The State vs Mustafa on 7 June, 2023

Author: K.Somashekar

Bench: K.Somashekar

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JUNE, 2023

PRESENT
THE HON'BLE MR JUSTICE K.SOMASHEKAR
AND
THE HON'BLE MR JUSTICE RAJESH RAI K
CRIMINAL APPEAL NO. 1124 OF 2017
C/W
CRIMINAL APPEAL NO. 1125 OF 2017
C/W
CRIMINAL APPEAL NO. 699 OF 2018
IN CRL.A.1124/2017
BETWEEN:

THE STATE
BY BANTWAL TOWN POLICE STATION

REP. BY STATE PUBLIC PROSECUTOR

HIGH COURT BUILDING
BENGALURU - 560 001.

...APPELLANT

(BY SRI. H S SHANKAR - HCGP)
AND:

MUSTAFA
S/O B.K.MOHAMMED
AGE 32 YEARS
CASTE BY MUSLIM
R/O MADAKA MANE
GOLATHAMAJALU VILLAGE
BANTWAL TALUK - 574 211.

...RESPONDENT

(BY SRI. B LETHIF - ADVOCATE)

THIS CRL.A. FILED U/S.378(1) & (3) CR.P.C PRAYING TO A] GRANT LEAVE TO FILE AN APPEAL AGAINST THE IMPUGNED

THAT PART OF JUDGMENT AND ORDER OF ACQUITTAL DATED 17.09.2016 PASSED BY THE VI-ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.41/2012 IN SO FAR AS IT RELATES TO ACQUITTING THE RESPONDENT/ ACCUSED FOR THE OFEFNCES P/U/S 366(A), 376 AND 506 OF IPC; B] SET ASIDE THAT PART OF JUDGMENT AND ORDER OF ACQUITTAL DATED 17.09.2016 PASSED BY THE VI-ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU S.C.NO.41/2012 IN SO FAR AS IT RELATES TO ACQUITTING THE RESPONDENT/ ACCUSED FOR THE OFEFNCES P/U/S 366(A), 376 AND 506 OF IPC AND C] CONVICT AND SENTENCE THE ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366-A, 376 AND 506 OF IPC.

IN CRL.A.1125/2017
BETWEEN:

THE STATE OF KARNATAKA
BY BANTWAL TOWN POLICE STATION
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001.

...APPELLANT

(BY SRI. H S SHANKAR - HCGP)

AND:

MUSTAFA
S/O B.K.MOHAMMED
AGE 32 YEARS
CASTE BY MUSLIM
R/O MADAKA MANE
GOLATHAMAJALU VILLAGE
BANTWAL TALUK - 574 211.

...RESPONDENT

(BY SRI. B LETHIF - ADVOCATE)

THIS CRL.A. FILED U/S.377 CR.P.C PRAYING TO MODIFY THAT PART OF JUDGMENT AND ORDER DATED 17.09.2016 PASSED BY THE LEARNED VI-ADDL. DISTRICT AND SESSIONS

JUDGE, D.K., MANGALURU IN SESSIONS CASE NO.41/2012 IN PASSING INADEQUATE SENTENCE FOR THE OFFENCE PUNISHABLE UNDER SECTION 342 OF IPC AND IMPOSE PROPER AND ADEQUATE SENTENCE FOR THE OFFENCE PUNISHABLE UNDER SECTION 342 OF IPC.

IN CRL.A.699/2018
BETWEEN:

MUSTAFA
S/O B.K.MOHAMMED
AGE 27 YEARS
R/O MADAKA MANE
GOLATHAMAJALU VILLAGE
BANTWAL TALUK
D.K. DISTRICT - 574 211.

...APPELLANT

(BY SRI. B LETHIF - ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY BANTWAL TOWN POLICE STATION
D.K. DISTRICT
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX BUILDING
BENGALURU - 560 001.

