

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 11 of 2014**

Mr. Lawrence Dias	
S/o. Anthony Dias,	
Aged 26 years,	
R/o. H. No.188,	
Mesta Bhat, Mercas, Goa.	
Presently undergoing sentence	.. Appellant
at Central Jail, Aguada	(Original Accused)
V/s	
State	
Through PP	
High Court Complex,	
Panaji-Goa.	.. Respondent

Mr. Arun Bras De Sa, Advocate for the appellant.

Mr. S. R. Rivankar, Public Prosecutor for the respondent.

CORAM :- C. V. BHADANG, J.

Reserved on :- 5th March, 2018

Pronounced on :- 6th March, 2018

JUDGMENT :

By this appeal, the appellant (accused) is challenging his conviction for the offence punishable under Sections 376, 323 and 506(II) of the Indian Penal Code (IPC, for short). For the offence under Section 376 of IPC, the appellant has been sentenced to suffer Rigorous Imprisonment for seven years and to pay a fine of Rs.10,000/- and in default, to undergo Rigorous Imprisonment for 6 months. For the offence punishable under

Section 323 of IPC, the accused has been sentenced to pay a fine of Rs.1,000/- and in default, to undergo Rigorous Imprisonment of one month. Lastly, for the offence under Section 506(II) of IPC, the appellant has been sentenced to pay a fine of Rs.1,000/- and in default, to suffer Rigorous Imprisonment for one month.

2. The prosecution case may be briefly stated thus :

That at the relevant time, the appellant was working as a snake catcher with the Forest Department. The office, where the appellant was working, is situated near Kala Academy at Campal, Panaji, Goa. The prosecutrix (PW1) is a British national and had come down to Goa in October, 2007. She was working for a NGO. On 11/01/2008, the prosecutrix had attended a music concert "Idea Jalsa" at 7.00 p.m. at Kala Academy, Panaji, Goa. After the conclusion of concert, the prosecutrix came out at about 22.30 hours and proceeded for about 100 metres from the main gate of Kala Academy, when she noticed a person on a black coloured motorbike, who asked her whether she needs a ride. The prosecutrix requested the said person to drop her to bus stand. The said person (who according to the prosecution is none other than the appellant) apprised the prosecutrix that hiring rickshaw would be too expensive at that time and asked the prosecutrix where she was going. The prosecutrix told him that she wants to

go to Mapusa, when the appellant told her, if she could fill in a fuel of Rs.50/- in the motorbike, he would drop her at Mapusa. Accordingly, the prosecutrix agreed and while both of them were proceeding to Mapusa, the appellant took a purported short cut i.e. by Pillar road and on the way at around 23.00 hours, is alleged to have raped the prosecutrix in a secluded area. The appellant thereafter, dropped the prosecutrix on the main road, where she managed to take help of Santosh Adgaokar (PW10) and Sanjay Shirodkar (PW11), who were proceeding by bike on the main road. The prosecutrix is alleged to have informed about the incident to Mr. and Mrs Arya and lodged a complaint of the incident with Police Station, Panaji on the following day i.e. on 12/01/2008.

3. On the basis of the complaint, an offence at Crime No.17/2008 came to be registered under Sections 323, 506 and 376 of IPC. During the course of investigation, the statement of the prosecutrix and other witnesses came to be recorded. The prosecutrix was sent for medical examination. Her clothes came to be seized. On the basis of the description given by the prosecutrix, a sketch of the offender was prepared. It appears that ultimately on the basis of the information given by the informant, the appellant came to be arrested on 17/02/2009. After his arrest, a test identification parade came to be conducted by

the Magistrate, in which the prosecutrix is alleged to have identified the appellant as the one, who had forcible intercourse with her on the day of the incident. On completion of the investigation, a chargesheet came to be filed, which was eventually committed to the Court of Sessions at Panaji and was registered as Sessions Case No.20/2009.

