

TEST IDENTIFICATION PARADE: A CRITICAL ANALYSIS IN INDIA PRACTICE

Written by **Aakash Sai Gundu*** & **Pranav Sai Tirunagiri****

*3rd Year BBA LLB Student, Symbiosis Law School, Hyderabad

**3rd Year BBA LLB Law Student

ABSTRACT

Test identification parade is used as a means to examine the truthfulness of the witness and his ability to identify unknown persons. The test is generally not necessary to identify the accused if all the witness knows the accused and can recognise the accused in moonlight and lantern.ⁱ Test identification parade is a useful tool in the investigation and with the right procedure it can be accepted as evidence in the court of law as corroborative, the purpose is primarily to test and strengthen the existing substantial evidence of the witness in court. If the witness cannot name the accused and can only identify him on the basis of his physical appearance then the Test cannot be taken into consideration as held in the case of Ahmad bin Salam v State of Andhra Pradeshⁱⁱ, In this case the witness could recognise the person who attacked the deceased while they were all lined up.

The corroborative value of test identification parade is absolute and its use of test of identification parade as substantial evidence is obsolete, the test identification has only corroborative value as evidence. As explained more detailed manner in the cases section of the paper, in the case of State of Himachal Pradesh vs Lekh raj it was mentioned that "Test identification is considered a safe principle of judiciousness for authentication of the sworn testimony of various evidentiary value people appearing as witnesses in court with regards to the character of the accused. There may anyway be special cases to this general principle when for instance the court is intrigued by a specific observer on whose testimony it can securely depend without such or other corroboration."ⁱⁱⁱ

PROVISIONS OF THE INDIAN EVIDENCE ACT AND THE CODE OF CRIMINAL PROCEDURE

Indian Evidence Act Section 9 allows the identification of the accused as well as the proofs admissible in the courtroom though there is the absence of compulsory process of sending the suspected for identification parade, in order to facilitate such process, section 54a of Code of Criminal Procedure granted the process to send the suspected for test identification parade.

Section 54A allows the person suspected to be sent for test identification parade when the appropriate court has the right to send the person to be a subject of test identification parade by directing the person itself or the police officer to take the procedure required.

Article 20(3) of the Indian Constitution which is about no person should be compelled to be a witness against himself is not violated with test identification parade, it doesn't mean appearing for test identification parade is giving testimony.

EVIDENTIARY VALUE:

The parade conducted at the investigation cannot be considered as important substantial evidence and also conviction can be founded on the sole reason of test identification parade, the witness identification in the court is required in order to convict. And the same person identifying in the parade if identified in court as well, it doesn't really change any extra value.

THE NECESSITY OF HOLDING OF TEST IDENTIFICATION PARADE- WHETHER NECESSARY OR NOT:

When Required: Test Identification is usually required when the dispute arises as to that of the identity of the accused, which is required in situations where the victim never saw the accused in life before the incident. When the act of crime was done to the victim, usually, sometimes, victims can see the criminal, identify him at a later stage with various mechanisms as body structure, height, etc, so if they reasonably saw the person who committed the crime and says to the investigating officer they can identify the person, then in such cases test identification parade is conducted. And the parade should be held closest as possible whenever possible that too in front of a magistrate.^{iv}

When Not Required: Test identification is not required when both witness and accused know each other as they reside in the same place. The reason for test identification is to support and examine the genuineness of that evidence. It is in a way assumed to be a safe rule of authenticity to normally look for corroboration of the testimony of a witness in court to recognise the identity of the accused strangers to them in the form of earlier identification proceedings. This rule of authenticity is identified with exceptions.

