

PROOF OF THE IDENTIFICATION PARADE

INTRODUCTION

The idea of the Test of Identification (TI) parade is to test the veracity of the witness in the question of his capacity to identify, from among several persons made to stand in a queue, an unknown person whom the witness had seen at the time of occurrence.

The main questions taken into consideration in this context are –

- Whether there was opportunity to see the accused;
- Whether they could remember by face the accused person; &
- Whether they could identify them by such memory in the court.

The proof of identification parade is a very important method regarding adducing evidences in person by the competent witnesses. It is used to test the veracity of the evidence given by the witness as well as it is important in the context of measurement of the status of the investigation process i.e. whether it is going in the right direction or not. The basic objective of the identification parade is to test the trustworthiness and the strength of the witness.

The important areas of consideration under this topic are regarding its evidentiary value, circumstances of validity and invalidity of the evidence of identification parade, procedure of taking identification parade, constitutional validity of the identification parade etc.

About the evidentiary value of the identification parade it is well settled that though it can be a sole basis of conviction but it is submitted that it must act as a corroborative evidence to avoid discrepancies. Until and unless it is evident that the eye witness's memory in the identification of the right accused cannot be questioned, it will be admitted.

At times its validity is questioned on the ground of the violation of sec. 162 of the Criminal Procedure Code, 1973, in case holding identification parade in the police custody.

All these issues have been discussed at the appropriate places in this project

WHY IDENTIFICATION PARADE

It is true that where the identity of the accused is not known to the eye-witness, it is essential for the investigating officer to get such suspect identified from eye-witness in a test identification parade, which has mainly two works –

- Ensures that investigation is proceeding on a right track,

- Ensures that the eye-witness's memory regarding the identity of the appellant.

Test identification parade is not sine qua non in every case if from circumstances the guilt is established¹. Identification is not necessary in those cases where the witness knows the accused by name and where the witness knows the accused by name, the identification parade would be a force². The accused cannot be compelled to come to identification parade if he is undergoing treatment³.

Oral testimony of a magistrate regarding the successful identification of the accused would constitute substantive evidence, if witness is denying giving evidence before a court. Here demeanour of evidence is taken care⁴.

Giving thumb impression or impression of foot or palm or fingers or specimen writings or exposing parts of body for purpose of identification are not included in the expression "to be witness"⁵ {Art. 20(3)}.

Evidence of identification in jail or elsewhere is relevant under section 9⁶

CONDITIONS FOR THE IDENTIFICATION PARADE

- It is for the satisfaction of the prosecution that investigation was moving in the right direction,⁷
- It is to test the strength and trustworthiness of the evidence,
- It acts as corroborative evidence,⁸
- It is to test the ability of the witness to recognize the suspect,⁹
- It is to corroborate the substantive evidence in the process of cross- examination of the witness,¹⁰
- Police held identification parade to enable witnesses to identified the properties which are the subject matter of offence and to identify the person,¹¹

¹ *Visveswaran v. State*, AIR 2003 SC 2471.

² *Suresh Ganpat Munde v. State Of Maharashtra*, 2000 (5) Bom CR 40.

³ *K. Satnarayan v. State of AP*, 1994 CriLJ 37 AP.

⁴ *Ram Nath Mahto v. State of Bihar*, AIR 1996 SC 2511.

⁵ *S v. Kathikalu*, AIR 1961 SC 1808.

⁶ *Kashmira v. R*, AIR 1949 Pu 361.

⁷ *Ayyub v. State of UP*, AIR 2002 SC 1192.

⁸ *Malkhan Singh v. State of MP*, AIR 2003 SC 2669.

⁹ *Akbar Nazir Ahmad v. State of Maharashtra*, 2004 Bom CR (Cri) 396 Bom.

¹⁰ *Dana Yadav v. State of Bihar*, AIR 2002 SC 3325.

- It is to check the veracity of the witnesses who claim to see the accused i.e. to test the memory of witnesses and they can be considered as an eye-witness.¹²

In the nutshell, principles behind the identification parade are as follows –

- Acts as corroborative part of evidence to assist substantive evidence,
- Object to test the memory of the witnesses based upon first impression and enable the prosecution to decide whether any witness can be cited as eye-witness,
- To show witness test identification parade would be held soon after the arrest of the accused,
- Appreciation of such evidence would depend upon the strength and trustworthiness of the witness.

VALUE OF EVIDENCE OF IDENTIFICATION

Hon'ble Supreme Court of India in *Bahri's case*,¹³ laid down that – identification of the accused soon after his arrest is very important as it helps in two ways –

- investigation is proceeding on a right direction,
- helps as a corroborative evidence.

The evidence of identity must be thoroughly scrutinized, giving benefit of all doubts to the accused. Conviction can be made basing on such evidence in the rarest of rare case¹⁴, though this can only be used as corroborative evidence.

