

## **TEST IDENTIFICATION PARADE**

	Paper presented by, Sri. V. Srinivasa Rao, XVI Additional District Judge, Nandigama.
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**1. INTRODUCTION:** Identification of an accused or crime property is an important process in the administration of justice. Where the Court has to know the identity of anything or any person, any fact, which establishes such identity, is relevant. The identity of person can be established by the evidence of persons known to him/her. Identification parades are held for the purpose of identifying the persons concerned in an offense or the properties, which are subject matter of an offense.

**2. MEANING:** Identification means proving or finding before the court that a person, article or animal is the very same that he or it alleged, charged to be. Test identification is a process by which the identity of the persons, things or animals concerned in the offence under investigation or trial is established, through a test parade. The test is used in the actual meaning of an examination in which the witness is to find out the person, thing or animal in a test identification parade.

**3. PURPOSE:** Mostly identification parades are held in criminal cases to prove or disprove the guilt or innocence of the accused whether it is held in respect of persons or articles. Identification parades in criminal cases are held, while the cases are under investigation.

**4. SANCTITY OF IDENTIFICATION:** Section 9 of the Indian Evidence Act, 1872 makes the identification of proper accused and properties admissible and relevant facts in a court of Law, but there is no specific provision to direct the suspected to be present for the identification parade by the Investigating Officer, but recently Section 54 A was introduced in the Code of Criminal Procedure, 1973, to meet this situation, according to which, the court can direct the person arrested to present for identification parade on the request of the investigating police officer.

## **5. Section 9 in The Indian Evidence Act, 1872 reads as under:**

Facts necessary to explain or introduce relevant facts. —Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Section 9 dealing with large number of facts which are either introductory or explanatory in nature, are relevant. These are as follows:

1. Facts which are necessary to explain a fact in issue or relevant fact.
2. Facts which are necessary to introduce a fact in issue or relevant fact.
3. Facts which support or rebut an inference of a fact in issue or relevant fact.
4. Facts which establish the identity of anything or person whose identity is relevant.
5. Facts which fix the time or place of the fact in issue.
6. Facts which show the relation of parties by which any fact was transacted.

## **6. WHY TEST IDENTIFICATION PARADE:**

Usually, there is a stretched time gape between the commission of an offence and the trial, and quite naturally if the accused is not known to the eyewitness, then, how can it be expected of the eyewitness to remember minute details such as: general appearance, physical structure, stature and complexion of the accused, and as a necessary corollary, how can it be expected of the eyewitness to identify the accused with exactitude in the court of law; thus, to resolve this anomaly, soon after the commission of crime, if any eyewitness is available then test identification parade should be conducted as a matter of priority, prudence and propriety and not just

procedure, so that the eyewitness is able to depose about the accused and the crime scene when his memory is fresh and unsullied. It is important to note that, evidence of test identification parade conducted by police cannot be tendered in the court of law because such identification amounts to a statement made to the police and accordingly as per the purport of Section 162 of the Criminal Procedure Code, 1973, such evidence being in the nature of statement made to the police during investigation it cannot be tendered as evidence in the court of law. In order to make test identification parade admissible in the court of law, so that it can be used to corroborate the oral evidence that would be given in the court of law, test identification parade must be conducted in the presence of a magistrate (judicial or executive).

**7.** Once the witness identifies the accused at the test identification parade conducted before the magistrate, then, the magistrate becomes a witness and is to tell the court about the various precautionary steps that the magistrate took to see that the witness actually picked out the concerned accused/suspect at the test identification parade without any police help. If a witness clearly and correctly identifies the accused at the test identification parade, but not before the court of law, then, the evidence of the magistrate, who conducted the test identification parade holding that the witness identified the accused at the test identification parade, supported by remarks of the trial judge regarding the demeanour of the witness, that, the witness was frightened and was thus unable to recognise the accused at the trial, would be relevant and sufficient to convict the accused.

**8. What is not Test Identification Parade:** In the case of, **Ahmed Bin Salam v. State of A.P.1999 Cri L.J. 2281 (SC)** the police inquired from the witness as to whether or not, he could identify the persons who were on scooter and who threw bombs towards the deceased; the accused persons were thereafter shown to the witness and the witness identified them as accused. The Hon'ble Supreme

Court of India held that, such an exercise cannot be termed as test identification parade.

**9. Evidentiary value of Test Identification Parade:** Identification of an accused in the court of law is substantive evidence. Whereas, evidence of identification in test identification parade though is primary evidence, but is not substantive one and the same can be used only to corroborate the identification of the accused by the witness in the court of law. It is interesting to note that, if test identification parade is not conducted and the witness identifies the accused for the first time in the court of law, then, the evidence regarding identification in the court of law does not ipso facto becomes inadmissible and cannot be discarded on the ground that it was not preceded by test identification parade. Identification of accused in the court without test identification parade is admissible if the court finds it trustworthy. The general rule is that, the evidence of identification of the accused before the court of law should not, ordinarily form the basis of conviction until and unless it is corroborated by previous identification in the test identification parade or vide some other evidence, although there are certain exceptions to this rule

In the case of **State of H.P. v. Prem Chand (2002) 10 SCC 518** the eyewitness knew the accused to be his uncle and had seen him coming to his house on the day of occurrence and also on the day preceding the day of occurrence and clearly identified him in the court of law, here, the Apex Court held that there was no need to hold test identification parade.

