

SEELAN @ JEYASEELAN

A

v.

THE INSPECTOR OF POLICE

Special Leave Petition (Criminal) No. 4206 of 2020

DECEMBER 16, 2020

B

**[ROHINTON FALI NARIMAN, NAVIN SINHA AND
K. M. JOSEPH, JJ]**

Penal Code, 1860: s.376(2) - Plea of petitioner that the charge was under s.376(1) and not under s.376(2) - On facts, charge was framed under s.376 which would include s.376(2) - There was concurrent finding of fact that the victim who was only six year old was raped by the petitioner - The evidence of victim and her mother who was eye witness to the incident was on record - Special leave petition dismissed.

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CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Criminal) No.4206 of 2020.

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From the Judgment and Order dated 22.7.2019 of the High Court of Madurai Bench of Madras High Court in Crl. RC (MD) No. 520 of 2015.

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R. Basant, Sr. Adv., A. Velan, Ms. Navpreet Kaur, Shree Pal Singh, Advs. for the appearing parties.

The Order of the Court was passed by

R. F. NARIMAN, J.

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1. Our order dated 04.12.2020, records:

“Having heard Mr. R. Basant, learned Senior Advocate appearing for the petitioner for some time, when the Court pointed out that under Section 376(2)(f) the minimum punishment is 10 years, Mr. Basant pointed out that the charge was only under Section 376(1) and not under Section 376(2).

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This being the case, we allow Mr. Basant to produce the order where charges have been framed.

List after one week.”

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- A 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).
- B 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.
- C 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,
- D 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.

Devika Gujral

SLP dismissed.