The admissibility of such evidence depends on the bona fide true nature of the witness. It should not be accepted unless free from all reasonable doubts and must be scrutinized with greater care and caution¹⁵. Mere wrong identification by star eye-witnesses by itself is not fatal to the case of prosecution if on the basis of other evidence, the prosecution case stands proved¹⁶

It is true that the TI parade can be taken as the substantive evidence. The substantive evidence is the evidence of identification in court and the test identification provides

¹¹ *Harnath v. S.*, 1970 SC 1619.

¹² *Abdul Waheed Khan v. State of AP*, AIR 2002 SC 2961.

¹³ See *S.C. Bahri's v. UOI*, AIR 1994 SC 2420.

¹⁴ *Ramesh kumar Soni v. State of Madhya Pradesh*, 1997 CriLJ 3418 (MP).

¹⁵ See *supra* note 10.

¹⁶ *Simon v. State of Kant*, AIR 2004 SC 2775.

corroboration to the identification of the witness in court, if required. However what weight should be given the identification parade is the matter of discretion of the court. In a case where the evidence of the prosecutrix was found to be reliable, court held that there was no need of corroboration¹⁷. The evidence should be capable of creating belief in the mind of the judge as to the involvement of the person brought before the court.

The substantive piece of evidence of in identification in court but also loses its value where the suspect was shown to the witnesses before identification¹⁸. This all depends on the question of the fact. For the reliability of the test identification parade, it must be in conformation with para 9 of rule 395 of the Madhya Pradesh Prison Rules.

WITNESS SEEING ACCUSED BEFORE IDENTIFICATION PARADE

The evidence of identification can only be relied upon if all the chances of suspects being shown to the witnesses prior to their TI parade are eliminated. The prosecution has to adduce link evidence to the effect that right from the arrest till being lodged in jail, the faces of the suspects were kept veiled and no one had opportunity to see them. This fact need not be affirmatively established, it is sufficient if the accused can create a reasonable doubt in the mind of the court¹⁹.

It is rule that under no circumstances conviction cannot be based on a solitary identification. It is only the rule of prudence. Although test identification parade is a step in investigation but it is identification in court which is regarded as evidence. But the TI parade assumes importance particularly if held within a reasonable time after the commission of the offence²⁰

It was also held that where the accused was shown to the witness before the TI parade, the proceeding of T.I. parade and its outcome will have no evidentiary value²¹.

If the witness properly identified the accused both in the test identification parade and in the court, then it can be safely admitted as well as accepted. Evidence of identification for the first time in court is not that strong.

¹⁷ *Malkhan singh v. State of M.P.*, AIR 2003 SC 2669.

¹⁸ *Shaikh Umar Ahmed Shaikh v. State Of Maharashtra*, AIR 1998 SC 1922.

¹⁹ *Asharfi v. State*, AIR 1961 All 153.

²⁰ *Girja Shankar Misra v. State of UP*, AIR 1993 SC 2618.

²¹ *State of MP v. Samaylal*, 1994 Cri LJ 3407.

The value of identification evidence depends on the effectiveness of the precautions taken against the identifying witnesses having an opportunity to see the persons to be identified before parade and also against being provided with any unfair aid or assistance to facilitate identification²²

Hence when the witnesses had no opportunity to see the accused prior to the holding of the identification parade as well as also no unfair aid and assistance was given by the investigating authority²³ as to facilitate the identification of the accused, then their evidence can be accepted²⁴.

IDENTIFICATION OF SOME OTHER PERSON

It is clearly held that a witness's evidence of identification given in court should only be accepted if he identified the same person, whom he had previously picked out in the identification parade in jail.²⁵

In a case, where identification of was conducted after five months and their statement in court recorded after three and half years. Here one witness failed to identify the accused and another suspiciously identified the accused in court. Here it was held that the evidence of the witness as to identification of accused being suspicious and doubtful could not be acted upon.

Delaying in holding identification parade without any reasonable justification would be dangerous. In such circumstances the accused would be acquitted²⁶. The evidence must reveal any special feature of the accused or appellant.

The person to be identified must be described in the FIR or compliant. In the absence of the description of the assailants in the FIR the identification of accused cannot be accepted.

MANNER TO HOLD THE IDENTIFICATION PARADE

There are certain principles with must be followed while conducting the identification parade. The establishment of these principles can be done examining the witnesses who

²² *Hasib v. S*, AIR 1972 SC 283.

²³ *Bollavaram Pedda Narsi Reddy v. State of AP*, 1991 CriLJ 1837 (SC).

²⁴ *Kalipado Gope v. State of Bihar*, 1987 Cri LJ 1320.

²⁵ *Kanan v. S*, AIR 1979 SC 1127; *Chandran v. State Of Kerela*, 1986 CriLJ 1865.

²⁶ *Shrirathi v. State of UP*, 2002 Cri LJ (NOC) 133.

conducted the identification parade i.e. they must be put to the cross examination by a magistrate²⁷.