For example, if the court finds any other evidence where the court can safely rely on and in doing so the investigation can be side-tracked while no party has the right to question or initiate test identification parade. Test identification parade is not to be considered as substantial evidence as laid down under sec 162 of the act and non-performance in doing so wouldn't affect the admissibility of evidence in court. In a few cases, however, it can be admissible even without corroboration. The aforementioned understanding of the purpose and value of the test identification parade was given by the supreme court in the case of *Heera v state of Rajasthan*.^v

PROCEDURE AND PRECAUTIONS OF HOLDING TEST IDENTIFICATION PARADE:

Procedures: It is the right thing to do to hold the parade as soon as possible, so that the victim doesn't forget the details, as soon as the suspect is arrested the parade has to be conducted. The magistrate should be the one along with police when a test identification parade is being conducted. The identifier should be able to identify both in test identification parade as well as the court, as parade identifying is not considered substantial evidence as per law. Also, the important aspects to remember are that the accused should not be knowing the witness or victim before committing a crime, FIR has to be given with all aspects remembered, victim or identifier must have seen the person for some time as in order to identify him later on and in also well-lighted area.

Precautions: The police should leave the place to let the identifier identify the person, after they make the necessary arrangements, Except for the magistrate and identifier, no police should be in the place. The important aspect is a similar person such as the accused must be kept along with the accused in a test identification parade at the possible ratio of one to five

and a maximum of one to ten. Witnesses are not allowed to be during a parade and to be kept far away from the place of taking place of the test identification parade. Accused has to change positions after each witness identifying is done. \

TEST OF CREDIBILITY:

The credibility of the identification done by the identifier a regards to the test identification parade, the credibility varies from circumstance to circumstance and case to case. The time, severity of the incident acts done by the criminal, such traumatic experiences when done, it registers a permanent scar in the mind of the victim or identifier, that they remember the person who did the act clearly. Even time of the day when the act was committed, place of occurrence, no of people involved, everything comes in to play. If done during the day time in an open place, it can be that there was enough lighting for the victim to clearly identify the person, similarly, whether the persons covered their faces, etc all comes into consideration.

In instances where the persons covered their faces and other parts, the identification is not deemed suitable as the identifier cant identify the person, as well as instances where a very huge gap between commission of act and test identification parade, it is court view that it decides whether parade to be held or not depending on circumstances of the case. In the case of *Ramanbhai Naranbhai Patel vs State of Gujarat*^{vi}, the act of assault was done in broad daylight, the court said that when happened in broad daylight, it could that eyewitnesses easily remember and identify the person who committed the act, so conviction was appraised on the basis of identification through Test Identification Parade.

DELAY AND IRREGULARITY IN HOLDING TEST IDENTIFICATION PARADE:

The procedure laid down is that the parade must be conducted as soon as the accused is in custody, but sometimes due to unsatisfiable reasons, non-availability of the identifier, and maybe sometimes magistrate. In such a case of *Muralilal Jivaram Sharma vs. State of Maharashtra*^{vii} the officer who is investigating the case kept writing to the magistrate, the delay as 2 months, the magistrate was not available due to court duties, yet the parade held was valid and considered. But the truth is a delay in the time of conducting the test identification parade diminishes the authenticity or truthfulness. Irregularity in holding also is not correct except

reasons are accepted by the court. The test identification parade when necessary should be held as soon as possible.

CRITICAL ANALYSIS OF TEN CASES DECIDED BY THE SUPREME COURT

***Raju Manjhi v. State of Bihar*^{viii}**

The judgment of this landmark case was delivered by Honorable Mr Justice N. V. Ramana and Honorable MR. Justice Mohan M. Shantanagoudar. The lower court from which was appealed was from the High Court of Patna. The facts are that on a night in the 1999 year, almost ten to twelve people aged between twenty and twenty-six years robbed into the house of Kamdeo Singh and stole items from there, the complaint was registered, and an investigation was started by the police. Injured were sent to hospital after places of injury was noted. Many witnesses were examined, it was argued the lower courts followed the filmy type of story and continued investigation. During test identification parade, any identification was not done by the witnesses, it doesn't mean prosecution case against accused is in a false way The identification test is conducted just in order to help the investigation officer in a better way and no other purpose. The identification parade goes to the stage of the investigation. There is nothing mentioned in the CrPC which accommodates the investigating agency to hold or gives a right to the accused to demand a parade. They are not considered substantive evidence and these parades are essentially governed by Section 162 of the CrPC. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The decision in matters as to such identification should be a matter for the Courts to decide.^{ix}

***Rajesh Govind Jogesh v. State of Maharashtra*^x**

The appellants have been accused of committing offences under section 302, 304 read with 34 of IPC. They have been accused to have committed the murder of the deceased joy Kutty in Mumbai, Vashi. The appellants were convicted under sec 302 and sec 34 of the IPC by the sessions judge. The appellants preferred an appeal in the high court and the high court rejected the appeal, one of the appellants contended with the judgment saying that his identification was not proper as it was ultra vires the established procedure in identifying the convicts.