4. The learned Sessions Judge framed charge against the appellant for offences as aforesaid, to which the appellant pleaded not guilty and claimed to be tried. The appellant apart from setting up defence of total denial and false implication, has also raised the defence of *alibi*, in support of which, he examined himself as the defence witness. It was contended by the appellant that on the day of incident, he had attended three calls for catching of snakes and last of such call was attended between 10.15 to 11.00p.m. at Mercedes near CMM Furniture, Pondsabhata. It is, thus, contended that at the time when the incident is alleged to have happened, the appellant was away at Pondsabhata, attending a regular call.

5. At the trial, the prosecution examined as many as 24 witnesses and produced the record of the investigation. As noticed earlier, the appellant examined himself in his defence.

6. The learned Sessions Judge, by a judgment dated 20/01/2014, convicted and sentenced the appellant as aforesaid. Feeling aggrieved, the appellant is before this Court.

7. I have heard Shri De Sa, the learned Counsel for the appellant and Shri Rivankar, the learned Public Prosecutor for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment.

8. It is submitted by Shri De Sa, the learned Counsel for the appellant that this is a case of mistaken identity. It is submitted that the appellant was arrested more than a year after the alleged incident. It is submitted that the appellant came to be arrested on the basis of the statement of PW5. The learned Counsel has taken me through the evidence of the said witness, in order to submit that the same does not inspire confidence. It is pointed out that after the witness was declared hostile, no opportunity was granted to the appellant to cross-examine the said witness. It is submitted that in any event, the evidence of PW5 is highly improbable and the appellant could not have been arrested on the basis of any such statement. It is next submitted that the

prosecutrix has claimed that there was total darkness as it was a secluded area in the forest, where the incident had happened and thus, the prosecutrix has had no opportunity to see the appellant, so as to identify him as the one involved in the offence. It is submitted that the prosecutrix was recalled twice at an interval of more than one year each and the evidence of the prosecutrix, particularly on the point of the identification of the appellant, is untrustworthy and not acceptable. It is submitted that the evidence of the test identification parade is also not acceptable in as much as the prosecutrix had a clear opportunity to see the appellant prior to holding of the test identification parade. It is submitted that the appellant was shown to the prosecutrix prior to test identification parade and, therefore, the evidence as to the test identification parade loses its efficacy.

9. It is submitted that the prosecutrix had not given any details of the motorbike, on which the appellant had allegedly taken her, including its registration number. The learned Counsel strenuously urged that this is a clear case of mistaken identity and/ or a false charge being foisted on the appellant. It is next submitted that on the basis of the evidence produced by the prosecution itself, it is established that between 10.15 to 11.00 p.m. on 11/01/2008, the appellant was attending a call for capture

of a snake and as such, the defence of *alibi* of the appellant is also clearly established on record. The learned Counsel was at pains to point out that the prosecution had failed to collect the call data records, which would have shown the location of the prosecutrix and for the matter of that, the appellant at the relevant time. It is submitted that the prosecution has not carried out the DNA test of the appellant as required by Section 53-A of Cr.P.C. He, therefore, submitted that the impugned judgment holding the appellant guilty, needs to be set aside. On behalf of the appellant, reliance is placed on the decision of the Supreme Court in the case of ***Krishan Kumar Malik Vs. State of Haryana***; (2011)7 SCC 130.

10. On the contrary, it is submitted by Shri Rivankar, the learned Public Prosecutor that the evidence of PW1 is natural, cogent and one inspiring confidence. It is submitted that the appellant had taken the prosecutrix from in front of the gate of Kala Academy, which is situated in the heart of the city and thus, the prosecutrix had a clear opportunity to see the appellant since the time she took a ride with the appellant. It is, thus, submitted that the absence of any source of light on the spot of the incident, would not derogate from the evidence of PW1, wherein she has clearly identified the appellant to be the one, who is involved in the offence. It is submitted that normally, a girl would not falsely

implicate somebody else, letting out the real culprit and, therefore, the evidence of the prosecutrix, if found to be otherwise acceptable, can be relied upon to base the conviction. It is submitted that there is also the evidence of test identification parade, in which the prosecutrix has identified the appellant. It is submitted that there are no circumstances creating any doubt in so far as the evidence of test identification parade is concerned. It is submitted that the prosecutrix also identified the appellant before the Court and thus, the case set up about a mistaken identity, cannot be accepted.