If the manner of holding the identification parade throws suspicion on police, then the TI parade would not have any evidentiary value. It is also true that the presence of police officer and the public prosecutor at the place of the identification parade would not vitiate it, when there was no prejudice against the accused²⁸. The Bombay High Court has enumerated the procedure for holding identification parade.²⁹

The procedure for holding Identification Parade needs to be enumerated as indicated hereunder:

(i) An Executive Magistrate/Honorary Magistrate, if called upon for the purpose of holding an Identification Parade, should remember that he is the person who conducts the parade; he will be in full and sole charge of the entire proceedings.

(ii) The Executive Magistrate should first acquaint himself with the facts of the case and find out who is to be put in the parade for identification and who are the witnesses to be called up for identification.

(iii) Two independent respectable persons (not being persons connected with the police) should be first called up. The Police themselves will have normally arranged to call up such person; but the Executive Magistrate will question them and satisfy himself that they are independent and fairly intelligent persons. In order that they may follow the proceedings intelligently, the Executive Magistrate should acquaint them, briefly, with the facts of the case and as to who is sought to be identified and who are to come for identification.

(iv) The parade should then be arranged in a room or a place which is such that the identifying witnesses, as well as the persons connected with the Police, should not be able to look into it.

(v) If there is only one accused person to be identified, there should be atleast half a dozen persons placed in the parade. If two accused persons are to be identified, then there should be about 10 or 12 persons in the parade. Not more than two accused should be placed in any Single Identification Parade. Normally, the Police themselves will have called up the persons to be put in the parade; but the Executive Magistrate should see that they are persons of more or less the

²⁷ *Ansar Pasha v. State*, 2000 CriLJ 5066.

²⁸ *State of UP v. Girija Shankar Mishra*, 1985 Cri LJ NOC 79 (Del) (DB).

²⁹ *Syed Mohd. Owais v. State of Maharashtra*, 2002 Cri. LJ 303: 2003 (3) Mah LJ 261 (Bom).

same physical appearance, and approximately of the same age, as the person to be identified. It is desirable that innocent persons to be mixed should be different for each parade.

(vi) No person, other than the persons in the parade, and the two respectable persons, should be allowed to remain in the room where the identification proceedings are being held. In particular, all police officers and constables should be asked to withdraw themselves completely from the room. There is no objection to any of them remaining outside the room or otherwise at hand, ready to be called up in case the accused creates trouble, or in case of emergency. They should, however, not be visible from the room or the place where the parade is being held.

(vii) After the parade is arranged, one of the two respectable persons should be sent up to bring the accused from the lockup. Care should be taken to see that when the accused is being brought from the lock-up, the identifying witnesses do not have an opportunity of seeing him. They should be kept in quite a different room, out of sight of the lock-up.

(viii) At this stage, the Executive Magistrate should commence to write the memorandum. It should include:-

- The place at which and the date on which, parade is being held and the time at which it was commenced;
- The names, ages, occupations and the full addresses of the two respectable persons;
- The names and the approximate ages of the persons standing in the parade, mentioning clearly, one below the other, in numerical order their positions in the parade, (which positions they should not be allowed afterwards to alter;
- The fact that no persons, other than those, in the parade and the two respectable persons, were allowed to remain in the room and that all police officers and constables were asked to withdraw; and
- That respectable person so and so fetched the accused from the lock-up, and that the identifying witnesses were in a different room so that they could not see him being brought from the lock-up to the identification room.

(ix) When the accused is brought, the Executive Magistrate should ask him to take whatever place he likes in the parade. The place which he selects should be noted in the memorandum. For example, he may select to stand between numbers 3 and 4 in the parade; and it should then be noted that he took his position between Nos. 3 and 4 in the parade. The original numbering of the persons in the parade should not be altered simply because the accused has now joined in.

(x) The accused should then be asked if he wants to make any alteration in his dress. He may change his cap or coat, or he may decide to put on (or remove) a cap or a coat. He should be allowed to do this, and that fact should be noted in the memorandum. If he does not wish to change his dress, then that fact, too should be noted in the memorandum.

(xi) The one of the respectable persons should be asked to fetch the first identifying witness from the room in which he may be sitting. When the witness arrives, the Executive Magistrate should question him and ascertain from him whether he had an opportunity to see the culprit at any time subsequent to the offence or after the arrest. He may either record the statement separately or make a reference to the statement in his memorandum. The witness should then be asked to view the parade carefully and see whether he would be able to identify the person, who, for instance; stabbed him or whom he saw firing a shot from a revolver, or whom he saw inside the flat in which a burglary may have taken place, or, as the case may be. The identifying witness will then go up and look closely at the parade. If he identifies any persons, he should be asked to forward and touch that person, and not merely to point him out from a distance. This is necessary in order that there may be no doubt afterwards as to whom exactly he had identified. The fact that the identifying witness identified the accused, should be noted in the memorandum (along with the name of the accused) and, of course, also if he failed to identify him or identified a wrong person. It should further be noted whether the witness identified the accused straightway or after some hesitation or after first pointing out a wrong person and then correcting himself and pointing out the accused. When this is over the identifying witness should be asked to go away into a different room and not to contact the remaining identifying witnesses. He may even be asked to go away.