...RESPONDENT

(BY SRI. H S SHANKAR - HCGP)

THIS CRL.A. FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER OF CONVICTION AND SENTENCE DATED 17.09.2016 PASSED BY THE VI-ADDL. DISTRICT AND SESSION JUDGE, D.K. MANGALURU IN S.C.NO.41/2012 FOR THE OFFENCE PUNISHABLE UNDER SECTION 342 OF IPC AND ACQUIT THE APPELLANT.

THESE CRIMINAL APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, K. SOMASHEKAR .J., DELIVERED THE FOLLOWING:

COMMON JUDGMENT

Crl.A.No.1124/2017 is preferred by the appellant -

State seeking to set-aside the judgment of acquittal rendered by the VI Additional District and Sessions Judge, D.K.Mangaluru in S.C.No.41/2012 dated 17.09.2016 acquitting the accused for the offence punishable under Sections 366-A, 376 and 506 of IPC and to convict the accused for the aforesaid offences.

2. Crl.A.No.1125/2017 is preferred by the appellant - State seeking modification of the judgment of conviction and order of sentence rendered by the VI Additional District and Sessions Judge, D.K. Mangaluru in S.C.No.41/2012 dated 17.09.2016 whereby the trial Court has passed inadequate sentence for the offence punishable under Section 342 of IPC and to impose adequate sentence for the said offence.

3. Crl.A.No.699/2018 is preferred by the appellant - accused seeking to set-aside the judgment of conviction

and order of sentence rendered by the VI Additional District and Sessions Judge, D.K.Mangaluru in S.C.No.41/2012 dated 17.09.2016 insofar as it relates convicting him for the offence punishable under Section 342 of IPC and to acquit him for the aforesaid offence by consideration of the grounds urged therein.

4. All these three appeals are arising out of the judgment of conviction and order of sentence rendered by the VI Additional District and Sessions Judge, D.K.Mangaluru in S.C.No.41/2012 dated 17.09.2016 for the offences as stated in the operative portion of the order. Therefore, all these appeals are disposed of through this common judgment.

5. Heard learned HCGP Sri H.S.Shankar for the State and so also, learned counsel Sri B.Lethif for the accused. Perused the impugned judgment of conviction and order of sentence rendered by the trial Court.

6. The factual matrix of the appeals are as under:

It is stated in the case of the prosecution that PW.1 - complainant namely Rukmini filed a complaint against the accused person before the Bantwal Town Police alleging that CW.2/victim being her daughter was working in Kala Mudranalaya at Kalladka of Golthamajalu village. That in the evening on 11.03.2009, the accused called the victim to Pumpwell in Mangaluru and from there he abducted her in a car to House No.312, 1st floor, K.A.Commercial Complex of Kodambaru of Minja village, Kasaragodu, Kerala against her will with a point of knife threatened and

wrongfully confined her. On 17.03.2009 at 9.30 p.m. in a bus waiting shed at Balipaguli, Minja village he alleged to have committed forcible sexual intercourse on her. In pursuance of the act of the accused and so also, on filing of complaint by PW.1, criminal law was set into motion by registering the case in Crime No.55/2009 for the offences punishable under Sections 366-A, 342, 506 and 376 of IPC.

7. Subsequent to registration of crime against the accused, the investigating officer took up the case for investigation and thoroughly investigation has been done. During the course of investigation he conducted mahazar as per Ex.P4 in the presence of PWs.9 and 10 who have subscribed their signature. Another mahazar was also conducted as per Ex.P5 and PWs.9, 10 and 14 have subscribed their signature. In addition to that the IO secured wound certificate at Ex.P8. He also recorded the confession statement of accused as per Ex.P10. Statement of witnesses were also recorded and so also, FSL report as per Ex.P15 was secured. Thereafter, charge sheet against the accused came to be laid before the committal Court. The committal Court committed the case to the Court of Sessions for trial wherein the accused was secured and the trial Court heard arguments of learned

Public Prosecutor for the State and so also, the defense counsel and having found prima-facie case against the accused, charges for offences under Sections 366-A, 342, 506 and 376 of IPC came to be framed. The charges were

read over and explained in the language known to him, but the accused pleaded not guilty and claimed to be tried. Accordingly, plea of the accused was recorded separately.

