PRESENTATION ON

RESGESTAE

RELEVANCY OF MOTIVE, PREPARATION AND CONDUCT

TEST IDENTIFICATION PARADE

ALIBI

UNDER THE INDIAN EVIDENCE ACT,1872

BY

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ADDITIONAL JUNIOR CIVIL JUDGE,

NANDYAL

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INTRODUCTION

In the judicial proceedings only relevant facts are admissible. The term 'relevant fact' is not defined under the Act but it provides the way in which the fact is said to be relevant. Section 3 of the Evidence Act provides that *"One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts"*, which means that for a fact to be relevant it must come under any of the circumstances provided from section 5 to 55 of the Evidence Act, such as res gestae, motive, conduct, occasion, cause or effect, admission and confession, conspiracy, dying declaration, evidence relating to character etc.

Section 5 of the Evidence Act provides that evidence may be given of the fact in issue and relevant fact only. Fact in issue is defined under Section 3 the Act as *"The expression "facts in issue" means and includes— any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows."* In simple words, fact in issue means those facts which are in dispute between the parties. It includes the facts which are asserted by one party and denied by the other party to the suit or proceeding. It means the issue regarding the right or liability of a person and the issue regarding the existence or non-existence of such right or liability. Therefore the fact in dispute may be proved by either proving the fact in issue or the relevant fact.

The fact in issue may be proved by producing the evidences which are related to the fact in issue directly. Such evidence is called direct evidence. Rule of direct evidence is the rule of best evidence. Section 60 of the Act provides that oral evidence must be direct. Further, Section 64 of the Act provides the documents may be proved by primary evidence except the cases in which the secondary evidence may be given of the document with the permission of the court. Though the rule of best evidence is provided under the Act, circumstantial evidence is also admissible if the series or chain of circumstances is completely established. The rule regarding the same is enshrined under section 6 of the Act.

RES GESTAE

The Latin term “Res Gestae” means “part of the same transaction.” It is an exception to the hearsay rule, which states that hearsay evidence is no evidence and is not admissible in the court of law. The reasoning behind this is the suddenness and promptness of such explanation that there is hardly any time for fabrication. The history of this doctrine dates back to 1693, where in the case of **Thompson v. Trevanion** this doctrine was established and it was stated that declarations made after an action was subject to confirmation.

Section 6 of the Act provides that, *“Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”* It is basically a spontaneous and an instant declaratory statement made by a person immediately or just after an event or a transaction and before the mind has the senses to conjure a false story which is in contravention to the real facts.

The following conditions must be satisfied for a statement to be considered admissible under Section 6 of the Act:

1. It must be a statement of fact and not an statement of opinion.
2. It should be made by a participant to the transaction or a witness of the said transaction.
3. It must be spontaneous or contemporaneous but not mere narrative of a past event.
4. A bystander's statement is admissible only if he or she was present at the place of the commitment of the offence.
5. The statement should depict, describe, elaborate, or explain the incident or the transaction in a similar way or manner.

Transaction under Section 6 of the Act may be an offense, a contract, a misunderstanding, or any other subject of inquiry. The proximity of time, continuity or vicinity of location, consistency of behavior and culture of sense or nature are all relevant indicators of what kind of transaction it is. The time of the incident, location of the police station and the consistency of operation are all necessities for a complaint made by someone present at the time of the

incident to be admissible.[1] The transaction should be interpreted as a series of events or all facets of an occurrence that routinely investigated as a whole and not isolated as a single act.

JUDICIAL PRECEDENTS ON RES GESTAE

In the case of **Rattan vs. State of H. P**.[2]the deceased was the house wife. She was shot dead by the gun during the night when she was sleeping. The assailant was a retired army man charged with the murder. When he fired at the deceased, the deceased shouted and other members hearing the noise of the bullet as well as the woman entered her room. The woman said that she was shot dead by the appellant and died. The statement given by her was held admissible as a part of same transaction because the statement was the natural outcome of the incident.

In the case of **Basanti vs. State of H.P.**[3]the appellant was married to a person who was seven years elder to the wife. There was a servant in the house of the appellant aged about 70 years. The servant was the paramour of the appellant. The deceased husband knew the fact of his wife's affair with the servant. He was intending to marry another woman and wanted to take the marriage dissolved by divorce. On the other hand, the appellant wife intended to carry on the situation as it is. But one day when the situation went out of control, the appellant and her paramour conspired to commit the murder of the deceased husband. They actually committed the murder of the deceased by striking blows on the neck of the deceased. The relatives of the husband lodged FIR for his missing. During the investigation, the appellant misled the police by telling that the deceased has went out of the station and will come back after 4 or 5 days. But when the body was recovered, her blood stained dupatta was also recovered. The prosecution produced the circumstantial evidences about the incident which were held admissible in the trial court as well as in the High Court. The case finally came before the Supreme Court. Hon'ble Supreme Court held that after the incident the conduct of the appellant of taking all the villagers and other relatives of her husband on a false track is admissible as a part of the same transaction.