(xii) After he leaves the room the accused should be asked once again, whether he desires to change his place in the parade. If he changes his place, it should be noted in the memorandum, and also if he declines to do so, he should be asked, again, if he wants to change his dress; and if he does so, or if he declines to do so, that fact should also be noted in the memorandum.

(xiii) Then one of the respectable person should be asked to fetch the second identifying witness. In regard to the identification by him also, the same procedure should be gone through as in the case of the first identifying witness, the memorandum being also written up side by side.

(xiv) This procedure should be followed for each subsequent identifying witness.

(xv) After all the identifying witnesses have thus been exhausted one after the other; the memorandum should be wound up by stating the time at which it was concluded. Then the memorandum should be read over and explained to the respectable persons in language which they understand. If the respectable persons know English well, then they should be asked in addition, to read over the memorandum for themselves.

(xvi) After the memorandum is completed, the Executive Magistrate should make the following endorsement at the end:-

"Identification Parade was conducted by me personally with the help of two respectable witnesses, namely Shri.....and Shri..... whose signatures have been obtained in token of what transpired in their presence, and shall sign below this endorsement and put the date below his signature."

There shall be another endorsement to the following effect:-

"We read above memorandum [or it was explained to us) and it depicts the correct state of affairs as stated, in the memorandum, and he shall obtain the signature of the two respectable persons with whose help he held the Identification Parade."

(xvii) The Executive Magistrate himself should also sign every sheet of the memorandum.

(xviii) All corrections and interlineations in the memorandum should be initialed by the Executive Magistrate.

(xix) The memorandum should then be handed over to the Police Officer concerned.

(xx) Care should be taken to see that at no stage of the proceedings Police Officer or any Police Constable comes into the room in which the parade is being held. The police should not be allowed to interfere with the proceedings, which are entirely to be conducted by the Executive Magistrate. It will be advisable to note in the memorandum itself that, no Police Officer or Constable was present at any time during the entire proceedings of the Identification Parade.

(xxi) The most important part of the memorandum will be the statements made by the identifying witnesses. These should be very carefully recorded along with the questions asked to the identifying witnesses. (This recording need not be in the question and answer form). For example, an identifying witness may be asked if he is able to identify any one in the parade as the person who fired shot, and the identifying witness may point out the accused and may add that it was not the accused who actually fired, but that the accused was standing by the side of

the man who had fired the shot. In that case, whatever the identifying witness states should be carefully noted, as far as possible in his words.

(xxii) If more than one accused are placed in parade, then in the memorandum they should not be referred to as "Accused No. 1", "Accused No. 2" etc. but they should be referred by their full names.

(xxiii) The memorandum should be written in the language of the Court.

(xxiv) At the hearing of the case, the Executive Magistrate who held the parade and wrote out the memorandum may be called upon to give evidence. In that case, he should state exactly what happened. He has a right to refresh his memory by referring to the memorandum which he had himself prepared.

GUIDELINES AND REQUIREMENTS IN HOLDING IDENTIFICATION PARADE

There should be at least 10 under trials for each suspect. The proper way to put up each suspect separately for identification mixed with at least nine or ten persons. Less than that number considerably diminishes the value of identification³⁰. In a case where 36 dummies were used for identifying 6 accused, it was said as in violation of guidelines. Hence evidence of holding parade was not admissible³¹.

The suspect should be placed amongst persons who are as far as possible of the same age, height, general appearance including standard of dress and grooming and position in life.

The dummies should be selected properly and one accused should be kept for identification by mixing appropriate member of dummies. The number of dummies per accused should be in the ratio of 1:4 or 1:6. Generally not more than two accused should be put for the identification parade. The dummies so placed along with the accused should be of similar appearance to the accused³².

The value of identification evidence depends on the factors which minimize the possibility of chance as much as possible. An accused has no right to cover his face while the TI parade is going on. Hence it is necessary that sufficient number of dummies should be mixed and each accused should be put to identification parade separately.

³⁰ *Anwar v. S*, AIR 1961 All 50.

³¹ *Haresh Mahadeo Kamla v. State Of Maharashtra*, 2002 Cri LJ 1297 (Bom).

³² *Thambi nasir v. State*, 2003 Cri LJ 429 (Bom).

PRECAUTIONS IN HOLDING IDENTIFICATION PARADE

The basic precaution must be taken in this context is that of concealment of the distinctive marks and conditions necessary for proper identification which would be acceptable by all³³ like presence of small pox marks on the body. So in such cases persons having same character must be mixed with the accused³⁴.

The purpose of the TI parade is futile when the accused and the police officials were present at the police station at the time of identification parade. Prior to an *ad hoc* confrontation identification, a note should be made to the witness's description of the offender³⁵. Burden of proof in such cases lies on the Prosecution that the TI parade was held and also strictly in accordance with the rules.

