. JOSEPH)

**New Delhi;
December 16, 2020.**