8. Subsequent to framing of charge against the accused, the case of the prosecution was put on trial and accordingly, PW.1 to PW.19 were subjected to examination, got marked documents as per Ex.P1 to Ex.P17 and so also material objects as per MO.1 to MO.3. Subsequent to closure of the evidence of the prosecution witnesses, the accused was subjected to examination as contemplated under section 313 of Cr.P.C. wherein the accused denied the truth of the evidence of the prosecution adduced so far. Subsequent to recording incriminating statement, accused was secured to adduce defense evidence, if any, but he did not come forward to adduce any evidence. Accordingly, it was recorded.

9. Subsequently, the trial Court heard the arguments

advanced by the learned Public Prosecutor and so also the

counter argument made by the defence counsel. On appreciation of the oral and documentary evidence available on record, the trial Court passed impugned judgment convicting the accused for the offence under Section 342 of IPC and acquitted for the offences punishable under Sections 366-A, 376 and 506 of IPC. It is this judgment which is challenged by the State in Crl.A.No.1125/2017 seeking modification of the judgment insofar as it relates to convicting the accused under Section 342 of IPC and to impose adequate sentence for the aforesaid offence. Further, the State has also filed Crl.A.No.1124/2017 seeking to set aside the impugned judgment insofar as it relates to acquitting the accused for the offences punishable under Sections 366-A, 376 and 506 of IPC. The accused has filed Crl.A.No.699/2018 seeking to set-aside the judgment of conviction insofar as convicting him under Section 342 of IPC by urging various grounds.

10. Learned HCGP for the State contends that the impugned order of trial Court imposing inadequate

sentence for the offences punishable under Section 342 of IPC is contrary to the facts and evidence available on record. The trial Court has committed error in appreciating the evidence of PW.6 - victim who has stated in her evidence regarding the acts committed by the accused. Her evidence is corroborated by the evidence of PW.2 and 17. Further, the evidence of PW.2 being Doctor who issued Ex.P2 - wound certificate and Ex.P17 - statement of PW.19 clearly establish the attempt to commit rape by the accused. But the trial Court has not properly appreciated these materials and imposed inadequate sentence for the offence punishable under Section 342 of IPC. It is further contended that the trial Court erred in rejecting Exs.P13 and P14 which were produced in proof of age of the victim, without assigning proper reasons and the same requires intervention of this Court, if not, there will be miscarriage of justice. Further, it is contended that though the trial Court held that the prosecution has made out prima-facie

case against the accused for the offence under Section 342 of IPC, but erred in imposing inadequate sentence, which requires to be enhanced by this Court.

11. Learned HCGP further contends that the

impugned judgment of acquittal recorded by the trial Court and the reasons assigned therein is erroneous and the same has led to miscarriage of justice. The trial Court has failed to appreciate the evidence of PW.6 - victim who supported the prosecution case and the evidence of PW.1- mother of victim and author of the complaint based upon which the criminal law was set into motion, is corroborative to her complaint as per Ex.P1. The trial Court has failed to notice the evidence of PW.6 who stated that without her consent the accused forcibly committed sexual assault on her with the point of knife and threatened her. The trial Court ought to have convicted the accused for the offences under Sections 366-A, 376 and 506 of IPC.

12. The trial court has not properly appreciated the evidence of PW.2 being the doctor who issued Ex.P2 - wound certificate which supports the prosecution case and so also, the trial court rejected Exs.P13 and P14, the school certificate and copy of TC in proof of the age of victim without assigning proper reasons. The trial Court has not even appreciated the evidence of PW.17 - Scientific Officer who examined MOs.1 to 3 being the innerwear, vaginal swab and vaginal smear of PW.6 and issued FSL report as per Ex.P15. The trial court has not