In the case of *Anthony v. State of Maharashtra*³⁶, it was held that the identification parade should not be held in police station buildings but separate rooms should be reserved for holding the identification parade in the separate building. The identification should be held in such circumstances which should not be influenced by the presence of police of their influence.

The Supreme Court vide the Judgment reported in 1955 Criminal Law Journal 196 has held that identification of property or person by a witness in an "identification parade" held by the Police amounts to a statement to the Police and attracts the provisions of section 162 of the Code of Criminal procedure. In view of this ruling the notes and other records relating to such parade cannot be used in evidence except to the extent permitted under the proviso to sub-section (i) of section 162. Thus even though there is no bar to the holding of identification parade by the police the value of such parades for the prosecution is very much reduced as the statements recorded during such parade cannot be used for the purpose of corroborating the identifying witnesses at the trial.

It is therefore, necessary that identification parades should as far as possible be conducted by a magistrate or if no magistrate is available, by *panchas* (independent respectable persons) and the Police should completely withdraw before the commencement of the identification. It should however, be clearly understood that the observation made by the Supreme Court in the above mentioned case do not in any way prevent the police from holding an identification parade.

³³ See *supra* note 19.

³⁴ *Tulsi v. State of UP*, 2000 All LJ 1314.

³⁵ *R v. Vaughan*, The Independent, May, 12, 1997 (CA).

³⁶ *Anthony v. State of Maharashtra*, 2003 (4) Mah LJ 894 (Bom).

Therefore in cases where in spite of all possible efforts, the services of a Magistrate or a *panch* cannot be secured to hold an identification parade, the police officers should themselves hold the identification parade and make use of the statements incorporated in the identification memorandum in the same way as any other statement recorded by the police during the investigation that is, within the limitations of section 162, Criminal Procedure Code.

All necessary precautions must be taken so that the witnesses should not see the suspect before the identification parade. Sufficient number of dummies should be mixed and each accused should be put to identification parade separately.

DELAY IN HOLDING IDENTIFICATION PARADE

An identification parade should be conducted as soon as after the arrest of the accused. Thus it becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the identification parade. But in case there is some delay in holding the test identification parade, it would not always be fatal to the prosecution. It is necessary as memory of witness fades away with the passage of time and it is necessary that the suspects should be identified at the earliest possible opportunity after the occurrence³⁷.

Where there is an inordinate delay in holding of the identification parade, the court must adopt a cautious approach so as to prevent miscarriage of justice.

The effect on the evidentiary value of the identification parade would depend on the fact and circumstances of the case. In a case where the court is satisfied that the witnesses had ample time of commission of the offence and there is no chance of mistaken identity, delay in holding the identification may not be held to be fatal³⁸ The accused can take the plea of benefit of doubt if the identification parade was not conducted properly.

It was held in *Waqil Singh v. State of Bihar*³⁹ by the Supreme Court that where identification was by a single witness and there was no corroborating factor and there had been delay in holding the identification parade and in such circumstances the possibility of wrong identification due to loss of memory cannot be discounted and as such the benefit of doubt was given to the accused persons.

³⁷ *Islam molla v. State of W.B.*, 1996 Cri LJ 724(Cal).

³⁸ *Lal Singh v. State of UP*, (2003) 8 SCC 188.

³⁹ *Waqil Singh v. State of Bihar*, AIR 1981 SC 1392.

It is the imperative duty of the Investigating officer to put up the suspects at identification parade. Where no question was put to the investigating officer or the magistrate regarding the cause of delay in holding the identification parade, the delay of 14 days was not regarded as fatal⁴⁰.

If the delay is inordinate and there is evidence probalising the possibility of the accused having been shown to the witnesses, the court may not act on the basis of such evidence. The court has to consider the evidence in its entirety.

Evidence regarding identification in a test identification parade held 13 months after the arrest of the accused cannot be relied on but where is a gap of 10 years between the holding of the identification parade and the trial, the court can safely rely on the identification in the parade⁴¹.

The Supreme Court has held that, the delay could not be held to be inordinate in the fact and circumstances of the case and in any event having regard to the opportunity which the witnesses had to identify the appellant; the possibility of mistaken identity had to be ruled out. Reliance could be placed on the identification by the witness. It was held in a case that rape victims or any other victim are natural witnesses could not lose impression of the accused. So information is acceptable. Identification of accused in the absence of proper light cannot be doubted⁴².

The court has further led down that it should be borne in mind that in cases resting on identification evidence, the burden is on prosecution that there was sufficient light wherein the victim and witnesses identified the miscreants.

WHO CAN HOLD THE IDENTIFICATION PARADE

The parade should be held by a magistrate or any officer who is not a police officer because the police should not take part in the identification parade⁴³.