Further, in the case of, **Ramesh Kumar v. State of Punjab (1993) Cri L.J. 1800 (SC)** it was held that, there is no need for identification parade where the witnesses already knew who the assailants were. Test identification parade is not a sine qua non in every case, that is, if the facts and circumstances of a case conclusively establish the guilt of the accused, then, there is no need to hold test identification parade.

**10. Test identification parade is not a substantive evidence:** it only assures that the investigatory process is progressing on right

lines. Test identification parade is a part of the investigatory process under Section 162 of the Criminal Procedure Code, 1973. Test identification parade has been in common use for a very long time; the object is to place the suspect of crime in a line with other individuals for identification. The purpose is to find out whether or not the suspect/accused is the perpetrator of the crime. This is all the more essential where the name and details of the accused, although, are not known to the eyewitnesses of the incident, but, still by recalling the scene of crime and the physical features (face, eyes, complexion, height and/or physique) of the accused/suspect the eyewitnesses are able to identify the accused/suspect. The rationale of test identification parade is to confirm the identity of the accused and to help the police in their investigation.

In the case of, **State of Andhra Pradesh Vs. V.K. Venkata Reddy (1976) 1 SCC 463**, the Hon'ble Supreme Court of India categorically held that, the evidence given by a witness in the court of law is substantive testimony while the identification made by the witness in the test identification parade is only confirmatory of the testimony made before the court of law.

**11. DELAY IN HOLDING TEST IDENTIFICATION:** Many times test identification parade gets delayed due to the non-availability of the magistrate; the delay in holding test identification parade must be accounted for satisfactorily, for example, in the case of, **Rajesh Govind Jogesh Vs. State of Maharashtra AIR 2000 SC 160**, the explanation tendered by the I.O. that no magistrate was available in Bombay for 5 (five) weeks for supervising the test identification parade was held to be not a satisfactory explanation by the Hon'ble Supreme Court of India; whereas, in another case, **Murarilal Jivaram Sharma Vs. State of Maharashtra AIR 1997 SC 1593**, delay of 2 (two) months in holding test identification parade was held to be sufficiently explained where the I.O. although kept writing to the magistrate for holding test identification parade but the magistrate was not able to spare time due to his pre-occupations. Delays in holding test

identification parade can reduce the credence that can be attributed to the evidence obtained via the test identification parade route.

## **12. HOLDING TEST IDENTIFICATION PARADE WHEN NECESSARY**

**AND WHEN NOT:** Absence of test identification parade in all cases is not fatal, for example, in the case of **Dastagir Singh Vs. State of Karnataka, AIR 2004 SC 2884**, where X was raped by A, and, X was able to see A due to the proximity involved in the commission of crime, the Hon'ble Supreme Court of India, held that, to say that, test identification parade is necessary to test the veracity, reliability and memory of X, will be incongruous and farcical because in offences such as that of rape, the victim herself is a "natural witness". However, in another case, **Devinder Singh Vs. State of Himachal Pradesh, AIR 2003 SC 3365**, the Apex Court held that, because the crime of rape was committed in the night, in the room of the victim, where there was no light, even if, it is stated that the victim had a fleeting glimpse of the accused when torch was lighted in the room after the commission of the crime, it will not be enough as the accused was not known to the victim, and, therefore, it was incumbent upon the prosecution to hold test identification parade, and failure to do so was held to be fatal to the case of the prosecution. In the case of **Jadunath Singh Vs. State of Uttar Pradesh, AIR 1971 SC 363**, it was emphatically held that, if the prosecution refrains from holding test identification parade on the plea that, the witness already knew the accused, but later it transpires during the course of the trial that the witness did not know the accused in the past, then, the prosecution runs the risk of losing the case; therefore, if there is any doubt, it is always advisable for the prosecution to hold test identification parade. On the contrary, in the case of, **Asha & Ors Vs. State of Rajasthan, AIR 1997 SC 2828**, the Hon'ble Supreme Court of India held that, test identification parade was not necessary as the F.I.R. was lodged within one (1) hour of the commission of the crime and the culprits were named in the F.I.R., that is, the culprits were known to the complainant.