considered the evidence of PW.2 mother of victim whose evidence corroborates with the evidence of PWs.6 and clearly disclose the act of accused with the victim and also corroborates with the evidence of other prosecution witnesses. Only by pointing out some minor discrepancies in the evidence of prosecution witnesses, the trial Court has not properly appreciated the evidence of material witnesses. The trial court has not raised proper probabilities and drawn inferences on the basis of the evidence on record. While passing the order of acquittal,

the trial Court has not placed any sound reasoning and erred in acquitting the accused for the offences under Sections 366-A, 376 and 506 of IPC. On all these grounds, learned HCGP for State seeks intervention of this Court by setting aside the judgment of acquittal for the offences under Sections 366-A, 376 and 506 of IPC and also seeks for modification of the judgment of conviction insofar as imposing inadequate sentence for the offence under Section 342 of IPC and seeks for imposing adequate sentence for the said offence.

13. Learned counsel Sri Lethif.B. for the appellant - accused in Crl.A.No.699/2018 contends that the trial Court

committed error in convicting the appellant only for the offence under Section 342 of IPC while acquitting for the offence under Sections 366-A, 376 and 506 of IPC. It is his contention that the trial Court erred in convicting the accused for the offence under Section 342 of IPC without there being any evidence in respect of wrongful confinement of PW.6 being the victim. Further there is no

ingredient made out by the prosecution for convicting the appellant for the said offence. There are contradictions in the evidence of PW6 to prove the case of prosecution about her wrongful confinement. Therefore, the same is liable to be set-aside.

14. It is further contended that the prosecution has suppressed the actual incident and has come up with the concocted story that the accused has committed the offence without appreciating the case of the prosecution in a proper perspective manner and without assigning proper and cogent reasons. The trial Court has committed error in holding that the prosecution has proved the case beyond reasonable doubt that accused is guilty of the offence alleged against him. On all these grounds counsel for the appellant - accused seeks for setting aside the judgment of conviction insofar as convicting the accused

for the offence under Section 342 of IPC by allowing the appeal.

15. It is in this context of the contentions as taken by the learned HCGP for State in Crl.A.No.1125/2017 and Crl.A.No.1124/2017 and so also, counsel for the appellant - accused in Crl.A.No.699/2018, it is relevant to refer to the evidence of PW.1 - Rukmini being the mother of victim and also author of the complaint based upon which the criminal law was set into motion. She has stated in her evidence that she lodged the complaint on 16.3.2009 that accused abducted her daughter - PW.6 who was 16 years with an intention to marry her. She has also stated that the accused had forcible sexual intercourse on her even though she resisted. In the cross-examination she has stated that she cannot say in which year her daughter - PW.6 was born. She has stated that accused took her stating that he would marry her and then she lodged the complaint. But PW.6 did not come to home and was staying in Ashrama. Now PW.6 is married and is working in Panchayath office.

16. PW.2 - Dr.K.Radhika has stated in her evidence

that on 6.4.2009 PW.6 victim was brought before her for examination. She examined PW.6 and found no injuries on her body. In her genitals she did not found other pubic hair and her hymen was torn. She was capable to have sexual intercourse and she opined that there was chances of sexual intercourse would have taken place. She collected vaginal smear and swab for chemical examination and also collected her inner clothes. She issued wound certificate as per Ex.P2.

17. PW.3 - Ganesha in his evidence has stated that in the year 2009 victim was working in Kala Mudrana at Kalladka which belonged to PW.4 - Harish Bangera. PW.1 informed him that her daughter went on 10.3.2009 saying that she would go to her grandfather's house. Further, PW.1 has stated that accused abducted PW.6 with an intention to marry.

18. PW.4 - Harish Bangera is the owner of Kala Mudrana, Kalladka and he has stated that PW.2 was doing

binding and numbering work in his Mudranalaya. On 10.3.2009 PW.1 came and asked him that PW.6 did not come to home. From 11.3.2009 PW.6 did not came to work. Thereafter he came to know that accused abducted

PW.6 with an intention to marry her.