It can be held by the panch (Ordinary person). Police can make arrangement for conducting identification parade but it must be done in the presence of the Panch or a magistrate as it does not come in the purview of sec. 162 of Code Of Criminal Procedure, 1973.

⁴⁰ *Ganpat Singh v. State of Rajasthan*, 1994 Cri LJ 1565 (Raj).

⁴¹ *Subhas Bhatta Charya v. State*, 1985 Cri LJ 1807 (Cal) (DB).

⁴² *S. Mahto v. State of Bihar*, AIR 2002 SC 2857.

⁴³ *Akbar Nazir Ahmad v. State Of Maharastra*, 2004 (1) Bom CR (Cri) 369.

So when the identification parade is conducted wholly by the police, it would come under sec. 162 of the CrPC, 1973. Hence it would be better that entire identification parade is within the command and control of the police officers except the actual identification that is being made. Identification in any way whether express or implied i.e. by finger, touch, nod or assent etc comes within the purview of sec. 162, CrPC, 1973. The authorities to hold identification parade is exclusively with the magistrate or the panch but the arrangements made by police are called as make believe affair.

At times even identification in the premises of police station is permitted⁴⁴ if,

- the place of identification is totally separate from the police office;
- the police machinery had no access to the spot of identification;
- also there was no opportunity for the witness of seeing the suspects before the parade; and
- There was nothing on record to that suspects were shown to witnesses prior to the identification parade

In such circumstances, identification evidence is reliable.

Statement by witness recorded by magistrate in identification parade must be made in adherence with sec. 164 of CrPC, 1973. Hence it can never be used as substantive evidence, but it can be used for contradiction or corroboration of the same witness⁴⁵

The record of an identification memo cannot be regarded as a record of evidence of witness in a judicial proceeding given on oath and so the presumption under sec. 80 of Indian Evidence Act, 1872 would not applicable here related to the genuineness of document though there are different opinions about the matter.

FAILURE TO HOLD IDENTIFICATION PARADE

The necessity of holding the identification parade is to test the veracity of the witness and also about reliability about witness testimony if witness has seen only once. So if the victim recognizes the accused on the road street shortly after the commission of offence, in this case accused disputes the identification and requests for holding identification parade. The basic

⁴⁴ *Bhaskar Virappa Kanchan v. State of Maharashtra*, 2003 Bom CR (Cri) 1648; All MR (CrI) 1452.

⁴⁵ *Abdul Aziz v. R*, AIR 1950 L 167; *Bhuboni v. R*, 53 CWN 609.

question here is whether the provisions of the code required identification parade even where the suspect had been previously positively defined.

It was held in *R v. Forbes* (2001)⁴⁶ that if the police had sufficient information to justify the arrest of a particular person for suspected involvement in an offence and an eye witness had identified that person, but the suspect disputes his identification, an identification parade must be held if the suspect consents for it.

But in the case of *R v. Popat*⁴⁷ it was held that the identification parade is not necessary when an actual and complete identification of the suspect had already been made by the witness. It is applicable to a situation where a suspect is being produced by the police to a witness not by the witness to the police.

At times non holding of the identification parade prove to be fatal to the prosecution. Police failure to hold identification parade in such cases would amount to breach of PACE Codes of Practice, Code D para 2.3. Each case depends on its own fact and circumstances.

Again in a case it was held that where the accused was well known to the prosecution witness before hand, the holding of identification parade is a waste of public time⁴⁸.

Absence of identification parade by itself is not fatal and ipso facto it does not bring discredit to the claim of witnesses. Failure to hold identification parade would not make evidence of identity inadmissible in a court of law.

Evidence of identification would not be affected by the want of evidence of earlier identification held in the identification parade⁴⁹. It was held in the case of *Ronny v. State of Maharashtra*,⁵⁰ that the identification of the accused by the witness if he had the opportunity to interact with him and to take notice of his distinctive features lends assurance to his testimony in the court and absence of identification parade would not be material in a rape case where the prosecutrix was called in the court after 3 and half years after the date of occurrence and she did not know the accused previously, her identification of the accused in court was of no value and no conviction can be given on the basis of such identification⁵¹.

⁴⁶ *R v. Forbes*, (2001) 1 All ER 686; (2001) 1 AC 473.

⁴⁷ *R v. Popat*, (1998) 2 CrAppR 208.

⁴⁸ See *supra* note 10.

⁴⁹ *Gorge v. State of Kerela*, AIR 1998 SC 1376.

⁵⁰ *Ronny v. State of Maharashtra*, AIR 1998 SC 1252.

⁵¹ *Kanan v. State of Kerela*, 1979 SC 1127.

Further in the case it was held by the Supreme Court that, it could not be held that in the absence in identification parade, the evidence of eye-witnesses identifying the accused for the first time during trial would become inadmissible or totally useless. The credence of such evidence would always depend on the facts and circumstances of the case.