**13.** Where the witness states before the court that, he identified the accused at the test identification parade and the magistrate

corroborates the witness, then there is no difficulty. But, the problem begins when the witness states that, **(a)** he did not identify the accused at the test identification parade, but is able to identify the accused in the court; or, **(b)** he did identify the accused at the test identification parade, but is unable to identify the accused in the court; or, **(c)** he did not identify the accused at the test identification parade, nor is able to identify the accused in the court. The question for consideration which arises here is this: Can the magistrate give evidence of the test identification parade which was held by him and during which the accused was identified by the witness?

**14.** The purpose of test identification parade is to enable the witness who claims to have seen the commission of the crime, to identify the accused/suspect out of the several persons lined up by the I.O. in the presence of judicial/executive magistrate. The test identification parade takes place in the presence of magistrate and it is the magistrate who prepares the record of the test identification parade proceedings. It is for the witness to point out the accused/suspect out of the several persons and it is for the magistrate to corroborate the identification by the witness of the accused/suspect. Thus, in situations **(a)** and **(c)**, there is nothing for the magistrate to corroborate, and it is only in situation **(b)** that a magistrate can corroborate the identification of the accused/suspect by the witness.

**15. IDENTIFICATION BY PHOTOGRAPH:** Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 stated 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 the same value as the evidence of the test identification parade."

In the case of, **Kartar Singh Vs. State of Punjab (1994) 3 SCC 569**, constitutional validity of Section 22 of TADA was challenged before the Apex Court. The Hon'ble Supreme Court of India held that, Section 22 of TADA was opposed to the fair and reasonable procedure enshrined in Article 21 of the Constitution of India, 1950. In the case of, **Rabinder Kumar Pal Vs. Republic of India (2011) 2 SCC 490**,

the Hon'ble Supreme Court of India held that, photo identification of accused and test identification parade are only aides to the investigation conducted by the investigating officer and these do not form substantive evidences. Substantive evidence is the evidence in the court of law on oath. The logic behind test identification parade, which includes photo- identification, lies in the fact that it is only an aid to the investigation, where an accused is not known to the witnesses; the I.O. conducts test identification parade to ensure that he has caught hold of the right person as the accused.

**16. IDENTIFICATION BY VOICE:** In the case of, **Mohan Singh Vs. State of Bihar, (2011) 9 SCC 272**, the trial pertained to an offence concerning conspiracy for murder; here, the witness heard the accused while the accused was demanding money from the victim, and subsequently the witness identified the accused by the voice of the accused. Even prior to the happening of the incident, the witness had some acquaintance with the accused. The court held that, the evidence tendered by the witness, identifying the accused by his voice was reliable.

**17. Some Important aspects of TIP:** Where the accused is not named in the F.I.R. and was not previously known to the witnesses, test identification parade must be held. Identification of the accused through a photograph can take the place of a formal test identification parade. Failure to hold test identification parade would not make inadmissible the evidence of identification of the accused in the court of law if such court identification of accused is found to be reliable, trustworthy and dependable. Holding test identification parade is not obligatory and accused has no right to insist upon the holding of test identification parade. Delay in holding test identification parade although is not fatal, but, efforts must be made to hold it as soon as possible to avoid the mischief of accused being shown to the witnesses. Court identification of the accused by the witness is useless, when the witness has already failed to identify the accused at the test identification parade. If the accused is caught red-handed from the scene of crime then no question of test identification parade arises If the contents of the test identification parade are contrary to the

contents of the F.I.R. and the statement of the accused under Section 161 of the Criminal Procedure Code, 1973, then, test identification parade will be held to be unreliable. No one can be compelled to line-up for test identification parade and if the accused/suspect refuses to submit himself for test identification parade, he does so at his own risk. If court is of the opinion that regard being had to the facts of a particular case, bail should be granted to the accused, then, bail cannot be rejected simply because test identification parade is still to be conducted. Court is empowered to grant bail by imposing some limited conditions on the accused such as that the accused shall not appear in public or interact with media for a limited period of time. Giving thumb impression, or, foot impression, or, palm/finger impression, or, specimen of handwriting, or, exposing parts of body for the purpose of identification, is outside the periphery of "to be a witness" so far as the mandate of Article 20(3) of the Constitution of India, 1950 is concerned.

**18. TEST IDENTIFICATION PARADE - SAFEGUARDS:** Test identification parade must ideally be conducted as soon as possible to avoid any mistake on the part of the witnesses. The judicial/executive magistrate who is to conduct the test identification parade must first acquaint himself with the facts of the case, and thereafter he must take note of the suspects who are to be identified and the witnesses who shall be identifying the suspects;

3. Where the prosecution-witness is well-acquainted with the accused/suspect, holding of test identification parade is a complete waste of public time and money;
4. Ideally, before conducting test identification parade, two independent and well thought-of individuals (not connected/associated with police officials) must be called-up by the police officials to participate in the test identification parade. The judicial/executive magistrate should brief these independent individuals about the facts of the case, and, as to who is to be identified (suspect) and who all are to come forward to identify (eye-witnesses);