19. PW.6 being the victim has stated that from June 2008 to March 2009 she was working in Kala Mudranalaya at Kalladka which belonged to PW.4. She has stated that she know the accused and that on 10.3.2009 she went saying her mother going to grandfather's house at Purvipalya, but she did not went there but went to her friend Sudha's house. Next day came to Kala Mudranalaya and her mother came there and abused her in respect of her relationship with accused. Therefore, she informed the said incident to the accused who in turn told her that he will help her and asked her to come to Mangaluru. She went there and got down at Pumpwell after seeing accused. After sometime the accused asked her to sit in a car and asked her to marry him. But she denied stating

that she belong to other community and also she has not crossed her age. But accused with knife point threatened her and abducted her and confined in a room at Manjeshwara. Next day he took her forcibly in a car to Kotekar, Kerala and confined in the house and had forcibly committed sexual intercourse on her. After lodging of complaint, the police traced and brought her to Bantwal police Station. She stated that her date of birth is

4.3.1992 and at the time of incident her age was 17 years. She studied 8th standard at Sharada High School, Pane, Mangaluru. In her cross - examination she denied the suggestion that at the time of incident she completed 18 years.

20. PW.7, PW.8 and PW.12 are the police officials. PW.11 - Dr.Surendranath Nayak has given his opinion that the accused is capable to do sexual intercourse and has issued certificate as per Ex.P8.

21. PW.13 - K.Madhava is the PSI who registered the case based upon the complaint lodged by PW.1 and also

recorded statement of witnesses. He tried to traced the accused but not secured. That on 6.4.2009 got the information that PW.6 was spotted near the lodge at Kannur Pete, Kerala. He went there and secured PW.6. After medical examination sent the victim to Prajna Counselling Centre, Mangaluru.

22. PW.14 - Anil S.Kulkarni is the CPI who recorded the voluntary statement of the accused as per Ex.P10 and also submitted additional charge sheet. He drew the mahazar at Ex.P5 and also recorded the statements of building owner Mansoor and panchas Shaukath Ali and

Mohiddin Naufar. He sent the accused for medical examination and received the medical certificate at Ex.P8. On 21.4.2012 submitted additional charge sheet against the accused and notice was marked at Ex.P12. In his cross-examination he denied the suggestion that accused did not gave voluntary statement before him as per Ex.P10.

23. PW.15 - Theresa Fernandes, the in-charge Head Master of Saint Joseph Higher Primary school has stated in her evidence that she issued school certificate as per Ex.P13 and as per the school records, PW.6 was born on 4.3.1992 and also issued TC which is marked as Ex.P14. He stated that PW.6 studied in their school from 1st to 7th standard. In the cross-examination she denied the suggestion that she issued certificate on force.

24. PW.16 - K.U.Belliyappa, CPI has stated in his evidence that on 27.8.2014 he received the certificate of birth date of PW.6 from the school at Ex.P13. On 12.8.2015 he sent the clothes of victim to FSL for examination and on 01.09.2015 received the FSL report at Ex.P15. In the cross-examination he has stated that he did not enquired as to who admitted PW.6 to the school and he has not asked the admission register.

25. PW.17 - Dr.Geethalakshmi is the Scientific Officer who stated in her evidence that on 18.8.2015 the police officials submitted three sealed items in

Cr.No.55/2009. Seminal stains was not found in item 'A' and 'C'. Spermatozoa was not detected in item 'B'. Presence of vaginal secretions was detected in item 'A' but not detected their groups. She issued report as per Ex.P15. In her cross-examination she stated that without the blood sample, she cannot say semen belongs to whom.

26. PW.18 - K.Nanjunde Gowda is the CPI who has stated that on 9.4.2009 he received the case file from Madhav PSI and he tried to trace the accused but did not found him. He received the medical certificate of PW.6 at Ex.P2 and submitted charge sheet. In the cross-examination he has stated that he has not collected the document of birth date of PW.6. He collected the call details but did not produce before the Court.