11. The learned Public Prosecutor submits that the defence of *alibi* is not properly established. It is submitted that the logbook, on which the appellant has placed reliance, is filled in by the appellant himself and which is verified by the Range Forest Officer (RFO) on the following day. It is, thus, submitted that the possibility of the appellant having created the record, to support the case of *alibi*, cannot be ruled out. It is submitted that in any event, the distance between the Kala Academy and the spot where the appellant allegedly attended his third call, is not such as would exclude the possibility of the appellant being in front of the Kala Academy, even after attending the call. On behalf of the respondent, the learned Public Prosecutor has placed reliance on

the decision of the Supreme Court in the case of ***Dudh Nath Pandey, Vs. State of U.P.***; 1981 2 SCC 166, ***Sudhansu Sekhar Sahoo Vs. State of Orissa***; 2002 10 SCC 743 and ***State of M.P. Vs. Dayal Sahu***; 2005 8 SCC 122, in support of his various submissions. He, therefore, submits that no interference is call for in the impugned judgment.

12. I have carefully considered the rival circumstances and the submissions made.

13. The perusal of the evidence of PW1 leaves no manner of doubt that she was subjected to a forcible intercourse. PW1 has given all the details as to what happened from the time she left the concert at Kala Academy till she was dropped on the highway and subsequently, met PW10 and PW11. Her evidence indicates that the incident happened at about 11.00 p.m. in a secluded jungle area. PW1 has given meticulous details as to how she was overpowered and was subjected to sexual assault, in which she suffered bleeding injuries. She has also stated about a violent struggle and resistance put up by her and has stated about the assailant having held her hair, having punched her on the face and mouth and the neck being twisted. She has also stated about an attempt by the assailant to pin her on the ground on a threat being

held out to quietly succumb else at the risk of being killed. It has also come in her evidence that she pleaded that all her money and belongings may be taken away. However, the assailant only insisted for sex. She has also described the dress she was wearing on the day of the incident and has given all the details of the forcible act of having sexual intercourse. Nothing significant has come in the cross-examination of this witness, so as to dislodge her evidence on the aspect of she being subjected to a violent and forcible intercourse. PW1 had lodged a complaint on the very next date i.e. on 12/01/2008 at 20.30 hours.

14. Dr. Silvano Sapeco (PW15) examined PW1 on 12/01/2008 and found the following injuries on her person :

- "1. Features of left black eye were seen.*
- 2. Back of both elbows had soft scab abrasion each of 4x3 cms area.*
- 3. Soft scab abrasion area 9x5 cms at right back and outer aspect of buttock.*
- 4. Soft scab abrasional area $6^{1/2} \times 5^{1/4}$ cms at right knee cap.*
- 5. Vertuically oblique linear soft scab scratch marks each of 7 cms X linear on right cheek.*
- 6. Half centimeter diameter elavational haematoma at back of scalp.*
- 7. Tenderness for neck along nape region."*

All the aforesaid seven injuries were found to be sustained within 24 hours caused by blunt force object or surface impact. The Medical Officer also found a fresh edematous bruise of 2x1 cms with tear at 8 o' clock position of hymen, which was bleeding on touch and tender. The Medical Officer has clearly opined on the basis of the physical genital examination that the victim was subjected to a recent forcible intercourse. He collected vaginal swab/ smears and pubic hair sample. In the cross-examination, it was suggested to this witness that the injury to hymen could be caused by any other object than a sexual act, which the witness has denied. There is nothing, which has come in the cross-examination of the Medical Officer to dislodge his evidence. The said witness substantially corroborates the evidence of PW1 in material particulars about PW1 having subjected to a forcible sexual intercourse. It has come on record that after the incident and before she was examined, the victim had taken a bath and changed her clothes. However, notwithstanding this, the evidence of the injuries found on the person of PW1 corroborates in material particulars her evidence about she being subjected to a forcible sexual intercourse.

