

Delhi High Court Kallu Mal Gupta vs State on 29 October, 1999 Equivalent citations: 2000 IAD Delhi 107, 82 (1999) DLT 609 Author: M Siddiqui Bench: M Siddiqui ORDER M.S.A. Siddiqui, J. 1. This revision is directed against the order dated 21.7.1999 passed by the Additional Sessions Judge in Sessions Case No. 42/99 directing framing of a charge under Section 376 IPC against the petitioner. 2. Briefly stated, the prosecution case is that on 5.6.1998, the prosecutrix Smt. Sudesh accompanied by her sister Kumari Sunita came to Delhi from Jalandhar. At Delhi, the prosecutrix got separated from her sister and stayed at the railway platform overnight. Next day she came to Gurudwara Shishganj in search of Kumari Sunita where she was accosted by the petitioner. She requested the petitioner to lend her some money for her return journey to Jalandhar. Since the petitioner was proceeding to Haridwar, he asked the prosecutrix to meet him on the next date to collect the money. However, on 8.6.1998, when the prosecutrix came at the petitioner's tea stall, the petitioner took her to his house and committed rape on her. Thereafter, petitioner's other associates also attempted to commit rape on her but she raised an alarm and came out of the petitioner's house. She went to the police station Kotwali and lodged the FIR No. 359/98 regarding the alleged incident. Investigation pursuant to the said FIR culminated into submission of a charge-sheet under Section 376/34 against the petitioner and his associates. On consideration of the material collected by the investigating agency and after hearing the parties, learned Additional Sessions Judge framed a charge under Section 376 IPC against the petitioner vide orders dated 21.7.1999. Feeling aggrieved, the petitioner has come up in revision before this Court. 3. Assailing the validity of the impugned order, learned counsel for the petitioner contended that there was bad blood and enmity between the petitioner and the prosecution witness, namely, Sukhbir Saran Aggarwal. According to learned counsel, the petitioner had obtained a restraint order against the said Sukhbir Saran Aggarwal in the Writ Petition (Civil) No. 240/98 filed by him. Incensed by the said restraint order, Sukhbir Saran Aggarwal hatched a criminal conspiracy with Subhash Verma, Purshottam Gupta, Mukesh @ Chini and Ashok Chopra to involve the petitioner in a criminal case. Pursuant to the said conspiracy Sukhbir Saran Aggarwal through the aforesaid witnesses hired the prosecutrix for rupees fifteen thousand and thus concocted a false story about the alleged rape to wreak his vengeance by embroiling the petitioner in the said rape case so that he could be pressurized to withdraw the said writ petition. He has invited my attention to the case diary statements of the said witnesses in support of his contention. 4. The question is whether the learned Additional Sessions Judge was justified in directing framing of the impugned charge under Section 376 IPC against the petitioner. In State of Maharashtra and others Vs. Som Nath Thapa and others, it was held that "if on the basis of materials on record a Court could come to the conclusion that commission of the offence is a provable consequence, a case of framing of charge exists. To put it differently, if the Courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge probative value

of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage". In *Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau* JT 1999 (5) 394, it was held that "it is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the Court could come to the conclusion that the accused would have committed the offence, the Court is obliged to frame the charge and proceed to the trial". 5. A conspectus of the above decisions makes it evident that while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise. This being the initial stage of the trial, the Court is not supposed to decide whether the materials collected by the investigating agency provide sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. What is required to be seen is whether there is strong suspicion which may lead to the Court to think that there is ground for presuming that the accused has committed an offence. In the case of *State of Bihar Vs. Ramesh Singh*, , it was held that at the stage of framing charges, the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial is not to be meticulously judged. The standard of proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing charges (see also *Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhiraj Bijia Bagga*, ). Testing the case in hand on the touchstone of the principles laid down in the aforesaid authoritative pronouncements of the Supreme Court, the conclusion is inevitable that the statement of the prosecutrix Smt. Sudesh recorded under Section 164 Cr. P.C. alone is sufficient to make out a prima facie case under Section 376 IPC against the petitioner. No doubt statements of Subhash Verma, Purshottam Gupta, Mukesh @ Chini and Ashok Chopra recorded by the Investigating Officer under Section 161 support the petitioner's probable defense of his false implication in the matter. Learned counsel for the State submitted that the prosecution has not relied on the statements of the said witnesses. The statement of the prosecutrix Smt. Sudesh shows what the prosecution has up its sleeves and what it proposes to prove. It matters not whether it does ultimately succeed or not in proving the charge under Section 376 IPC against the petitioner. What is important at this stage is that the statement of the prosecutrix Smt. Sudesh clearly provides a ground for presuming that the petitioner has committed the offence charged. It bears repetition that it is axiomatic that the standard of prove normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is whether there is sufficient ground for presuming that the accused has committed the offence charged. That being so, the learned Additional Sessions Judge cannot be faulted for framing a charge under Sections 376 IPC against the petitioner. 6. In the result, the revision is dismissed.