Rattan vs. Queen, an English case explains the rule of res gestae very clearly. In this case, a phone call was received by the police headquarter with the lady on the phone call stating that kindly connect me to police officer. Before connecting the call to the police the call was

[1] *Bandela Nagaraju v. State of Andhra Pradesh*, 1983 INDLAW AP 75
[2] AIR 1996 SC
[3] AIR 1987 SC 1572

disconnected. The police traced the phone call location and reached at the address of the alleged lady where the police found the lady as dead. The husband stated that he mistakenly fired at her wife and she died. The court held that the husband is liable for murder and the phone call made by the lady was held admissible as forming part of the same transaction.

In the English case of **R vs. Foster,** two persons were going on a road. They saw a car going at a very high speed at some distance from them. After a little of time, they heard the noise of a man, they reached to the spot of noise where they found a man severely injured. The injured man told that a car of a particular number crushed him and the man died. In the trial the evidence of the deceased man's statement to the two persons were held admissible as a part of the same transaction.

In the case of **R. vs. Bedingfiled**, the doctrine of res gestae was not accepted by Justice Cookburn. In this case a young girl was living with her friend named Herry. By the passing of the time, relation between them was strained. One day Herry cut throat of his friend. The girl went to the house of Herry's Aunt who was living at some distance of their house, she knocked the door and when the door was opened she told that aunt see, what Herry has done to me. During the trial the statement of the girl to the aunt was held inadmissible. The court opined that the statement during the occurrence was admissible as part of same transaction. Anything said after the incident is over though relevant but can't be admitted as part of same transaction.

Whether FIR can be treated as res gestae. One important question which has risen before the court is that whether lodging of FIR can be treated as part of same transaction. The question was answered in the case of **Sawal Das vs. State of Bihar**[4] the deceased was the wife of the appellant. The marital relations between the appellant and the deceased wife were not good. One day, the deceased was taken to the room by the appellant. The father and mother of the appellant also followed him. After some time noise of crying of the deceased that "save me" was listened by a person who was present at the scene of occurrence immediately informed the police and lodged FIR. The police reached to the spot and found that the deceased was killed and burned by the appellant secretly. During the trial the FIR lodged by the neighbor was held admissible as part of the same transaction. However the court also opined that FIR may be relevant but will not be admissible in all the cases. Where there is unexplained delay in lodging the FIR, it can't be admissible.

[4] AIR 1974, SCR (3) 778

In the case of **Gentela Vijayvardhan Rao and another v. State of A.P.[5],** explained the nature and scope Section 6 of the Evidence Act. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that suck fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae. In the present case there was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the Judicial Magistrate recording statements of the victims. That interval, therefore, blocks the statements from acquiring legitimacy under Section 6 of the Evidence Act.

In the case of **Uttam Singh vs. State of M. P**.[6], the child who was the eye witness of the incident was the son of the deceased. He was sleeping with his father on the night of the occurrence. The accused came with an axe and gave blow on the neck of the deceased. The child awakened by the sound of the blow. The child saw the incident and shouted for his mother and sister for help. His mother and sister entered in the room and the child shouted again that the accused named by him has committed the act with his father. Other witnesses also gathered in the house. The evidence of the child was held admissible as part of the same transaction as such shout was the natural and probable consequence of the fact.

In the case of **Sukhar v. State of U.P.[7],** it was held that Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or

[5] (1996) 6 SCC 241
[6] AIR 2002, M.P. High Court, 79
[7] (1999) 9 SCC 507

immediately thereafter. In the present case, it has to be held that the statement of PW 2 indicating that the injured told him that his nephew has fired at him, would become admissible under Section 6 of the Evidence Act.

In the case of **State of Andhra Pradesh v. Panna Satyanarayan**[8]**,** the accused murdered his wife and daughter. The statement by the father of deceased wife that father of accused told him on telephone that his son has killed the deceased. Absence of a finding as to whether the information given by accused's father to the deceased's father that the accused had killed the deceased was either of the time of commission of the crime or immediately thereafter so as to form the part of same transaction. The statement cannot be considered as relevant under section 6 of the Evidence Act.

In the case of **Javed Alam v. State of Chhattisgarh and another**[9]**,** it was held by the Hon'ble Supreme Court that Section 6 of the Evidence Act is an exception to the rule of evidence that hearsay evidence is not admissible. The test for applying the rule of res gestae is that the statement should be spontaneous and should form part of the same transaction ruling out any possibility of concoction.

In the case of **Krishna Kumar Malik v. State of Haryana**[10]**,** it was held by the Hon'ble Supreme Court that the purpose of incorporating Section 6 in the Evidence Act is to complete the missing links in the chain of evidence of the solitary witness.

[8] AIR 2000 SC 2138
[9] Criminal Appeals No.1240 of 2006 with Nos. 1241-42 of 2006, decided on May 8, 2009.
[10] Criminal Appeal No. 1252 of 2011, decided on July 4,2011.

RELEVANCY OF MOTIVE, PREPARATION AND CONDUCT

Section 8 of the Evidence Act deals with the relevancy of motive, preparation and conduct, both previous and subsequent. It reads as follows:-

"Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

Before deliberate commission of a crime, the offender must have some motive behind that and to achieve the same he might have made certain preparations, both such motive and preparations are relevant under this section. These fall under the category of circumstantial evidence. From the circumstantial evidences available before it, the Court can draw inferences and arrive at conclusion. Therefore where the evidence is not direct and clear, this section comes to the rescue.