15. PW14 Dr. Pandurang Phaldessai, who was working as a Member Secretary of Kala Academy, has stated that there was a

programme called 'Idea Jalsa' held at Kala Academy on 11/01/2008.

16. A brief reference at this stage may be made to the evidence of PW10 and PW11. Santosh Adgaonkar (PW10) at the relevant time, was working as a driver for one Mr. Ulhas Pilankar on 11/01/2008. On 11/01/2008, at about 7.00 p.m., this witness left the house of Gurudas Pilankar along with two sons of Gurudas and cousin of Gurudas to attend the 'Idea Jalsa' programme at Kala Academy, where he met his friend Sanjay Shirodkar (PW11). However, they left the programme in the middle and returned back to the house of Gurudas. Thereafter, both of them i.e. Santosh and Sanjay went for a bhajan at Satari temple at Peribhat, Merces and at about 11.15 p.m., went to the house of Gurudas. They, thereafter, left his car at his residence and Santosh and Sanjay then proceeded on the motor cycle of Sanjay to his residence. Santosh (PW10) was riding the motor cycle. Sanjay (PW11) was a pillion rider. It has come in their evidence that when they reached a junction near Subhadra Bar, a foreigner lady came in the middle of the road and stopped them and requested for help, informing that she has been attacked. They tried to find out whether there was a STD booth nearby as she wanted to make a phone call. Both of them along with the lady i.e. PW1 went to

Subhadra Bar, where Mr. Laximan Kankonkar, the owner of the Bar was present. However, they were informed that the Bar is closed. Hence, the said lady PW1 made a phone call to one person, who then spoke with Sanjay and asked him to drop the lady to his residence. PW1 asked PW10 to drop her at Rego Hotel at KTC Bus stand, Panaji. It has also come in their evidence that at that time, the said lady had a bleeding injury to the head. The evidence of PW10 and PW11 substantially corroborates the evidence of PW1 as to her presence on the high way at the relevant time and the fact of a bleeding injury on her person. Thus, the evidence of PW1, PW10, PW11 and PW15 taken together leaves no manner of doubt that PW1 was subjected to a forcible sexual intercourse. The material question is whether it is the appellant, who was involved in the incident.

17. The learned Counsel for the appellant has tried to assail the conviction, on two aspects. Firstly, it is contended that the identity of the person, who is allegedly involved, is not established and in any event, this is a clear case of a mistaken identity. Secondly, it is contended that the appellant was called for catching a snake at or around the time when the incident is alleged to have happened and this establishes the defence of *alibi*. The matter has essentially to be examined on these two aspects.

First with reference to the identity. Although it has come on record that the incident occurred at a secluded place in the jungle, there is enough evidence on record to show that PW1 had taken a ride on the motor cycle from Kala Academy, which is in the heart of the city. It is not disputed that the office, where the appellant was working, is situated at Campal near Kala Academy. Be that as it may, the fact that the PW1 had taken a ride from Kala Academy, had a conversation with the pilot enroute to Mapusa, would clearly show that the PW1 had enough opportunity to see the concerned pilot and note his appearance. In the complaint Exh.13, PW1 has described the assailant as being in his late 20s with dark complexion with a height about 5.5 feet, having high cheek bones and teeth slightly protruding out. She has described the assailant to be of thin built with elongated face and speaking "broken English". She has also stated about his clothes. She has stated that the assailant was wearing checkered shirt and dark jeans pant and was an Indian national. Enroute to the spot of the incident, she had also enquired whether he is a Hindu, when she was told that he is Roman Catholic. Thus, not only that PW1 has narrated about the incident and the trauma she underwent, but she has also described the assailant in vivid details. On 13/01/2008, PW1 had led the police to the scene of offence from where her underwear was recovered and seized under a

panchanama.