The appellants have allegedly attacked Joy Kutty with swords and choppers and the respondents saw him running along the highway after the attack had happened they admitted him in a hospital where he was declared dead the sessions court has established that it is a case of murder as swords and chopper prove so, The high court upheld the sessions court decision.

One of the appellant Rajesh Govind Jogesh has claimed constantly that he was not connected to the crime in any manner beyond all reasonable doubts, he has argued that his identification parade was held beyond the time period and no person with the resemblance of the aforementioned appellant was included in the parade and thus furthering that the test identification as not valid. The appellant no 2 did not resemble the features the like long hair and beard e.tc.

Issue before the Court

Whether the test identification parade held was valid pertaining to Rajesh Govind Jogesh as the parade was held with unreasonable delay and he did not match the description given by the appellants in the F.I.R.

Rule:

The accused were charged due to section 302 and section 34. Of the IPC and the High court has rejected the appeal as the evidence regarding the weapons used and the evidence collected was proving the guilt of all the accused the high court upheld the decision of the trial court describing that test identification parade can, in this case, be used as evidence for all the accused members.

Analysis:

In this case the High court has given this consideration based on the facts that though there was a delay in the test identification parade the evidence containing the blood scrapes of the weapons and the identification parade of all the accused proved the guilt and common intention of all the members involved in the crime and the counsels argument that the person was not

identified acc. to the description cannot be accepted as the all the other evidence prove otherwise that the accused are guilty beyond reasonable doubt.

Decision of the Court

In the light of events established by both the courts the clarity regarding the test identification parade's acceptability has been revised for the case as a special one since the case involved proving common object of all the accused, it had taken the liberty of accepting the parades evidence as it was unexpectedly beyond a reasonable time. Making the test identification parade's important even though it was unexpectedly delayed.

State of A. P. v. Dr M. V. Ramana Reddy^{xi}

The appellants were accused of murdering a politician, trade union worker who was sleeping on the terrace of his house. The deceased was sleeping with the respondent who was his daughter, at 3:00 in the night the respondent was held against her bed while the accused were stabbing the deceased and after they've finished they tried stabbing the respondent and the respondent escaped while they were stabbing her and as a result she inflicted injury on her finger. She rushed down to her home informing her mother and neighbours about the incident and the neighbours had called the police. The police have taken up the investigation and the police put up 19 accused before the trial in the sessions court the court then accordingly testing the evidence convicted 3 appellants for murder u/s 302, 148 and 324 of the IPC and sentenced all the three to life imprisonment for the murder of Ram Subba Reddy. The convicted persons appealed to the high court, the high court acquitted them and so they filed to the supreme court under special leave petition.

Issue before the Court

Whether the acquittal given by the High court is acceptable as the reasons specified, I delivering the judgment was ambiguous.

Rule:

The accused were accused and charged under section 302,324 and 148 of the IPC

Court's Reasoning

The high court in this matter has referred to the following reasons in giving the judgement the high court has specified that the test identification parade taken by the prosecution was taken 5. Days later of the scheduled date. The high court also pointed out to the doubt whether the respondent was present on the terrace during the occurrence of the event, the supreme court in this case established that the respondent was present on the terrace while the event had occurred and hence her test identification parade is acceptable as evidence.