MOTIVE

Salmond describes motive as "the ulterior intent". It may be good or bad. Motive is the moving power, which impels one to do an act. In simple terms, it is that one thing which moves or induces a person to act in a certain way; it is the reason behind the act or the conduct. It is an emotion or State of Mind, which leads a man to do an act. Motive by itself is no crime, however heinous it may be. Once a crime has been committed, the evidence of motive becomes important and the same is made relevant under this section. Therefore, evidence of the existence of a motive for the crime charged is admissible. Motive differs from intention. Intention refers to immediate consequences, whereas, motive refers to ultimate purpose with which an act is done. An act may be done with bad intention but good motive.

To establish liability whether civil or criminal, motive is generally irrelevant but an enquiry into motive is often of great importance, particularly in cases of circumstantial evidence[11]. There can hardly be any action without motive. If the offence has been committed voluntarily then presence of motive cannot be declined. Since motive sometimes play a very important role in criminal cases, its relevancy is drawn by the courts and supplied as evidence. In a case where there is a clear proof of motive for the commission of crime, it supports the findings of the Court proving the accused guilty of the charges leveled against him or her. Evidence of motive becomes very important when a case is based on circumstantial evidence only. Supreme Court held in **State of UP v. Nawab Singh (dead) and others**[12]that if the eye witnesses are trustworthy, the motive attributed for the commission of crime may not be of much relevance. The same was held in the case of **State of UP v. Nahar Singh**[13], wherein it was held that when participation of accused established by evidence of eyewitness absence of motive pales into insignificance. By proving the motive the prosecution can rely upon the conduct of accused, the same was held in **State of Madhya Pradesh v. Bhim Mohd**.[14]

JUDICIAL PRECEDENTS ON MOTIVE

In the case of **Kundula Bala Subrahmanyam v. State of A.P**[15]**,** it was held that in a case based on circumstantial evidence, motive assumes great significance as its existence is an enlightening factor in a process of presumptive reasoning. The motive in this case is alleged to be the greed of dowry. Motive has been conclusively established by the prosecution.

In the case of **Raghubir Singh and others v. State of Punjab**[16], it was held that where ocular evidence is found to be reliable absence of proof of motive is not fatal to the prosecution case. *"7... The motives may be minor but nonetheless they did provide an occasion for attack on the deceased by the appellants. That apart, even in the absence of motive, the guilt of the culprits can be established in a given case if the other evidence on the record is trustworthy and the absence of proof of motive has never been considered as fatal to the prosecution case where the ocular evidence is found reliable."*

[11] Queen v. Bahar Ali Khan, 15 WR (Cr) 46.
[12] JT (2004) 2 SC 79
[13] AIR 1998 SC 1328
[14] 2002 Cr LJ 1906.
[15] (1993) 2 SCC 684
[16] (1996) 9 SCC 233

In the case of **Gurmej Singh Vs State of Punjab**[17], the deceased had successfully contested election against the accused. Few months before the incident, they had a quarrel with one another. The reason behind that the accused diverted dirty water towards the house of the deceased and the deceased frustrated his efforts. It was also on evidence that proceedings under Cr.P.C were pending between them and the dirty water issue added a new level to it. The Court concluded that incident over the passage of dirty water could be the motive for the murder and the motive is not so weak that it would not prompt the accused to kill the deceased rival. Eye witnesses, whose testimony was reliable cannot be said to have falsely involved the accused.

In the case of **Rajinder Kumar v. State of Punjab**[18]**,** it was held that the motive behind a crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assessing the evidence.
In the case of **Ranganayaki v. State by inspector of police**[19]**,** it was held that in some cases it may be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead to an inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to the aid of the accused. These principles have to be tested on the background of factual scenario.

PREPARATION

In criminal cases, preparation itself is no crime unless coupled with intention, attempt and completed act. Section 8 of the Evidence Act provides that acts of preparation are relevant. It lays down that facts which show or constitute preparation for any fact in issue or relevant fact are relevant. Evidence tending to show that the accused made preparation to commit a crime, is always admissible. Preparation only evidences a design or plan to do a certain things as planned. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant. The given illustration is self-explanatory and clearly reveals the

[17] AIR 1992 SC 214
[18] AIR 1966 SC 1322
[19] Appeal (crl.) 1505 of 2003, dated:13.10.2004.

importance of preparation as relevant evidence. The preparation on the part of the accused may be reflected in various stages namely to accomplish the crime, to prevent the discovery of crime or it may be to aid escape of the criminal and avoid suspicion.

The existence of the plan is always used in daily life as the basis of inferences to the act planned. In a case of burglary, the four accused held a meeting to arrange for the crime; a bar of iron and pair of pincers were alone necessary; and these the accused brought; these facts were admitted to show preparation. The probative force, both of preparation and the previous attempts manifestly rests on the presumption that an intention to commit the offence was framed in the mind of accused which persisted until the power and opportunity were found to carry it into execution. The preparation on the part of the accused may be, to accomplish the crime, to prevent discovery of crime or it may be to aid the escape of the criminal and avert suspicion, held in the case of **Appu alias Ayyanar Padayachi v. State**[20]

CONDUCT

The conduct of a man is particularly important to the law of evidence, for his guilt or the state of mind is often reflected by his conduct. Guilty mind begets guilty conduct. Under section 8, the conduct of the following parties is relevant:-

(i) parties to the suit/proceeding or of their agent (plaintiff and defendant in a civil suit, and accused in a criminal proceeding),
(ii) any person an offence against whom is the subject of any proceeding (injured person).