Mere non holding of identification parade cannot for releasing the accused on bail. So failure to hold identification parade even after demand by the accused is not always fatal⁵². Failure to hold the identification parade may not vitiate the trial but still it is a very important element in the evaluation of the credibility of witness in respect of their identification evidence. It cannot eschew the testimony of witnesses whose evidence was concurrently accepted by trial and appellate court. The reliability of the witness depends upon the quality of witness and not on the quantity of evidence i.e. veracity of the witness.

In the rape cases, it was held that the prosecutrix could not be blamed for the lapse on the part of the investigating agency for not holding the investigation parade after the arrest of the accused. The legal position is very settled now that prosecutrix in rape cases cannot be disbelieved if her testimony inspires confidence about the truth of the incident, even if there has been lapse of the time.⁵³

It becomes mandatory for the police to hold identification parade in following circumstances –

- The police have sufficient information to arrest a particular person for suspected involvement in an offence;
- An eye witness has identified or may be able to identify that person;
- The suspect disputes the identification parade.

REFUSAL TO HOLD IDENTIFICATION PARADE

It was held in the case of *Sunil v. State of Haryana*⁵⁴ that non participation of the suspect would not in any way detract the evidence of the prosecution witnesses when ample opportunity existed for the witnesses to identify the assailant who participated in the occurrence.

⁵² *Surendra nath v. State of UP*, 1998 CriLJ 359 (SC).

⁵³ *Malkhan singh v. State of M.P.*, 2003 (2) JLJ 151.

⁵⁴ *Sunil v. State of Haryana*, AIR 1994 SC 1536.

But where the accused refused to participate in identification parade on ground that he was shown to the witness and this fact was admitted by the police constable with the investigation of the accused, in such cases the accused would be justified in not participating in the identification parade⁵⁵ but otherwise not in every case a suspect can refuse to participate in the identification parade⁵⁶. It is clearly laid down that no one can be compelled to line up for the identification parade and if the accused refused to submit for it, they do it on their own risk⁵⁷. The prosecution could not be blamed for not holding the identification parade. At times even the plea of been shown to the witness by the police would amount to a baseless and unreasonable argument. The accused would be liable for the consequences.

If the accused is taking plea of being seen by the witnesses, then the evidence given by the witnesses would be admissible and court would be relying upon the statement of witnesses made for the first time in court identifying him⁵⁸.

CONSTITUTIONAL VALIDITY OF THE TEST IDENTIFICATION PARADE

Article 20(3) of the Constitution of India states that no person accused of any offence shall be compelled to be a witness against himself. At times of identification, it may be necessary to expose parts of the body, in which case the question would arise whether a person suspected of an offence can be compelled to expose his body, and whether the right of the suspect under the Constitution would be violative. In the case of state of *Bombay v. Kathikalu*⁵⁹, it has been held that exposing parts of body for purpose of identification does not offend Article 20 (3) of the Constitution of the India.

MEMORANDUM OF IDENTIFICATION

The memorandum of identification must be prepared by the magistrate, who is known as the author of the document. The magistrate must be examined before accepting the document.

⁵⁵ *Mangal singh v. State*, 1996 AIHC 2390 (Del).

⁵⁶ *N. Krishnarayana Babu v. State*, 1996, Cri LJ 4484 (Mad).

⁵⁷ *Suraj Pal v. State of Haryana*, 1995 2 SCC 64.

⁵⁸ *Munna v. State (NCT of Delhi)*, AIR 2003 SC 3809.

⁵⁹ *Bombay v. Kathikalu*, AIR 1961 SC 1808.

The document must be in the language normally understood by the witnesses as well as the accused too⁶⁰.

IDENTIFICATION ON THE BASIS OF PHOTOGRAPH

Section 22 of TADA provides that –

“Where a person has been declared a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have as the evidence of the test identification parade.”

But afterwards this section has been struck down by the Supreme Court in the case of *Kartar Singh v. State of Punjab*⁶¹ 1994 as it is being opposed to the fair and reasonable procedure enshrined in Article 21 of the Indian Constitution.

IDENTIFICATION THROUGH VIDEO TAPE

It was held in the English that the evidence of identification of a suspect by a witness who was not present at the crime scene but who knew the suspect and recognizes him on a video was admissible at the trial. The basis of this is the recognition by the witness of the suspect in a video tape. Apart from knowledge, no special skill, ability or expertise is needed but he must have acquired special skill in relation to persons appearing on the video by the frequent playing and analyzing it⁶². The only condition is the witness should not know the suspect before hand⁶³.

PRECAUTIONARY MEASURES FOR THE IDENTIFICATION OF THE ACCUSED

There are two types of identification i.e.

- circumstantial evidence (like voice, body-mark, scar etc)
- direct evidence by direct assertion

⁶⁰ *Syed Mohd. Owais v. State of Maharashtra*, 2002 Cri LJ 303.

⁶¹ *Kartar Singh v. State of Punjab*, Cri LJ 3139 SC.

⁶² *R v. Clare (Richard)*, (1995) 2 CrAppR 333.