18. It is submitted by Shri De Sa, the learned Counsel for the appellant that PW1 was recalled twice and this would create a dent in her evidence. I am unable to accept the said contention. The record discloses that initially, the evidence of PW1 was concluded on 27/11/2009 and she was recalled on 16/07/2010 for the purpose of identification of her clothes as the clothes were not available when her evidence was recorded earlier as the clothes were sent to CFSL, Hyderabad and were not received back. A perusal of the evidence further shows that the learned Sessions Judge had made an endorsement in the evidence that the clothes would be shown after they are received. It can, thus, be seen that the appellant was aware that at the time when initially the evidence of PW1 was recorded, the clothes could not be shown to PW1 for the purposes of identification and they were to be shown subsequently, when they are received. The record further discloses that PW1 was again recalled on 29/11/2011 and was re-examined on the point of opportunity to the PW1 to see the appellant. I have carefully gone through the evidence of PW1 recorded on 29/11/2011 and it is essentially in the nature of explaining the earlier evidence as to the opportunity available to PW1 to see the appellant. PW1 has stated that she had ample

opportunity to see the appellant as the area (near Kala Academy) from where she was picked up, was floodlit and there was light from the high mast lamps. She has further stated that when the appellant gave her a lift on his motorcycle, she had seen him clearly and even during the course of journey till the spot of the incident, there was sufficient light to see the appellant. Lastly, she has stated that she could clearly see the appellant when he was trying to force himself on her and when he attempted to kiss her. Although certain omissions have been brought on record in the cross-examination, I am clearly of the opinion that the same does not create any dent in the evidence of PW1. I am unable to persuade myself to accept that the re-examination of PW1 on two occasions, can be considered as a circumstance, which would render the evidence of PW1 unacceptable.

19. At this stage, a brief reference may be made to the evidence of PW5. Here, the learned Counsel for the appellant may be right that the evidence of PW5 is not acceptable. PW5 claims to be a goldsmith by profession and also used to give loan on interest on obtaining gold or vehicles as a security. Initially, he claimed that he does not know the appellant. In the second breathe, he says that the appellant was his neighbour, however, as he has not seen him for a long period, he is not sure whether the accused/

appellant in the dock, is Lawrence. He, however, claimed that he knows the wife of Lawrence, who was present in the Court. He claims that the full name of Lawrence was Lawrence Dias, but he does not remember his nick name. PW5 has then stated that he knows Lawrence since childhood and knows his family members as he used to visit the house of Lawrence at Merces frequently. He claims that his relations with Lawrence Dias was very friendly. In the material part of the evidence of PW5, he claims that Lawrence Dias had told him that he (Lawrence Dias) had raped a foreigner. However, he could not recollect the month and the year when Lawrence told this to him. He further claims that he informed about the aforesaid disclosure by Lawrence to Joaquim, who is the brother of Lawrence and to the wife of Lawrence by name Sushma. A bare perusal of the evidence of this witness shows that it is highly unnatural and improbable. In the first place, PW5 failed to identify the appellant, who was in the dock, however, said that he knows Lawrence Dias, which is the name of the appellant. It is also highly improbable that a person would disclose even to his closest of the friends, about a rape committed by such a person. I do not find that the evidence of PW5 can be accepted or acted upon. However, at the same time, I would hasten to add that this will not have any effect on the conviction of the appellant, which I find to be otherwise sustainable.

20. It has come in the evidence of Francisco Corte, P.I. (PW22) that a sketch of the assailant was drawn by Sanjay Halmalkar on the basis of the description given by the PW1. The sketch is produced at Exh.121. In this case, it appears that in spite of efforts, the Investigating Agency could not trace the accused for quite some time and hence, "A" final summary was submitted to the learned Magistrate in December, 2008, subject to the liberty to reopen the case, if the accused was traced. It has come in the evidence of PW22 that on 16/02/2009, he received a reliable information from the informant that the person suspected to be involved in Crime No.17/2008 was available near Mercedes Market and it was also informed that the appearance/ features of the suspect resemble the portrait drawn by Sanjay Halmalkar. It appears that the appellant was taken into custody and brought to Panaji Police Station on 21.15 hours on 16/02/2009. On the following day, a request was made to the learned Magistrate to reopen the case and after the same was granted, the appellant came to be formally arrested on 17/02/2009.