It is important to note that, the conduct is admissible only if the following conditions are satisfied as held in the case of **Hadu v. State of Orissa**[21]:

(i) it must be in reference to the suit or proceeding or in reference to any fact in issue therein or relevant thereto.
(ii) it must directly influence or be influenced by any fact in issue or relevant fact.

[20] AIR 1971 Mad 194
[21] AIR 1951 Ori 53

JUDICIAL PRECEDENTS

In **Queen-Empress v. Abdullah,**[22] one Abdullah was charged with murder of one Dulari, a prostitute, by cutting her throat with a razor. She was questioned by her mother, Kotwal, Deputy Magistrate and Surgeon, etc. about the incident. She was unable to speak. When Magistrate mentioned the name Abdullah after speaking great many names, she made an affirmative sign by nodding her head. It was held by a majority of three judges as against one that section 8 was not applicable, but that the evidence was relevant under section 32 as a dying declaration. Mahmood, J., held that the conduct in question was relevant under section 8, but not under section 32.

Petheram, Chief Justice, with whom two judges agreed, proceeded on the hypothesis that to attract section 8 the conduct must be influenced directly by the facts and not by the interposition of words spoken by third persons. In his view the "conduct" must be relevant first and then any statement influencing that conduct becomes relevant. In this case, the signs of head was a conduct which indicated nothing and were, therefore, irrelevant and any statement influencing an irrelevant conduct would be irrelevant.

Mahmood, J., however, did not agree with this reasoning and held that, nodding the head or waiving the hand is not a word. He, therefore, set aside section 32(1) which according to him, could only apply to "a statement written or verbal".

STATEMENTS AS CONDUCT

Conduct may in certain cases includes statements, held so in Emperor v. Nanua[23]. However, Explanation 1 to section 8 clearly state that statements will not be treated as conduct, unless they accompany and explain acts other than statements. The Explanation points to a case where actions and statements are mixed together in such a way that those actions and statements can be proved as a whole.

In **Prakash Chand v. State of Delhi**[24], the accused was charged with the offence of bribery. It was deposed by the witness. Evidence to the effect that at the time of raid by the police officer and trap witness, on the question "whether you have accepted bribe" the fact that the accused

[22] ILR (1885) 7 All 385 (FB)
[23] AIR 1941 All 145 (149)
[24] 1979 Cr LJ 329

was stunned and did not reply, he was confused and began to apologise, or that he began to tremble were held relevant.

To regard a conduct to be relevant it must be closely connected with the incident concerned. If the Court considers some conduct to be relevant then the conduct must help the Court in arriving to a conclusion in the controversy. The conduct must have a bearing over the decision. If so happens, then, notwithstanding the conduct was previous or subsequent, it shall be thoroughly scrutinized by the Court. A conduct to become relevant under section 8 of need not become simultaneous or spontaneous, that is to say with that very incident. It may become subsequent and previous to the main fact in issue. For example complaints of the deceased made before two months of his death becomes admissible.

In the case of **Mistri Vs King Emperor**[25], a person was charged for the murder of a girl. During the investigation the accused took the police to a place and pointed out and produced some ornaments which the deceased was wearing at the time of the incident took place. In the trial of the accused the facts that he took the police to locate the place where the ornaments were kept hidden and that the accused given the ornaments to the police were allowed to be proved under section 8 of the Evidence Act as these facts showed the subsequent relevant conduct of the accused.

In the case of **Emperor Vs Moti Ram**, one Moti Ram and Rai Singh were tried for the murder of a lady called Sita. The witness soon after the incident found that the lady was lying in the floor with her throat cut and she was bleeding greatly. When the witnessed asked her as to who did this she tried to utter the word Moti. When after she was again asked as to by Moti whether she meant Motiram or not, she nodded her head in a positive manner. She was later transferred to hospital and when the magistrate asked, she explained the incident and pointed the accusation towards Motiram. All these facts were held to be admissible as conduct of the person an offence against whom an inquiry was going on under section 8 of the Evidence Act.

Conduct admissible under Section 8 of the Evidence Act must be such that it has a close nexus with a fact in issue or relevant fact, held so in the case of **State (NCT of Delhi) v. Navjot Sandhu**[26].

[25] AIR 1938 (6) ALJ 839
[26] (2005) 11 SCC 600

In the case of **Tapash Sarkar v. State of Tripura**[27]**,** accused after commission of crime appeared at police station and narrated the occurrence. He lead the police to his house in presence of the witnesses and showed the dead body of his wife and produced the weapon of offence before the police officer, who seized it by preparing seizure list in presence of the witnesses. Appearance of the accused at the police station and his giving of the information is admissible against him as evidence of his conduct.

[27] 2012 SCC OnLine Gau 572.

TEST IDENTIFICATION PARADE

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. It is to be conducted when the accused is not known to the witness or complainant before occurrence of the crime.

The law governing Test Identification Parade is dealt under Section 9 of the Evidence Act, Section 54A of the CrPC, Rule 34 and 35 of Criminal Rules of Practice. Section 9 of the Act makes facts introducing the facts in issue or relevant facts relevant and the same reads as follows:-

"*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 any thing 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."*

TYPES OF TIP:-

Identification parades are held in criminal cases to identify

1. the persons living or dead, known or unknown
2. articles including fire arms, hand writing, photographs, finger and foot prints etc.