27. PW.9 - Shaukath Ali and PW.10 - Mohiddin Naufal are the mahazar witnesses as per Exs.P4 and P5 but they turned hostile to the case of the prosecution.

28. PW.19 - Mansoor has stated that his father Abdulla is the owner of K.A.commercial Complex at Kadambaru of Minja village. His father has let out the building but the police did not gave notice about their coming to drawn the mahazar.

29. These are all the evidence let in on the part of the prosecution in respect of PW.6 being the victim who was alleged to have been abducted by the accused and wrongfully confined and had forcible sexual intercourse upon her. The evidence of PW.6 being victim shows that on 11.3.2009 her mother - PW.1 came to her working place at Kala Mudranalaya and abused her that she did not come to home and after that due to fear she called the accused and herself went to Pumpwell, Mangaluru. Further, on the say of police she gave evidence before the Court against the accused and the police brought PW.6 but she did not stated anything against the accused and she did not go with her mother. If her mother had look after PW.6 well, definitely she would have went with her. PW.15

had issued the certificate at Ex.P13 by mentioning the date of birth of PW.6 is 4.3.1992 and the certificate came

to be issued in the year 2014, but the incident took place in the year 2009 which shows that after five years of the incident, police collected the document that too after filing of the charge sheet and additional charge sheet before the trial Court. Therefore, in the absence of admission register or evidence as to who admitted her to school, the certificate at Ex.P13 and the evidence of PW.15 cannot be believed as trustworthy that PW.6 was born on 4.3.1992. This benefit goes to the accused and considered age of PW.6 was 18 years at the time of incident. The trial Court rightly came to the conclusion that at the time of alleged incident age of PW.6 was 18 years and she was not a minor.

30. Further, PW.18 - Nanjunde Gowda, the IO who said to have collected the call details of mobile belonging to PW.6, but did not produce the call details before the Court. The police have not drawn the mahazar at the

alleged place of where they brought PW.6 to station on 6.4.2009. PW.1 being the mother of PW.6 - victim has stated after securing of her daughter she lodged the complaint on 16.3.2009. If mahazar was drawn on the date of bringing, PW.6 definitely would have known the truth. PW.13 PSI did not drew the mahazar at the spot.

31. It is relevant to note here that there is no evidence of PW.6 being victim that accused seduced or forced her to have illicit intercourse with a person other than the accused and hence, the ingredients under Section 366-A of IPC is not attracted. PW.2 - Dr. Radhika who examined PW.6 on 6.4.2009 stated that there were no injuries on PW.6. Since the hymen was ruptured she has stated that chance of PW.6 had sexual intercourse and issued medical certificate Ex.P2. But Ex.P2 does not show PW.6 stating before the Doctor that accused had sexual inter course on her. PW.2 Doctor has stated that at the time of examination of PW.6, she collected vaginal smear, vaginal swab and also innerwear. PW.17 -

Dr.Geethalakshmi, Scientific Officer has stated that on 18.5.2015 she received sealed items from Buntwal police and she examined the above articles and she found vaginal secretion on M.O.1 but in the absence of blood group cannot say semen belongs to whom. PW.6 in her evidence stated that M.O.1 was not worn at the time of sexual intercourse. The material objects were collected from PW.6 on 6.4.2009 but sent to FSL on 18.8.2015 after gap of six years. Therefore, there are clouds of doubt in the theory of the prosecution in respect of forcible sexual

intercourse on her. The trial Court rightly disbelieved the evidence of PW.6 that accused abducted her and had forcible sexual intercourse on her by giving threat. The trial Court after appreciation of oral and documentary evidence on record, came to the conclusion that prosecution has failed to prove the guilt of the accused beyond all reasonable for the offence punishable under Section 366-A, 376 and 506 of IPC and acquitted the accused for the aforesaid offences. We find no justifiable reasons to interfere with the same. Accordingly, the

appeal filed by the State challenging the judgment of acquittal is deserves to be dismissed.