5. All police officers and constables must be asked to completely withdraw themselves from the room where the test identification parade is to be conducted;
6. Ideally, test identification parade must not be held in a police station building but rather separate rooms must be reserved for holding test identification parade in separate building;
7. In the case of, **Bhaskar Virappa Kanchan Vs. State of Maharashtra, 2003 Bom CR (Cri) 1648**, it was held that, at times test identification parade can be conducted even in a police station, provided, the place of identification is completely separate from the police office; police officials have no access to the place where test identification parade is being conducted; there was no opportunity for the identifying witnesses to see the accused/suspect before the test identification parade; and there is nothing on record to state that the accused/suspect was shown to the identifying witnesses prior to the test identification parade;
8. Before the commencement of the test identification parade, the two independent-well-thought-of individuals (panch witnesses) must be asked to bring the accused/suspect from the lock-up room, and the judicial/executive magistrate must state in the identification memo that, the accused was brought to the room where test identification parade was to be conducted by the respective two independent individuals (panch witnesses);
9. When the accused/suspect is brought before the judicial/executive magistrate, then, it is incumbent upon the judicial/executive magistrate to allow the accused/suspect to take any place he likes in the parade. The place the accused/suspect selects to stand at must be mentioned in the identification memo by the judicial/executive magistrate;
10. An accused/suspect has no right to cover his face while the test identification parade is going on; thus, it is necessary

that adequate number of dummies are made to stand with accused/suspect in the test identification parade, and ideally, each accused must be put to identification disjointedly;

11. Before the parade begins, the judicial/executive magistrate must allow the accused/suspect to alter his/her dress; if, the accused/suspect alters his/her dress, then, the fact of his/her altering the dress must be recorded by the judicial/executive magistrate in the memo of mention in the identification prepared by him;
12. The judicial/executive magistrate must identification memo, whether the identifying-witnesses identified the accused/suspect straightway, or, after some hesitation, or, after pointing at the wrong person and then later correcting themselves;
13. Police authorities must ensure that delay in conducting test identification parade should not result into exposure of identity of the accused to the witnesses as this will be fatal to the very premise of test identification parade;
14. Appreciation of evidence obtained vide the test identification parade route depends upon the strength and trustworthiness of the witnesses;
15. If the manner of holding test identification parade throws doubt/suspicion on the police officials, then, test identification parade will have no evidentiary value. However, mere presence of police officials and/or public prosecutor at the place where test identification parade is conducted will not vitiate it, especially when no prejudice is shown to have been caused to the accused.
16. Witnesses should be prevented from seeing the suspect before he is paraded; if there is only one suspect who is to be identified, then, at least half a dozen of other individuals must be placed in the parade, however, if there are two suspects that are to be identified then there should be at least ten (or twelve) of other individuals that must be

- placed in the parade. Not more than two suspects are to be placed in any single test identification parade;
17. The suspect must be placed among persons of similar height, weight, age, physical structure and complexion as far as possible;
  18. If there are more witnesses than one, then, witnesses should be introduced one by one and should be asked to identify the suspect; witnesses must be allowed to touch any of the persons paraded before them;
  19. If parade takes place in a prison then the prison officer should be present throughout the parade;
  20. The identification memo prepared by the judicial/executive magistrate must contain the details as regards the time, place and date of the parade; details of the panch witnesses (two independent individuals); names of the persons standing in the parade; and statements made by the identifying witnesses;
  21. In the case of, **Krishnarayana Babu Vs. State, 1996 Cri L.J. 4484 (Mad)**, it was held that, it is the duty of judicial/executive magistrate to take note of every objection which is made by an accused/suspect at the time of test identification parade so that the court which has to appreciate the evidentiary value of the test identification parade can take into consideration those objections and in the light of those objections can understand the contents of the identification memo;
  22. After the test identification parade is complete then, the judicial/executive magistrate must read over the contents of the identification memo to the panch witnesses and they must sign the memo, stating that they agree with the details of the test identification parade contained in the memo;
  23. Identification memo must be written in the language of the court;

24. If a First Class Magistrate or Second Class Magistrate specially empowered in this behalf by the State Government holds identification, then, Section 164 of the Criminal Procedure Code, 1973 applies and the identification memo prepared is admissible in evidence under Section 80 of the Indian Evidence Act, 1872 without proof.
25. Court identification of the accused/suspect for the first time by an identifying witness is generally an evidence of inherently weak character.
26. There are no minimum number of witnesses that are required to identify the suspect/culprit in test identification parade; and,
27. There is no statutorily prescribed time limit within which test identification parade must be conducted. Prudence demands that test identification parade must be conducted as soon as possible.
28. Where the accused is not named in the F.I.R. and was not previously known to the witnesses, TIP must be held **(MOHD. SALEEM V. STATE, 1992 CR. L.J. 1959 (DELHI))**

**19. Appraisal of evidence on Test Identification Parade:**

Lordships of the Hon'ble Supreme Court in the case of Kanta Prashad vrs. Delhi Administration, reported in AIR 1958 SC 350, and connected matters, have held that failure to hold an identification parade does not make inadmissible the evidence of identification in the Court. Their lordships have held as follows:As for the test identification parade, it is true that no test identification parade was held. The appellants were known to the police officials who had deposed against the appellants and the only persons who did not know them before were the persons who gave evidence of association, to which the High Court did not attach much importance. It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in court.