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.

Sanctity of identification:-

Section 9 of the Indian Evidence Act, 1872 makes the identification of proper accused and properties 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.

Section 54 A of Code of Criminal Procedure, 1973:-

Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

Test identification parade - self incrimination: -

In the case of **Mukesh Singh v. The State (NCT of Delhi)[28],** it was held by the Hon'ble Supreme Court that the identification of accused at a test identification parade by someone is not the accused's own act. His mere attendance or the exhibition of his body cannot be regarded as furnishing any positive volitional evidentiary act. That being the position, the conduct of test identification parade cannot be regarded as violative of Article 20(3) of the Constitution.

Evidentiary value:-

The result of the identification parade conducted at the stage of investigation is not a substantive piece of evidence and cannot be the basis of a conviction by itself. The evidence against the accused must be the evidence given by the identifying witness in the witness box. Without this substantive evidence of identification by the witness in Court the evidence of identification of the accused or property is a previous test of identification parade even by the same witnesses cannot really be taken into consideration against the accused and the same cannot be basis for conviction.

[28] 2023 SCC Online SC 1061

Object of Test of Identification Parade:-

Identity of accused is important in criminal trial. If the accused disputes his identity, the burden heavily lies on the prosecution to prove his presence at the scene of offence. Accused may also put forward the false plea of alibi. To establish the identity of the accused the investigating officer can take recourse of Test Identification Parade.

Procedure and precautions to be taken by the Magistrate during the TIP.

1. The Test Identification Parade should be held soon after the arrest. It is not a ground for rejection of bail.
2. The police should take steps to arrange Test of Identification Parade by Magistrate only.
3. It is desirable to get identifiers' statements recorded u/s. 164 Cr.P.C., before the investigation.
4. Do not allow the presence of police officer during the TIP.
5. After making all arrangements, police should completely leave the place to conduct actual identification proceedings.
6. The accused, as far as possible, be mingled with persons of similar description, status, build and age in the proportion of minimum of 1 : 5 and maximum of 1 : 10 and they must be made to take their positions around with the persons with whom they are mingled or in the line.
7. The suspects should not be made to stand together.
8. The Magistrate or other person should satisfy that there are no other persons or police officer at the time of TIP.
9. The witnesses are kept out of view from the premises where the parade is taking place and that it is not possible to communicate with them by signals or other communications.
10. If a witness makes a statement, it can be recorded.
11. Further details which took place at the time of identification should be recorded in the proceedings.
12. After the identification of one witness is over, care should be taken to see that the witness does not mingle or communicate with other witness for whom identification parade is yet to be conducted.

13. If the identification by one witness is over, the whole parade will be re- shuffled and the accused can take different positions.

14. If the accused is willing to change their dress, they should be allowed to do so.

15. If any accused makes any objection, it should be recorded.

16. If there is any visible marks available on the accused, which are likely to facilitate his identification, then it is the duty of the personnel conducting the investigation either to cover up such marks or mix that accused with several other persons having similar marks, failure to take this precaution is sufficient to take away the value of the identification. After the completion of identification parade and drawing up all the proceedings, a certificate must be appended duly signed by the Magistrate or the panchayathdars, as the case may be.

17. The accused generally will not demand for Test of Identification Parade, but if any such demand is made by the accused, the police should arrange the same.

18. Mixing of suspects and innocent persons [non-suspects]: The proper way to hold identification proceedings is to put up each suspect seperately for identification mixed with as large a number of innocent men as possible, in any case not less than 9 or 10.

19. Concealment of distinctive marks: The covering of marks should be with reasonable limits and should not be carried out to such an extent as to disfigure the face or to make its identification practically impossible or extremely difficult and thereby defeat the very object of identification[29].

20. Same age group and of similar built and appearance: The suspect should be mixed up with persons of the same age group and of similar built and appearance.

RULE 34 OF CRIMINAL RULES OF PRACTICE:- IDENTIFICATION PARADES

In conducting identification parades of suspects, the Magistrate shall observe the following rules:

[i] (a) The Police should send a requisition for holding identification parade by the Magistrate as nominated by the Sessions Judge. On such requisition, the Magistrate shall conduct the identification parade as expeditiously as possible.

[29] AIR 1959 All 504, State v. Madanlaljaggi

(b) Where bail application is pending for the release of the accused and on being informed so by the Police Officer, the Magistrate shall as far as possible fix a date earlier to the date of arguments on the bail application and hold the identification parade.

[ii] (a) As far as possible, non-suspects selected for the parade shall be of the same age, height, general appearance and position in life as that of the suspects [accused]. Where a suspect wears any conspicuous garment, the Magistrate conducting the parade shall, if possible, either arrange for similar wear to others or induce the suspected person to remove such garment.

(b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the persons present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.

[iii] (a) The witnesses who have been summoned for the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.

(b) Before a witness is called upon to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify. He shall also be asked to state the marks of identification by which he can identify the suspects.

(c) Each witness shall be fetched by a peon separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting to see the persons paraded.

[iv] Every circumstance connected with the identification including the act if any attributed to the person who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not. Particularly any objection by any suspect to any point in the proceeding shall be recorded.