32. The trial Court has gone through the evidence of PW.6 who stated that accused wrongfully confined her in a house at Kotekar earlier to that Manjeshwar. After accused came to know her mother lodged the complaint through his friends left her to Kannur, near the lodge. Even PW.6 came with him voluntarily stating her mother abused her but he without informing her mother took her and confined her. The trial court came to the conclusion that accused had wrongfully confined her and convicted him for the offence under Section 342 of IPC. But it is relevant to note here that as per the evidence of PW.6 and

as contended by counsel for the appellant-accused, the victim and the accused had been to Kotekar in a car along with other two persons and confined in a room where there were males and females. In this regard the prosecution had examined PWs.9 and 10 as mahazar witnesses. But they did not withstood to their version and

turned hostile. The evidence of PW.6 runs contrary to the evidence of PW.1 being mother of PW.6 who filed complaint relating to abduction of her daughter and alleged that the accused had forcible sexual intercourse upon her. If really accused had sexual intercourse on PW.6 she would have stated before the Doctor at the time of her examination. The evidence on the part of the prosecution goes to show that the accused not at all had forcible intercourse on her.

33. In the instant case on record, it is relevant to refer the judgment of the Hon'ble Supreme Court Padam Singh vs. State of UP (AIR 2000 SC 361) wherein it is held that it is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution is said to have proved its

case beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate

Court in drawing inference from proved and admitted facts. This issue has been extensively addressed by the Hon'ble Supreme Court in the aforesaid reliance and more so based upon the evidence and also on facts. But the appeal in Crl.A.No.1124/2017 is preferred by the State challenging the judgment of acquittal for the offence under Sections 366-A, 376 and 506 of IPC and seeking to set-aside the impugned judgment. Crl.A.No.1125/2017 is preferred by the State for inadequacy of sentence imposed by the trial Court for the offence under Section 342 of IPC and seeking modification of the judgment relating to Section 342 of IPC. However, it is the duty cast upon the an appellate Court to look into the evidence facilitated by the prosecution and it must prove and establish beyond all reasonable doubt. Therefore, in this regard it is relevant to refer Section 3 of the Indian Evidence Act, 1872 wherein it is the domain vested with the trial Court to appreciate the evidence in a proper perspective and also the ingredients relating to the offences which lugged against the accused who is facing of

trial. But in the instant case, the evidence which is facilitated by the prosecution to prove the guilt of the accused but the credibility of the witnesses are required to be adjudged by the Appellate Court by drawing inference from proved and admitted facts and the materials which secured by the investigating officer during the course of investigation in respect of conducting mahazar in the presence of panch witness and securing the medical report/ wound certificate as per Ex.P2 from the concerned Doctor whereby the PW.6 victim was subjected to examination and PW.1 being the mother of victim who filed the complaint based upon which the criminal law was set into motion and only later which came to her knowledge and then only criminal prosecution was initiated. The same could be seen in the evidence of the prosecution witnesses that too be the evidence of PW.6/victim and so also, PW.1 being the mother of PW.6. Therefore, the aforesaid reliance is squarely applicable to the case on hand relating to the offence under Section 342 of IPC and it requires intervention. The ingredients of the

said offences has not been proved by the prosecution to secure the conviction as there is no strong, consistent and

also cogent evidence to convict the accused for the said offence.

34. Further it is relevant to refer the judgment of Hon'ble Supreme Court in Lalit Kumar Sharma v. Superintendent and Remembrancer of Legal Affairs, Government of West Bengal, (1989) Cr.L.J. 2297 wherein the Hon'ble Supreme Court has addressed the issues relating to the powers of the Appellate Court to review evidence in appeal against acquittal is as extensive as its powers in appeal against convictions but Appellate Court should be slow in interfering with the order of acquittal. But in the instant case, the State has sought for modification of sentence imposed by the trial Court for the offence under Section 342 of IPC and so also, for setting-aside the judgment of acquittal for the offences under Sections 366-A, 376 and 506 of IPC and the appellant-accused has sought for setting aside the judgment of

conviction insofar as it relates to convicting him for the offence under Section 342 of IPC. Therefore, the aforesaid decision is squarely applicable to the present case on hand wherein intervention is sought for.