The weight to be attached to such identification would be a matter for the courts of fact and it is not for this Court to reassess the evidence unless exceptional grounds were established necessitating such a course.

**20.** In the case of **State of Madhya Pradesh Vs. Sunder Lal, 1992 Cri. L.J. 2519**, their lordships of the Hon'ble Supreme Court have held that the girl who was 13 years old could not have forgotten the face of a man who committed ghastly crime upon her. It has been held as follows:“ We have perused the judgments of both the courts and also have evidence of PWs- 2 and 4. We are of the opinion that the High Court was in error in disbelieving the testimony of PW-2 with respect to the identity of the accused. The girl was 13 years old and she could not have forgotten the fact of the man who committed such ghastly crime upon her. It is not the case of the defence that there was no light. On the contrary, the prosecution evidence is that accused himself made PW-4 prepare lamps, and light them, before taking away PW-2. It is not a case where PW-2 had a mere fleeting glimpse of the accused. We are, therefore, of the opinion that the identity of the accused has been amply established by the evidence of PWs- 2 and 4. Accordingly, we set aside the judgment of the High Court and restore that of the learned Trial Judge.”

**21.** The Apex Court in the case of **State of Maharashtra Vs. Suresh, (2000) 1 SCC 471**, while considering the scope of test identification parade categorically held and laid down the law of law that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting test identification parade is two-fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is real one who has seen by them in connection with commission of crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses have seen in connection with the said occurrence. Thus, merely because the test identification parade was not arranged by the Investigating Agency, would not discredit the clear, cogent and trustworthy evidence of Vijay Kumar Shrivastava who

firmly said, that he had an occasion to see the accused for considerable time in broad day light he had also seen the accused/appellant who had fired by "Katla" to the deceased. This witness had seen the entire act of appellant right from very beginning. Thus, the argument in this regard advanced by learned Counsel for the appellant can not be accepted.

**Some more important case laws on TIP:**

In case of **LAXMI RAJ SHETTY Vs. STATE OF Tamilnadu, AIR 1988 SC 1274** Identification of the accused through a photograph can take the place of a formal TIP.

In case of **MALKHAN SINGH Vs. STATE OF Madhya Pradesh, AIR 2003 SC 2669** failure to hold TIP would not make inadmissible the evidence of identification of the accused in the court of law if such court identification of accused is found to be reliable, trustworthy and dependable.

In the case of, **DANA YADAV STATE OF BIHAR (2002) 7 SCC 295**, the Hon'ble Supreme Court of India categorically held that, the sole purpose of TIP is to lend corroboration to the court identification of the accused, and, identification before court should not normally be relied upon if the name of the accused is neither mentioned in the First Information Report, nor, is stated before the police;

In case of **ANIL KUMAR Vs. STATE OF Uttar Pradesh, (2003) 3 SCC 569**, Holding TIP is not obligatory and accused has no right to insist upon the holding of TIP. Delay in holding TIP although is not fatal, but, efforts must be made to hold it as soon as possible to avoid the mischief of accused being shown to the witnesses.

In case of **HARE KISHAN SINGH Vs. STATE OF BIHAR, AIR 1988 SC 863**, Court identification of the accused by the witness is useless, when the witness has already failed to identify the accused at the TIP.

In case of **KIWAN PRAKASH PANDURANG MOKASH Vs. STATE OF MAHARASHTRA, ILR 1974 BOM 337**, it was held that If the accused refuses to appear for TIP then an adverse inference of guilt can be drawn against him (Section 54A of the Criminal Procedure Code,

1973).. However, in the case of, **SATNARAYAN Vs. STATE OF A.P.1994 CRI L.J. 37 (AP)** it was held that, a suspect cannot be compelled to participate in TIP if he is undergoing treatment.

In case of **SURAJ PAL V. STATE OF HARYANA, (1995) 2 SCC 64**, No one can be compelled to line-up for TIP and if the accused/suspect refuses to submit himself for TIP, he does so at his own risk.

In the case of **VISVESWARAN Vs. STATE REP. BY S.D.M., AIR 2003 SC 2471**, their lordships of the Hon'ble Supreme Court have held that the approach required to be adopted by the Courts in rape cases has to be different. The ground realities are to be kept in view. Moreover, their lordships have further held that the identification of accused either in Court or in test identification parade is not a sine qua non for conviction. In every case, the guilt can be proved from other circumstances. Many a times, crimes are committed under cover of darkness when none is able to identify the accused. The commission of crime can be proved also by circumstantial evidence. The ground realities are to be kept in view. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by Courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved.