RULE 35 : IDENTIFICATION OF PROPERTY:-

1. Identification parades of properties shall be held in the Court of the Magistrate where the properties are lodged.

2. Each item of property shall be put up separately for the parade. It shall be mixed up with four or five similar objects.

3. Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not be allowed to communicate with the witness not yet called in.

JUDICIAL PRECEDENTS ON TIP:-

In the case of **Dana Yadav v. State of Bihar[30],** the Hon'ble Supreme Court held that the purpose of identification of accused in TI parade, though a primary evidence, but not substantive one. Such evidence is used to corroborate the evidence regarding identification of accused by witnesses before court, which is a substantive evidence.

Holding of TIP, when accused is known to the witnesses, is useless. If, however, accused files a petition before court for holding Tl parade claiming that he was not known to the witnesses, court has to find out bona fides of the claim of the accused. If it finds the claim to be bona fide and not a mere pretence, it may allow accused's prayer to hold TI parade. But if it finds otherwise, question of granting such prayer would not arise

Even if Tl parade is not held and witnesses identify the accused for the first time before court, evidence regarding identification in court does not become inadmissible and cannot be discarded on ground of not being preceded by Tl parade, when court finds the same to be trustworthy. But evidence of identification of accused before court should not, ordinarily, form the basis of conviction unless corroborated by previous identification in T parade or any other evidence, though there are exceptions to this rule. Further identification before court should not normally be relied upon if the name of accused is neither mentioned in FIR or before police.

In the case of **Malkhan Singh and others v. State of M.P.[31],** it was held the by the Hon'ble Supreme Court that the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn

[30] (2002) 7 SCC 295
[31] (2003) 5 SCC 746

testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. But failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The identification parades belong to the stage of investigation, and there is no provision in the CrPC which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. These parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.

In the case of **Rapani Laxman And Etc. vs State Of A.P.[32],** it was held by the Andhra High Court that it is clear from Clause (ii)(a) that the non-suspects to be selected for the parade shall be of the same age, height, general appearance and position in life as that of the accused. It is also mentioned in Clause (ii)(b) that the accused shall be allowed to select his own position and should be expressly asked, if he has any objection to the persons present with him or the arrangements made. It is also clear from Clause (i)(b) that the identification parade has to be conducted in case of an application pending for the release of the accused on bail before the arguments are completed. It is nowhere stated under Rule 34 that one parade can be conducted for all the accused. What is contemplated under Rule 34(ii)(a) is non-suspects selected for the parade shall be of the same age, height, general appearance and position in life as that of the accused. If there were several accused, they cannot select non-suspects of the same age, same height and the general appearance. Hence the only interpretation that can be put on to Rule 34 is that a separate test identification parade has to be conducted by the Magistrate for each of the accused. I am of the considered view that Rule 34 does not contemplate conducting

[32] 2004 CriLJ 136

common parade for all the accused. It is a fit case where directions have to be issued to all the Magistrates. Hence the Registry is directed to instruct all the Magistrates to conduct separate identification parades for each of the accused, so that it will be in accordance with Rule 34 of Criminal Rules of Practice and Circular Orders, 1990. It is not stated in this Rule that the suspects and non-suspects must be in the ratio of 1:5. It should be left to the discretion of the Magistrate and he shall only choose sufficiently large number for mixing up some suspects with non-suspects.

In the case of **Iqbal and another v. State of Uttar Pradesh**[33]**,** it was held by the Hon'ble Supreme Court that, evidence of identification in TIP is not substantive evidence. Conviction cannot be based solely on identification of accused by witnesses in TIP. Prosecution has to adduce reliable substantive evidence connecting accused with crime to prove offence beyond reasonable doubt. Furthermore, in present case, incident happened on new moon night (amavasya), when it was pitch dark. It is unbelievable that witnesses, who were in panicky state and standing at a distance of 3½ yd and 5-6 yd, hiding themselves behind walls in order to save themselves, could have seen actual faces of accused persons just by flash of torchlights on their faces and in light of lantern. It is doubtful whether witnesses would have gained an enduring impression of identity of accused. Hence, identification of appellants by the witnesses has to be viewed with caution and the court is to look for corroboration strengthening the identification, which is absent in present case. Hence, conviction of both appellant-accused under S. 396 IPC, reversed.

Generally speaking, accused cannot demand TIP as a matter of right but if demanded, never turn down such demand. If the prosecution turns down the request of the accused for identification, it runs the risk of the veracity of the eye witnesses being challenged on that ground, as held in **Lajjaram v. State**[34]**.**

In the case of **Vijay v. State of M.P.**[35]**,** it was held that the test identification is a part of the investigation and is very useful in a case where the accused are not known beforehand to the witnesses. It is used only to corroborate the evidence recorded in the court. Therefore, it is not substantive evidence. The actual evidence is what is given by the witnesses in the court."

[33] (2015) 6 SCC 623
[34] 1955 Crl.L.J. 1547.
[35] (2010) 8 SCC 191

In the case of **Kunjumon alias Unni v. State of Kerala[36],** it was held by the Hon'ble Supreme Court that failure to hold a TIP is not fatal to prosecution case. But trial judge will need to be circumspect in accepting identification of an accused by a witness in court if accused is a stranger to the witness.