Decision of the Court

This judgement was one of its kind where the high court's decision was ambiguous and the test identification delayed can be accepted and the judgment gave a clear insight that if the test identification has been delayed it cannot consider it as evidence

Heera and Anr v. State of Rajasthan^{xii}

In this case, all major judgments related to test identification parade are referred by the court in order to give the decision for the case. It was that 7-armed people came and hit members working at a petrol station at 2 am in the morning, threw stones due to which glass broke, and due to the stone, they woke up. They beat the people with lathis and robbed 12000 rupees from them, even when the neighbour came to see what was happening, he was also a tacked with lathis. Recovery was made of items as per section 27 etc. was admissible, Test identification parade was conducted by civil judge and magistrate, the necessary terms of conducting a parade was told by the court, the court said something like test identification parade is only tested and has no place for provision in court or evidence. Accused were identified, all requisite procedure was adhered to and the appeal was dismissed as there was nothing wrong in the judgement of the lower court, and identification parade is right in the case.

Kanta Prasad v. Delhi Administration.

In the case of Kanta Prasad, it was about the topic of appraisal of evidence on Test Identification Parade, the court said that, maybe identification parade was not conducted, but it doesn't mean because of such non conducting of an identification parade, doesn't they can't be witness in court identifying the same person. The persons accused were known to everyone except the people identifying them, they were known to police as well, it must have been conducted for the persons who did not know them to identify them through test identification parade but such test identification parade was not conducted, but the identification was court was allowed even though no such test identification was done before the magistrate The Court said unless exceptional grounds are there for the case to be re-assessed but on this matter it is not required.^{xiii}

Awadh Singh v. State^{xiv}

In this case the appellants owned a land growing pynes across a river, on the day of occurrence the respondents were a mob they entered the pyne and told the appellant to continue the digging but the appellant stood up to his right and stopped the digging the angry mob started assaulting on the appellant causing injuries and the appellants representatives. FIR was lodged later that day and the case was registered the magistrate of the court held that test identification parade has to be held and directed the local police officer to do so the police officer sent a latter stating the magistrate is inclined to the accused because the test identification proves it. The magistrate then held that the test identification parade is in no way in. an inclination to the accused as the appellant and the respondents were strangers till the day of occurrence and has held that in this case test identification parade was vital as the appellant has seen the respondents and this can be used as a witness. IN this case, the court held the importance of test identification parade as the only way the accused were to be identified is by the victims who were assaulted.

Dastagir Sab and another v. State of Karnataka^{xv}

In this case, the appellant was living in a village and the respondents came to her house three times asking for water, cycle pump the appellant said she had no cycle pump and sent them. on the same day at 12:30 the appellant went out to wash clothes and the respondents nabbed her put a cloth in her mouth and committed rape the girl couldn't alert others as she had a cloth in her mouth. The appellant managed to remove the cloth and started crying and the respondents fled the scene her father came running, the appellants father called in before the panchayat raj, and allegedly wanted to hold a test identification parade the same has been referred to the court where the court held that test identification parade, in this case, cannot be used as substantial evidence referring to Malkhan Singh v State of Punjab case. The appeal lied in the SC where the court declared that her identification parade can be genuinely accepted in identifying the accused as she was the only witness to her case and since the appellant had the time to see the offenders her identification parade can be accepted as evidence.

State of U.P. v. Girija Shankar Mishra^{xvi}

In this case the respondents and the appellants were husband and wife the husband is a politician and the wife is a social worker the respondent had an illicit affair with a police officer and both the husband and wife knew about it one day while the appellants were sitting in their house the assailants with rifles came running seeing this the appellants ran inside the house and the assailants killed three people the appellant managed to escape and filed an FIR on the assailants and she has claimed that the respondent has conspired with the assailants the court held that there should be test identification parade for the appellant to identify the assailants but there was an unreasonable delay in holding the test identification parade but still the court has considered the identification even if it was late under a special circumstance and here, in this case, the respondent had political power and the court considered that he could manipulate the investigation, and therefore the court held the test identification parade and identified the assailants and accepted the appellants witness in the case.