In the case of **TOORPATI MAJSAIAH AND ANOTHER Vs. STATE OF A.P., REPORTED IN 2005 CRI. L.J. 568**, the Honorable High Court has held that identification of the accused in the open Court by the prosecutrix cannot be disbelieved on the ground of lapse of time and absence of identification parade.

The Apex Court in the case of **STATE OF MAHARASHTRA Vs. SURESH, (2000) 1 SCC 471**, while considering the scope of test identification parade categorically held and laid down that identification parades are not primarily meant for the Court. They are meant for investigation purposes.

In the case of **MOHD. JAMIL Vs. STATE OF MADHYA PRADESH, 2005 CRI. L.J. 1470**, the Honorable Madhya Pradesh High Court has held that the object of conducting the test identification parade is two folds. First is to enable the witness to satisfy themselves that the prisoner whom they suspect is real one who was seen by them in connection with commission of crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses have seen in connection with the said occurrence. Thus, merely because the test identification parade was not arranged by the Investigating Agency, would not discredit the clear, cogent and trustworthy evidence of the witness.

In the case of **SHEIKH HASIB Vs. STATE OF BIHAR, (1972) 4 SCC 773** A three Judge Bench of the Supreme Court reiterated that it is only the identification of the accused in the Court which is a substantive evidence and the test identification parade is held during investigation to minimize the chances of memory to identifying witnesses fading away due to long lapse of time.

In the case of **RONNY @ RONALD JAMES ALWARIS Vs. STATE OF MAHARASHTRA, (1998) 3 SCC 625**, and in **KUNJUMON @ UNNI Vs. STATE OF KERALA, 2012 (11) SCALE 212**, while referring to its earlier judgments the Hon'ble Supreme Court observed that mere failure to hold a test identification parade is not fatal to the prosecution case but the Trial Judge will need to be circumspect in accepting the identification of an accused by a witness in the Court if the accused is a stranger to the witness.

In the case of **VIJAY @ CHINEE Vs. STATE OF MADHYA PRADESH , (2010) 8 SCC 191**, Holding of the Test Identification Parade is not a substantive piece of evidence, yet it may be used for the purpose of corroboration; for believing that a person brought before the Court is the real person involved in the commission of the crime. However, the Test Identification Parade, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of the accused can be sustained. It is a rule of prudence which is required to be

followed in cases where the accused is not known to the witness or the complainant.

The Honorable High court of Judicature at Hyderabad in its Division Bench Judgment in between **RAJAMOORI RAM REDDY Vs. ANDRA PRADESH, 2016 (2) ALT ( CRIMINAL ) 91**, ruled that after arrest of accused, shown him in press conference or produced before public through electronic media. Though it was said to be powered him with mass. While shown the accused in media, as the police were already presented the accused before public media, Subsequent identification in test identification parade would loose its credibility. Honorable High court of Judicature at Hyderabad in its Division Bench Judgment in between **POTTETI YELLAIAH Vs. STATE OF ANDRA PRADESH 2016 (2) ALT ( CRIMINAL ) 111** ruled that mere wearing mass by the suspect at the time of committing the offence is not a ground to reject the identification of accused by the victim at test identification parade, because the victim who suffered in the hands of accused got no difficulty identifying the accused got suspect, based on broad features like hight, age, behave and the way in which they were talk etc.

In case of **SHAIK SANTHAI MADAR @ JAFFAR @ SINTHA ETC., Vs. STATE REPRESENTED BY INSPECTOR OF POLICE REPORTED IN 2016 (1) ALD (CRIMINAL) 903 (SC)** Honorable Supreme court held that there is no invariable Rule but two accused person cannot be made part of same TIP as joint TIP.

In the case of **Prakash vs. State of Karnataka** in **(2014) 12 SCC 133: (2014) 6 SCC (Cri) 642:2014 Cri LJ 2503: (2014) 3 KCCR 2473: (2014) 138 AIC 150, Identification - Identification in court after 4 ½ years after incident - No identification parade held by IO - Appreciation of identification in court** - The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification

parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact.

An identification parade is not mandatory nor can it be claimed by the suspect as a matter of right. The purpose of pre - trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been by the witness or victim for some length of time. However, if the suspect is known to the witness or victim or they have been shown a photograph to the public by the media no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution.

The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is other wise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence.

PWs.6 and A saw P for the first time on the afternoon of 05.11.1990 and they had seen him, if at all, briefly if not fleetingly. These witnesses had identified P when he was produced before them on his apprehension about five or six days after the incident and also while he was in the dock in court 4 ½ years later, but the circumstances under which the dock identification took place are not quite satisfactory in as much as both the witnesses entered the witness box almost 4 ½ years after they are said to have first seen P only briefly and with out any identification parade having been conducted. The trial court took into account the identification of P in court, the absence of any distinguishing features of P, the brief time for which the witnesses saw him and the fact that, he was a total stranger to the witnesses. Thus, given the facts of the case, it would

have been more appropriate for an identification parade to have been conducted. Absence of an identification parade certainly casts of a doubt about P's presence at the house of the deceased on 05.11.1990.