In the case of **S v. Sunil Kumar and another[37],** it was held by the Hon'ble Supreme Court that what is substantive evidence is identification of accused in court by a witness. Prior identification in TIP is used only to corroborate identification in court. Holding of TIP is not rule of law but rule of prudence. Normally, identification of accused in TIP lends assurance so that subsequent identification in court during trial could be safely relied upon. However, even in absence of such TIP, identification in court can in given circumstances be relied upon, if witness is otherwise trustworthy and reliable. Herein, appellant victim was subjected to sexual intercourse during broad daylight. By very nature of offence, close proximity with offender (Respondent 1) would have certainly afforded sufficient time to imprint upon her mind, identity of offender. Her testimony is completely trustworthy and reliable. In such circumstances, there was nothing wrong or exceptional in she identifying accused in court for the first time. Affirmation by High Court, of the view taken by trial court while acquitting respondent-accused, that since no TIP was arranged, identification by appellant for the first time in court was not sufficient, not justified. Acquittal of respondent-accused reversed and he is convicted under S.376(1) IPC.

In the case of **Hemudan Nanbha Gadhvi v. State of Gujarat[38],** held that identification in the dock, generally speaking, is to be given primacy over identification in TIP, as the latter is considered to be corroborative evidence. But it cannot be generalised as a universal rule, that identification in TIP cannot be looked into, in case of failure in dock identification. Much will depend on the facts of a case. If other corroborative evidence is available, identification in TIP will assume relevance and will have to be considered cumulatively.

In the case of **Raja v. State by the Inspector of police and Govindraj and others v. State by the Inspector of police, Singarapattai police station, Krishnagiri District[39],** it was held

[36] (2012) 13 SCC 750
[37] (2015) 8 SCC 478
[38] (2019) 17 SCC 523
[39] (2020) 15 SCC 562

that there is no provision in CrPC which obliges the investigating agency to hold, or confers a right upon the accused to claim a TIP. The evidence of TIP merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity. Substantive evidence is the evidence of identification in court. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The court can take into account the fact that during investigation the photograph of the appellant was shown to the witness and he identified that person as the one whom he saw at the relevant time. There is no hard-and-fast rule about the period within which the TIP must be held from the arrest of the accused. In certain cases, Supreme Court considered delay of 10 days to be fatal while in other cases even delay of 40 days or more was not considered to be fatal at all.

In the case of **Gaddam Vijaya Bhaskara Reddy and others v. State of A.P.[40],** the Hon'ble High Court of Andhra Pradesh relying on the decision of the Hon'ble Supreme Court in the case of **Jadunath Singh v. State of U.P.[41],** held that even after filing of charge sheet, test identification parade can be conducted. It was also held that if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously the prosecution would run the risk of losing its case. It seems to us that if there is any doubt in the matter the prosecution should hold an identification parade specially if an accused says that the alleged eyewitnesses did not know him previously. It may be that there is no express provision in the Code of Criminal Procedure enabling an accused to insist on an identification parade but if the accused does make an application and that application is turned down and it transpires during the course of the trial that the witnesses did not know the accused previously as pointed out above the prosecution will unless there is some other evidence, run the risk of losing the case on this point. It further held that whenever such a request is made to the Court that Court should order identification parade.

[40] 1999 SCC Online AP 880
[41] (1970) 3 SCC 518

The Hon'ble Madras High Court in the case of **Murugasamy v. State rep by Inspector of Police, Karumanthampatty Police Station, Coimbatore District and another,**[42] held that

- An application for conduct of Test Identification Parade, shall be made under Section 54A of the Code by the Investigating Officer, to the Court having jurisdiction.
- On such application being made, the Court may direct the person so arrested to subject himself to identification.
- The Court shall make a request to the CMM/CJM of the District to nominate a Magistrate, other than the Magistrate who has jurisdiction of the case, to conduct the Test Identification Parade.
- Upon receipt of such request, the CMM/CJM shall immediately pass orders nominating a Magistrate, other than the jurisdictional Magistrate, to conduct Test Identification Parade and inform the same to the Magistrate so nominated and to the Investigating Officer.
- The Magistrate so nominated shall conduct Test Identification Parade and after preparing the Test Identification Parade report, he shall arrange to take two photocopies of the said report under his direct supervision and certify the same as true copies.
- He shall send the Test Identification Parade report in original in a sealed cover to the jurisdictional Court through a special messenger or by registered post with acknowledgment due.
- One certified photocopy of the Test Identification Parade report shall be furnished by the Magistrate to the Investigating Officer of the case free of cost, immediately, with a specific direction to the latter to use it for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed.
- The other certified photocopy of Test Identification Parade report shall be kept in a sealed cover in the safe custody of the Magistrate.

In the case of **Gireesan Nair and others v. State of Kerala**[43]**,** it was held by the Hon'ble Supreme Court that in cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the

[42] 2017 SCC Online Mad 37658
[43] (2023) 1 SCC 180

witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence.

If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless.

It is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. But reasons should be given as to why there was a delay.

Undue delay in conducting a TIP has a serious bearing on the credibility of the identification process. Though there is no fixed timeline within which the TIP must be conducted and the consequence of the delay would depend upon the facts and circumstances of the case, it is imperative to hold the TIP at the earliest. The possibility of the TIP witnesses seeing the accused is sufficient to cast doubt about their credibility.