35. It is the settled the position of law that reliance

can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. This issue has been addressed by the Hon'ble Supreme Court in the case of Raja v. State (1997) 2 Crimes 175 (Del). Insofar as reliance of the Hon'ble Supreme Court in Lallu Manjhi v. State of Jharkhand (AIR 2003 SC 854) it is held that the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be

no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court as to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. In the instant case, PW.6 being the victim who is alleged to have been abducted by the accused and made wrongful confinement under threat in terms of criminal intimidation and alleged to have had forcible sexual intercourse. But on close scrutiny of the evidence

on the part of the prosecution it indicates there are inconsistencies and contradictions as could be seen from the evidence of PW1 being the mother of victim and author of the complaint and so also, contradictions in the evidence of the investigating officers who conducted the investigation and laid the charge sheet. There is no worthwhile evidence on the part of the prosecution wherein the trial Court has rendered the impugned judgment and it founds to be perversity and absurdity. On all these premise, it requires intervention of the impugned

judgment, if not, certainly the accused being the gravamen of the accusation would suffer miscarriage of justice.

36. Further, on close scrutiny of the legal evidence facilitated by the prosecution and so also, exhibited documents in respect of mahazar conducted by the IO in the presence of panch witnesses and so also secured medical certificate as per Ex.P2, but in totality of the circumstances of the case and so also, the evidence facilitated by the prosecution, a prudent man can infer that the trial Court has misdirected and misinterpreted the evidence adduced on the part of the prosecution. Therefore, there is no go but to intervene with the

impugned judgment, if not, certainly there would be miscarriage of justice to the accused being the gravamen of the incident. In view of the aforesaid reasons and findings, we are of the opinion that the appeals preferred by the State challenging the impugned judgment of acquittal insofar as acquitting the accused for the offence

under Sections 366-A, 376 and 506 and so also, modification of the impugned judgment in respect of inadequate sentence imposed by the trial Court for the offence under Section 342 of IPC are liable to be rejected and the appeal preferred by the appellant-accused to set-aside the impugned judgment insofar as convicting him for the offence under Section 342 of IPC, deserves to be allowed. Accordingly, we proceed to pass the following:

ORDER

(i) Criminal Appeal No.1124 of 2017 filed by the Appellant - State under Section 378(1) and (3) of Cr.P.C. seeking to convict the appellant - accused for the offence punishable under Sections 366-A, 376 and 506 of IPC is hereby dismissed.

(ii) Criminal Appeal No.1125 of 2017 filed by the Appellant - State under Section 377 of Cr.P.C. seeking modification of the judgment of conviction for the offence punishable under Section 342 of IPC is hereby dismissed.

(iii) Consequently, the judgment of acquittal dated 17.09.2016 passed in SC No.41 of 2012 by the learned VI Additional District and Sessions Judge, DK, Mangaluru acquitting the appellant-accused

for the offences punishable under Sections 366-A, 376 and 506 of IPC is hereby confirmed.

(iv) Criminal Appeal No.699 of 2018 filed by the Appellant - accused under Section 374(2) of Cr.P.C. is hereby allowed. Consequently, the judgment of conviction and order of sentence dated 17.09.2016 passed in SC No.41 of 2012 by the learned VI Additional District and Sessions Judge, DK, Mangaluru, insofar as convicting the accused for the offence punishable under Section 342 of IPC is hereby set-aside. The appellant-accused is acquitted for the offence punishable under Section 342 of IPC. He shall be set at liberty forthwith, if not required in any other case/s.

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(v) Bail bond, if any, executed by the appellant- accused in Criminal Appeal No.699 of 2018 shall stands cancelled.

(vi) The fine amount (if any) deposited by the appellant-accused in pursuance of the judgment of conviction and order of sentence rendered by the Trial Court shall be returned to the appellant-accused, on due identification.

Sd/-

JUDGE Sd/-

JUDGE DKB