In the case of **Thankayyan vs. State of Kerala** in **(1994) SCC (Cri) 1751, Accused not previously known to the witnesses - Witnesses identifying the accused for the first time in court -** Held that, no reliance can be placed on their evidence.

In the case of **Ganpat Singh Vs. State of Rajasthan** in **(1997) 11 SCC 565, Appellants shown to the sole eye witnesses in police station who later identified them in TI Parade -** Held, no reliance can be placed on such identification and consequently his evidence regarding identification in court after one year cannot be relied upon.

In the case of **State of Gujarat Vs. Vinaya Chandra Chhota Lal Pathi, AIR 1967 SC 778: (1967) 1 SCR 249: 1967 Cri LJ 668, Admissibility in evidence of fact explaining a circumstance -** A slip of paper containing the particulars of cheques including those which are subject - matter of the criminal case for misappropriation in accused's handwriting - Complainant stating about the statement made to him by the accused about the circumstance in which the slip was written - Held, the slip and complainant's statements are admissible in evidence - Entire evidence is extra - Judicial confession of the accused.

In the case of **Puttan Vs. State of Uttar Pradesh** in **(1992) Supp (2) SCC 749: 1992 SCC (Cri) 833: AIR 1992 SC 1032: 1992 Cri LJ 1122:1992 ALJ 371: (1992) 1 Crimes 876, Belated Identification -** Appellant arrested about one and half month after the occurrence and identification parade held about six months thereafter - No plausible explanation for inordinate delay in holding the identification parade given - Held, Identification evidence not reliable.

In the case of **Chotey Lal Vs. State of U.P** in **(1994) SCC (Cri.) 144, Belated Identification parade - Offence of dacoity - Test Identification parade held two months and twenty days after arrest of appellant -** No explanation given for the delay - Identifying

witnesses making only omnibus statements that they saw the appellant committing dacoity - Not associating their memory with any overt act or weapon in the hands of the appellant - Proceedings of identification parade also not inspiring confidence - Held, the gross delay in holding the identification parade made the prosecution case doubtful - Even on overall view of the evidence, the prosecution had not made out a case against the appellant beyond reasonable doubt - Hence conviction under section 396 of IPC and sentence of life imprisonment imposed on the appellant by the lower courts set aside - Penal Code, 1860, section 396.

In the case of **Shankar Mahto Vs. State of Bihar** in **(2002) 6 SCC 431: (2002) SCC (Cri.) 1346: AIR 2002 SC 2857**, Defence plea that identification of the accused - appellants was highly doubtful - Conviction of the main accused persons already upheld by the Supreme Court by rejection of SLP filed by them - In view of the said facts, held, it would be impermissible for the supreme court to go into the merit of the above stated plea and reconsider the same Constitution of India, Article 136.

In the case of **Dalbir Kaur Vs. State of Punjab** in **(1976) 4 SCC 158: 1976 SCC (Cri.) 527: AIR 1977 SC 472: 1977 Cri LJ 273: (1977) 1 SCR 280**, Demand for identification parade made by accused - Held, to remove all doubts he should be identified even by such witnesses who claim to have known him earlier and had therefore recognized him at the scene of occurrence.

In the case of **State of Andhra Pradesh Vs. K. Venkata Reddy** in **(1976) 3 SCC 454: 1976 SCC (Cri.) 448: AIR 1976 SC 2207: 1976 Cri. LJ 1723**, Evidence given by witness in court is substantive testimony while the identification made by him at the parade is confirmatory of that fact.

In the case of **Yakub Abdul Razak Memon Vs. State of Maharashtra** in **(2013) 13 SCC 1** - Evidence of eyewitnesses - Reliability - Identification of accused in TIP conducted immediately after Bombay Blasts, 1993 - Failure of witness to identify accused in

court after several years (2 or 3 years in present case) – Held, not fatal  
- **Evidence reliable.**

In the case of **Ram Nath Mahto Vs. State of Bihar** in **(1996) 8 SCC 630: 1996 SCC (Cri.) 726: AIR 1996 SC 2511, Evidence of TI parade not by itself substantive evidence whereas evidence given in court is substantive evidence** - Witness correctly identifying the accused at TI parade - But, in court he did not identify him - Evidence of Magistrate who conducted the TI Parade that the witness correctly identified the accused in the TI parade supported by the remarks of the trial judge regarding the demeanour of the witness that he was frightened to accord recognition to the accused at the trial - Held, in the circumstances the High Court rightly maintained the conviction.