When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of Section 162 of the Code.

The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. Second, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Third, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime.

If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sine qua non that the non-suspects should be of the same age-group and should also have similar physical features (size, weight, colour, beard, scars, marks, bodily injuries, etc.) to that of the suspects. The officer concerned

overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality.

ALIBI

The term “alibi” is a Latin word, which means “elsewhere”. It is a rule of evidence recognized by Section 11 of the Evidence Act, which reads as follows:-

“When facts not otherwise relevant become relevant.—Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.”

Illustration:-

The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

It is used when the accused takes the plea that when the occurrence took place he was elsewhere and thus not possible for him to be present at the place of occurrence. In such a situation the prosecution has to discharge the burden satisfactorily. Once the prosecution is successful in discharging the burden it is incumbent on the accused who takes the place of alibi to prove it with absolute certainly. Alibi is not an exception envisaged in the IPC or any other law. However it cannot be the sole circumstance to bare conviction.

When the accused takes plea of alibi, as per Section 103 of this Act, the burden of proof lies on him. If a person is charged with murder and he takes the plea of alibi, he has to prove that he was elsewhere and if that person succeeds in establishing plea of alibi he will be entitled to an acquittal. It is pertinent to note here that the plea of alibi has to be taken at the earliest opportunity and the same has to be proved to the satisfaction of the court.

To establish the defence of plea of alibi, the following requirements to be fulfilled:-

- A crime must have been committed that is punishable by law.
- The accused must be charged with committing the crime.

- The accused must prove that they he was not present at the scene of offence when the crime was committed.
- The accused must demonstrate that he was present at a different location which would have made it impossible for him to be present at the crime scene at that point of time.
- The defence of plea of alibi must be raised at the earliest point of time in the judicial proceeding.

JUDICIAL PRECEDENTS

In the case of **Binay Kumar Singh v. State of Bihar[44],** it was held that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and as participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.

[44] (1997) 1 SCC 283

In the case of **Darshan Singh v. State of Punjab**[45]**,** it was held by the Hon'ble Supreme Court held that word alibi means "elsewhere". Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC. It is rule of evidence recognised under S. 11, Evidence Act. However, plea of alibi taken by defence is required to be proved only after prosecution has proved its case against accused.

In the case of **Surinder Grover v. State (Delhi Admn.)**[46]**,** accused 'S' pleading that on the day of occurrence he was under treatment as an out-patient in the hospital at another place and Out-patient ticket not produced but the medical officer deposing that two persons named 'S' were treated, such evidence was held not conclusive. On a much later date the accused sending to the Magistrate two telegrams seeking adjournment on the ground of serious illness. In absence of any documentary evidence supporting the allegation of illness or disclosing the nature of illness, lower courts rightly decided that alibi was not established.

In the case of **Dudh Nath Pandey v. State of U.P.**[47]**,** it was held that the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.

On the standard of proof, it was held in **Mohinder Singh v. State**[48] that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard.

In the case of **Jumni and others v. State of Haryana**[49]**,** it was held that when an alibi is set up, burden is on accused to lend credence to defence put up by him. However, approach of court should not be such as to pick holes in defence case. Defence evidence should be tested like any other testimony, always keeping in mind that a person is presumed innocent until found guilty. High Court erred in proceeding on basis that accused P and R who had set up plea of alibi were required to prove their innocence, since it was for prosecution to prove their guilt. As far as standard of proof is concerned, it must be the same as applied to prosecution evidence

[45] (2016) 3 SCC 37
[46] 1993 SCC (Cri) 1030
[47] (1981) 2 SCC 166
[48] AIR 1953 SC 415
[49] (2014) 11 SCC 355

i.e. it should be a reasonable standard. On facts held, alibi witnesses had made out a strong case of demonstrating improbability of P and R being involved in incident of beating deceased at about 12.00 noon on 4-4-1996, of stopping her at about 3 p.m. from going to police station to lodge complaint and setting her on fire at about 7.30 a.m. on 5-4-1996. Plea of alibi set up by P and R deserves acceptance and hence, their conviction is unsustainable.

In the case of **Jayantibhai Bhenkarbhai v. State of Gujarat[50],** it was held that it is duty of court while appreciating evidence in a case involving plea of alibi, that plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. In view of S. 103, the burden of proof on the accused is undoubtedly heavy. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court. Considering the facts and circumstances of the case and keeping in view the nature of the accusations made against the accused-appellant and weighing the same against the overwhelming defence evidence adduced by him in support of his plea of alibi, held, a reasonable doubt was created in the prosecution case so far as the participation of the appellant in the incident was concerned. Hence, appellant's conviction under Ss. 302/149 and Ss.147/148/452 IPC, set aside.

[50] (2002) 8 SCC 165

CONCLUSION

From the above discussion it can be concluded that though hearsay evidence is no evidence under the Indian Evidence Act, Section 6 of the Act is an exception to the general rule and makes a statement relevant though hearsay if it forms part of same transaction. Section 8 of the Act makes facts which prove motive, preparation, previous and subsequent conduct relevant. The evidence of test identification parade merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity. When accused takes plea of alibi, burden lies on him to prove that he was elsewhere and not present at the scene of occurrence at that time and strict proof is required for establishing the plea of alibi.