21. It would now be necessary to look into the evidence of the test identification parade. Siddhi Halarnkar (PW17) was working as Joint Mamlatdar/ Executive Magistrate at Tiswadi

taluka in February, 2009. She had received a request on 20/02/2009 to hold a test identification parade. She, accordingly, arranged the test identification parade on 12/03/2009 at 11.00 hours in the office of the Joint Mamlatdar-I of Tiswadi taluka. She also explained the delay in holding the test identification parade in view of Parliamentary and Panchayat elections and she being busy with the election duty. She states that she conducted the test identification parade on 12/03/2009 in the presence of two panchas, namely Manual Daniel, a Head Clerk, working in the office of Mamlatdar, Tiswadi and Mr. V. Prabhu, L.D.C., attached to the office of Directorate of settlement and land records, who was then deployed in the office of Mamlatdar for election work. She has given the details of the test identification parade and has stated that the appellant was made to sit in the chamber of Joint Mamlatdar-II and there was no visible connectivity between her office and that of Joint Mamlatdar-II. She has stated that PW1 appeared before her on 11.15 hours and she was made to sit in the Court of Joint Mamlatdar-III and none of these three offices had any visible connectivity. She has then stated about the dummies, having in the same age group and having similar appearance as that of the appellant, made to stand along with the appellant during the course of test identification parade. She has stated about the appellant being produced in her chamber with his

face covered in a mask. The appellant was given choice to take his own position. The appellant stood between dummy nos.1 and 3. She has then stated about PW1 having identified the appellant by pointing a finger at him. PW17 has accordingly drawn a memorandum of the T. I. Parade, which is at Exh.80. PW17 was cross-examined in relation to the holding of the test identification parade.

22. It has come in the cross-examination that four dummies were arranged by the panchas. The dummies were persons available in the office complex. The age of the dummies is not mentioned in the Memorandum Exh.80. She, however, clarified that she has conducted the test identification parade as per the guidelines contained in Criminal Manuel. It has further come in the cross-examination that the appellant was wearing lighter shade shirt and dark coloured pant and the dummies too were wearing similar light coloured shirts and dark trousers. She, however, admitted that the physical attributes of the dummies and the fact that the appellant was brought with his face covered in a mask, is not mentioned in the Memorandum Exh.80. On carefully going through the evidence of PW17, which is otherwise an independent witness, I do not find any reason to discard the evidence as to the test identification parade. It is true that the

Criminal Manuel requires that for each of the accused, there should be six dummies while in the present case, only four dummies were included in the test identification parade. PW17 has tried to explain this by saying that dummies having similar characteristics were not available. The question is what is the effect. In my considered view, the guidelines as contained in Criminal Manuel are in the nature of administrative instructions and mere non-compliance with the required number of dummies being included in the test identification parade, cannot vitiate the T.I. Parade or make it suspicious. The question would again depend upon the facts and circumstances of each case. Here is a case, where instead of six dummies, PW17 had included four dummies and there is clear evidence that PW1 identified the appellant to be involved in the offence. The effect of PW1 subsequently identifying the appellant during the course of the trial, has also to be taken into consideration. In fact, the identification before the Court, is the substantive evidence, which finds corroboration in the form of the evidence of PW17 and the Memorandum Exh.80. In my considered view, the evidence as to test identification parade, cannot be brushed aside merely on the ground of the number of dummies being four as against those required. Thus, the contention on behalf of the appellant about this being a case of mistaken identity, in my view, cannot be

accepted. The evidence is replete to show that PW1 has had enough opportunity to see the appellant and to be with him for sufficient period, so as to make subsequent identification of the appellant trustworthy. That is also corroborated by the evidence of the test identification parade and last but not the least, by the identification before the Court.