In the case of **Yakub Abdul Razak Memon Vs. State of Maharashtra** in **(2013) 13 SCC 1 - Evidentiary value** - Held, evidence with regard to TIP does not constitute substantive evidence - Same can only be used as corroborative piece of evidence to strengthen trustworthiness of substantive evidence of witness before court.

In the case of **State of H.P Vs. Lekh Raj** in **(2000) 1 SCC 247: 2000 SCC (Cri.) 147: AIR 1999 SC 3916:2000 Cri LJ 44 - Evidentiary value of test identification parade** - Held, is not a substantive evidence but holding of test identification is a safe rule of prudence and can be used for corroboration purposes.

In the case of **Kanan Vs. State of Kerala** in **(1979) 3 SCC 319: 1979 SCC (Cri.) 621: AIR 1979 SC 1127: 1979 Cri LJ 919 - Failure to conduct TI parade in respect of accused unknown to the witnesses** - Identification by such witness of the accused in Court raises a serious doubt and his testimony must be excluded.

Where a witness identifies an accused who is not know to him, in the Court for the first time, his evidence is absolutely valueless unless there has been a previous TI parade to test his powers of observation. The idea of holding TI parade under section 9 of the Evidence Act is to

test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no TI parade is held then it will be wholly unsafe to rely on his testimony regarding the identification of an accused for the first time in Court.

In the case of **Ram Pal Pithwa Rahidas Vs. State of Maharashtra** in **(1994) Supp (2) SCC 73: 1994 SCC (Cri.) 851: 1994 Cri LJ 2320: 1994 1 Crimes 1017 - Failure to hold Test Identification Parade - Effect** - Accused persons alleged to be wearing masks at the time of the incident and were unknown to the witnesses - Identification in court only, in the absence of any earlier test identification parade, in circumstances, is of no significance.

In the case of **Aasha Vs. State of Rajasthan** in **(1997) SCC Cri 712: AIR 1997 SC 2828: 1997 Cri LJ 3508 - Failure to conduct TI parade** - Assailants known to one of the eye witnesses from before the incident and their names disclosed by him to another witness who told the same to the first informant - FIR mentioning the names of all the three appellants with all necessary details - Incident taking place during day time ruling out possibility of erroneous identity - Held, in the circumstances, failure to hold TI parade is of no consequence.

In the case of **Surendras Narain Vs. State of U.P** in **(1998) 1 SCC 76: 1998 SCC (Cri.) 14: AIR 1998 SC 192: 1998 Cri LJ 359 - Failure to hold Test Identification Parade - even after a demand by the accused not always fatal** - It is only one of the relevant factors to be taken into consideration along with other evidence on record - If claim of eye witnesses that they know the accused already is found to be true, failure to hold TI parade is inconsequential - Witness mentioning name of the accused in the FIR lodged within 15 minutes of the occurrence - Accused and first informant related to the deceased - Other two eye witnesses knowing the accused previously - Absence of evidence of enmity between the witnesses and the accused - Accused not traceable for about 5 weeks - Point of identification not raised before the lower courts - Held, in the

circumstances of the case, failure to hold TI parade in spite of an order of the Sessions court is not fatal to the prosecution case.

In the case of **Satbir Vs. Surat Singh** in **(1997) 4 SCC 192: 1997 SCC (Cri.) 538: AIR 1997 SC 1160 - Failure to identify one of the nine accused** - Benefit can go only to the person not identified and not others.

In the case of **Binay Kumar Singh Vs. State of Bihar** in **(1997) 1 SCC 283: 1997 SCC (Cri.) 333: AIR 1997 SC 322: 1997 Cri LJ 362 - Identification** - Attack by a large number of persons on the inhabitants of the place of occurrence resulting in death of 13 persons and injuries to others - None of the injured witness identifying the assailants (except two or three appellants) but non injured witness identifying a bulk of them - Held, this cannot have any adverse impact on the credibility of the injured witness.

In the case of **Ahmed Shaikh Vs. State of Maharashtra** in **(1998) 5 SCC 103: 1998 SCC (Cri.) 1276: AIR 1998 SC 1922 - Identification - Evidence of Test Identification parade has only corroborative value** - Substantive piece of evidence is court identification - However, where suspects already shown to the witnesses before the test identification parade their identification in court becomes valueless - Conviction set aside - TADA, 1987, Section 3 (2)(i) - Penal Code, 1860, Section 302.

In the case of **Vikram Singh Vs. Raj Singh** in **1998 SCC (Cri) 578, 582 - Identification - Identification at night - Lantern light** - In view of birth of a child in the house testimony of the witness about presence of a burning lantern found acceptable - Identification of A1, brother of the witness and A2, a friend of A1 and resident of the same village, corroborated by other witnesses - Held, in the circumstances of the case, High Court not justified in entertaining doubt about identify of the accused.

#### **CONCLUSION:**

Finally it can be concluded that the purpose of TIP is to ensure that the investigation is going on right track. It is not a substantial evidence and it is merely a corroborative evidence.