⁶³ Attorney General's Reference No.2 of 2002, Re. (2002) EWCA Crim 2373; (2003) 1 CrAppR 21.

This leaves room for error in both kinds of evidence due to defective perception of imperfect recollection. It is essential to reduce the chances of testimonial error. Complaints are made against the police or the magistrate for defective identification parade.

Hence to eradicate this problem a committee was constituted i.e. Royal Commission on Police Powers and Procedure (1929). In 1969 the rules laid down by the commission were revised.

The main rules laid down here are as follows –

- The object of an identification parade is to make sure that the ability of witnesses to recognize the suspect has been fairly and adequately tested,
- It should be fair and should also be seen to be fair. It must exclude any suspicion or unfairness or risk of erroneous identification through the witness's attention being directed specially to the suspected person instead of equally to all persons paraded,
- If the officer concerned with the case against the suspect is present, he should take no part in conducting the parade,
- The suspect should be placed among persons (if practicable 8 or more) who are as far as possible of the same age, height, general appearance and position in life
- The suspect should be allowed to select his own position in the line and should be expressly asked if he has any objection to the persons present with him or the arrangement made. He should be informed that if so desires he may have his solicitor or a friend present at the identification parade,
- The witnesses should be introduced one by one. There should not be any communication between the witnesses and the person paraded'
- Positive identification must be secured. If the witness is unable to identify positively, he must say so.
- Photograph of suspects should never be shown to the witnesses

Again in 1974 a committee was set up by the Home Secretary of England. On the basis of the recommendations of the committee, the Court of Appeal laid down following guidelines –

- Whenever the case of an accused person depend wholly or substantially on the correctness of one or more identification of the accused, the jury must be much more cautious about the conviction on this basis,
- If the prosecution has reason to believe that there is a material discrepancy between the description of the accused given to the police by the witness when first seen and his actual appearance, it should supply the accused on his legal adviser with particulars of the description the police were first given,
- In all cases, if the accused asks to be given particulars of any descriptions, the prosecution must supply them,
- The judge should remind the jury of the specific weakness of the identification evidence,
- Where the quality of identification is good the jury can safely be left to assess the value of the identifying evidence even if there is no other evidence in support. If the quality is poor the judge must direct an acquittal unless there is other evidence supporting the identification⁶⁴.

In the Indian context, the Supreme Court and other high courts have pronounced judgments basing on these recommendations and guidelines.

In the case of *N. Krishnarayana Babu v. State*⁶⁵, it is laid down that it is the duty of the magistrate to make a note of every objection which is made by an accused at the time of the identification proceedings so that the court which has to judge the value of the identification evidence may take into consideration the objections and in the light of those objections may appreciate the evidence of identification. So the learned judicial magistrate, while conducting the identification parade, has to take into consideration all guidelines, before the identification proceedings are over.

The Supreme Court has held in the case of *Budhsen v. State of U.P.*⁶⁶ that the value of identification must be taken into consideration every objection raised by the accused. The magistrate is duty bound to record the objections raised by the accused/petitioner at the time of identification parade.

⁶⁴ *R. v. Turnbull*, (1976) 3 All ER 549.

⁶⁵ *N. Krishnarayana Babu v. State*, 1996Cri LJ 4484 (Mad).

⁶⁶ *Budhsen v. State of U.P.*, AIR 1970 Cri LJ 1149.

IDENTIFICATION IN COURT

The identification of the accused in court is the substantive evidence of the person identifying and his earlier identification in the identification parade as acts as corroborative evidence. It is notable that the want of evidence of earlier identification in an identification parade does not affect the admissibility of the evidence of identification in court⁶⁷. It is also true that mere evidence of identification for the first time in court is not sufficient to hold conviction. So it is inherently of weak character⁶⁸.

The basic rule behind the identification parade is the rule of prudence. But if the court can be impressed by a particular witness on whose testimony it can safely rely, the evidence gets weight. So if the evidence impresses confidence, absence of a prior identification parade would be no grounds to reject or disbelieve the testimony of the witness, more particularly in the case where the witness is a member of public and no motive attributed to him for falsely implicating the accused person.

Delay in holding the first identification in court affects the reliability of the evidence. The purpose of test identification is to test and strengthen the trustworthiness of the evidence regarding identification of the accused in the court.

Hence the absence of test identification parade would not always be detrimental for the prosecution but it depends on the facts and circumstances of the case.

FAILURE TO IDENTIFY IN COURT AFTER IDENTIFICATION PARADE

Where the witness identifies the accused in the identification parade but fails to identify in the court, in such cases the identification at the test identification parade loses its importance⁶⁹.

⁶⁷ *Gorge v. State of Kerala*, 1998 Cri LJ 2034.

⁶⁸ *Malkhan Singh v. State of M.P.*, AIR 2003 SC 2669.

⁶⁹ *Vijayan v. State of Kerala*, AIR 1999 SC 1086.