23. This takes me to the second aspect about the defence of *alibi*. It is trite that burden of proof and defence of *alibi* rests on the accused. Albeit the burden is not as heavy as that of the prosecution, the accused can discharge the burden on preponderance of probability. However, in order to accept the plea of *alibi*, it has to be shown that on or about the time of the occurrence of the alleged incident, the appellant was at a such place, from which, he cannot be expected to be and/ or to reach the place of alleged occurrence even by the fastest mode of communication. A perusal of the evidence of the appellant shows that this aspect is not at all established. The appellant was having his office, which is near Kala Academy, from where, the PW1 was allegedly picked up. The appellant in his evidence has stated that on 11/01/2008, he was on duty from 6.00 p.m.. to 8.00 a.m. on the next day morning. He received first call at 8.00 p.m. and second call on 10.13 p.m. He left the office to attend the call at 10.15

p.m. and went to Mercedes near CMM Furniture at Pondsabhata, where the owner of the house pointed out that the snake was in the toilet, which was abutting a paddy field. The appellant, however, did not notice any snake there and hence, returned back and accordingly, made an entry in the log book at about 11.00 p.m. Admittedly, the entries in the log book are made by the appellant himself, which are verified by the RFO on the following day. The entry in the log book cannot conclusively establish that the appellant did visit the place from where call for catching of the snake was made. It has come in his evidence that the distance between his office at Kala Academy and Mercedes, where he attended the call, is about 7 and half Kilometres one way and it took about 10 minutes for him to reach there. Thus, looking to the distance between the office of the appellant and the place, where he had visited and the place in front of the Kala Academy from where PW1 was allegedly picked up on a ride, cannot be said to be such that it is physically impossible for the appellant to be present in front of Kala Academy at or around the time as claimed by PW1. In any case, it is not possible to place implicit reliance on the evidence of the appellant, particularly when he has made an attempt to rely on an entry made by himself to hold that a plea of *alibi* is established. It is not possible to do so in view of the clear evidence of PW1 about identification of the appellant. I find that

the entire evidence of PW1 both on the point of identification and the actual occurrence is cogent and natural and one, which inspires confidence. In my considered view, the evidence of PW1 is such that implicit reliance can be placed on the same. It is well settled that a conviction can be based on the solitary testimony of the prosecutrix, if her evidence is reliable and worthy of acceptance. It is not necessary to multiply authorities on the point. However, this has been so held in a series of decisions, including the decision in the case of **Sudhanshu Sahoo** (supra) and **Dayal Sahu** (supra).

24. Reliance placed by the learned Counsel for the respondent on the decision in the case of **Krishan Kumar Malik** (supra) is, to my mind, misplaced. In the said decision, the Hon'ble Supreme Court has, *inter alia*, held that after incorporation of Section 53-A in the Cr.P.C., with effect from 23/06/2006, it has become necessary for the prosecution to go in for the DNA test in such cases, facilitating the prosecution to prove its case against the accused. It has been held that even prior to 2006, the prosecution could still have resorted to this procedure of the getting DNA test or analysis done and matching of semen of the appellant with that found on the undergarment of the prosecutrix, to make it a foolproof case (para 44 of the judgment).

25. In the case of **Krishan Kumar Malik** (supra), semen was found on the undergarment of the prosecutrix, which was not sent for analysis in the Forensic Laboratory. The Hon'ble Supreme Court found that had semen been sent for analysis, it would have conclusively proved beyond any shadow of doubt the commission of offence by the appellant. In the present case, it has come on record that PW1 had taken a bath and had changed her clothes after the incident and the appellant was arrested more than a year of the incident. It is not the case that on any of the undergarment or other clothes worn by the PW1 semen stains were found. The decision in the case of **Krishan Kumar Malik** (supra) cannot be read to mean that in the absence DNA analysis, the conviction is incompetent. In my considered view, the decision of **Krishan Kumar Malik** (supra) turns on its own facts.

26. I have carefully gone through the judgment passed by the learned Sessions Judge and I do not find that it requires interference. The appeal is without any merit and is, accordingly, dismissed. Bail bonds of the appellant stand cancelled.

C. V. BHADANG, J.

SMA