State of Maharashtra v. Suresh^{xvii}

In this case the appellants daughter who was four years old was kidnapped from the appellants house and was raped and killed and was thrown in a farm the appellants father upon the

deceased absence went searching for the deceased after she was kidnapped not finding her he lodged an fir in the police station the police investigated the case and found the deceased in a farm nearby the post mortem revealed that the girl was sexually assaulted and that she had bruises on her face which meant she was kidnapped, the doctors also concluded that the person who had committed the offence would have bruised his sexual parts after examining the respondent had bruises on his sexual organs, to corroborate to the case a shopkeeper has seen the man with a crying girl on the day of occurrence and his test identification was held to be valid as he was a witness to the case connecting all the evidence the high court has convicted the accused under section 302 of IPC for life imprisonment. The father also portrayed suspicion on the accused to the police and this is a case which gives value to test identification as corroborative evidence.

***Mohd. Jamil v. State of Madhya Pradesh*^{xviii}**

In this case the appellant was married to the accused and the appellant had a sister, the accused on several occasions tried to assault the deceased, but the deceased was gratifying the accused and consoling him after a few years the appellant divorced the accused and the accused after the next year came to the place of work of the deceased was a nurse in a hospital and shot her with a kattha (Indian made pistol) in the head there were two witness who could identify the accused . the witness then held an identification test and has identified the accused but there was a dilemma as to whether the identification parade can be accepted as substantive evidence and in this case the court held that the accused shot the deceased in broad daylight and he remains the only evidence in the case and referring to the case of Dasthagir Sab v State of Karnataka the court held that the identification test is valid evidence against the accused.^{xix}

CONCLUSION AND SUGGESTIONS

A test such as Test Identification Parade is very much necessary and it makes sure to direct the investigation to the righteous way. Test identification parade maybe just corroborative evidence, which is along with actual evidence when submitted in the court. Though the two-judge bench in the case of Raju Manjhi v. State of Bihar^{xx} opined that Test Identification

parade is no way substantial evidence but it just to be considered for the investigation agency for them to drive in the right way to apprehend the victims is just to help the investigation agency and no way about subnarial evidence.^{xxi} To summarize the part, test identification helps for the investigation agencies and not evidence in court. The magistrate mostly due to their duty as well as the police in making arrangements for the test identification parade, but if misidentified by the identifier, the entire investigation is side-tracked, and there are reasonable chances the investigation may not be solved, this is the drawback to test identification parade. It can be said that recommendations to police officers regarding the parade that the specific course of action to the investigators must be clearly explained and police not involved during the time of test identification parade happening.^{xxii} The government should increase more features for conducting test identification parade, it is done in normal places, but it should have tinted windows, so those main persons can see what's happening instead of just magistrate, etc. Over the 100's of years, test identification parade was active in India, and it really helps investigation faster and solving the cases sooner.

REFERENCES

-
- ⁱ Lal Batuk, Law of Evidence Central Law Agency, Allahabad, (2010)
ⁱⁱ 1999 AIR (SC) 1617
ⁱⁱⁱ Cr. Appeal No. 381 of 2011. In High Court of Himachal Pradesh, Quoted by Justice Tarlok Singh Chauhan and Justice Chander Bhusan Barowalia.
^{iv} Biray Singh vs. State, 1953 Cr.L.J., 1817 (Allahabad)
^v AIR 2007 SC 2425
^{vi} 1999 AIR SCW 4770
^{vii} AIR 1997 SC 1593
^{viii} 2018 SCC Online SC 778
^{ix} <https://blog.sconline.com/post/2018/08/03/test-identification-parade-not-obligatory-failure-does-not-make-evidence-of-identification-inadmissible-in-court-sc/>
^x AIR 2000 SC 160
^{xi} (1991) AIR SC P.2154
^{xii} AIR 2007 SC 2425
^{xiii} AIR 1958 SC 350
^{xiv} 1954 Cr.L.J., 1546 (Patna)
^{xv} (2004) 3 SCC 106
^{xvi} 1985 Cri L.J. NOC 79 (Del) (DB)
^{xvii} (2000) 1 SCC 471
^{xviii} 2005 Cri. L.J. 1470
^{xix} (2004) 3 SCC 106
^{xx} 2018 SCC Online SC 778
^{xxi} Anand, Ravi, Proof of the Identification Parade (April 2, 2009). Available at SSRN.
^{xxii} Chiwinga Augustino, "Analysis and Effectiveness of Identification Parade in the Administration of Justice in Tanzania".