

I WORKSHOP – 2017-18

TOPIC – 3

CONDUCT OF TEST IDENTIFICATION PARADES FOR SUSPECTS AND PROPERTY RECOVERED DURING INVESTIGATION

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CONDUCT OF TEST IDENTIFICATION PARADES FOR SUSPECTS AND PROPERTY RECOVERED DURING INVESTIGATION

Paper Presented by

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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.

Types of Identification Parades:

Identification parades are held in criminal cases to identify

- i] the persons living or dead known or unknown
- ii] articles including fire arms
- iii] 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 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.

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.

Identification of person and property:-

The identification of person and property may include their identity during the course of investigation, in test of identification parade and the identification during the trial. With regard to the probative value, the identification during the trial have more evidentiary value when compared with the former.

The identity of a person may be done by observations of the voice, gait, special and unique feature, utterances, finger prints, foot prints, photographs and even by family likeness or resemblance.

Test identification parade - self incrimination: -

Article 20(3) of the Constitution of India is also not violated by compelling an accused to stand up and show his face for the purpose of identification. It does not amount to giving of testimony as to the final facts. He can also be ordered to disclose any scar or mark on his body for the purpose of identification.

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 self same witnesses cannot really be taken into consideration against the accused, what to speak of basing a conviction of the accused on such evidence. In *Hasib v. State of Bihar*, reported in 1972 *Crl.L.J.* 233 (SC), the aspect of identification of accused is clearly explained.

Object of Test of Identification Parade:-

Identity of Accused: 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.

Identification parade is necessary to help the investigation officer to concentrate his focus and ambit of suspicion to a few only, which eliminates

waste of time and energy, and to specify the investigating officer regarding the identity of suspects/accused, identity of stolen property.

During the course of investigation, witnesses may say that they will identify the culprits, if they were shown to them, they will identify the properties, if the properties are produced before them. Therefore, the necessity of holding of test of identification parade during the investigation is necessary to test the memory and veracity of the witness does arise. Test of identification parade is integral part of investigation. In regard to the admissibility of test of identification parade, they are relevant by virtue of Section 9 of Indian Evidence Act. Hon'ble Supreme Court of India was pleased to opine in **Budhasen V. State of A.P. 1970 Crl.L.J. 1149 SC**, that the T.I.P. has two fold objectives:

[1] Establishing identity of the accused and corroborating the identity of witness before trial.

[2] TIP also tests the memory of the witnesses.

The identity of an offender in a criminal trial assumes a vital importance. In every case the crime is not disputed but the person who committed the offence is disputed. Therefore, the identity of accused becomes relevant. In cases where there is an undisputed evidence the suspect was caught red handed while committing crime or in cases where accused was well acquainted with the witnesses or victims, the question of identity becomes rather irrelevant, but in cases where the accused is not known to the victim or witnesses and his name is not mentioned in the FIR, the question of identity assumes paramount importance.

In addition to the evidence regarding presence of accused, identity of an unknown suspect also becomes equally important. To establish identity, investigating officer has to take up recourse to time tested and common practice T.I.P. Perusal of various decisions of Hon'ble Supreme Court of India leads to a conclusion that T.I.P. has a twofold objective as stated supra. It was held in a leading case of **Ramkrishnan v. State of Bombay State, A.I.R. 1955 S./C. 104 page 19** that

“..these parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject matter of the offence or to identify the persons who are concerned in the offence”.

In **Budhsen vs. State of U.P. 1970 Crl.L.J. 1149** it was held that “They are generally held during the course of investigation if the primary object enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the Investigation Officers

of the bonafides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court”.

Hence, TIP provides evidence regarding identity of the offender as well as evidence for corroborating the evidence of the witness before the court.

There is one more objection of TIP. It tests the memory and ability of the witness who claims to have seen a person previously. **Devlin Committee** has put this aspect in this way.

“The **object** of the identification parade is to test the ability of a witness to pick out from a group of persons, if he is present, who the witness has said that he has seen previously on a specified occasions”.

To sum up we can quote the views of Allahabad High Court in **Asarif V. State, AIR 1961 All 153** ;

“The identification is always a matter of opinion or belief. With regard to criminal offence is identification has a twofold object; first to satisfy the investigating authorities, before sending a case for trial to court, that the person arrested but not previously known to the witnesses was one of those who committed the crime, or the property concerned was the subject of such crime. Second, to satisfy the court that the accused was the real offender or the article was concerned with the crime which is being tried”.

During the investigation of a crime the police has to hold identification parades for the purpose of enabling witnesses to identify the properties which are the subject matter of the offence or to identify the persons who are concerned therein. They have thus a **two fold objects**; First, to satisfy the investigating authorities that a certain person not previously known to the witnesses was involved in the commission of the crime or a particular property was the subject matter of the crime. It is also designed to furnish evidence to corroborate the testimony which the witness concerned renders before the court.

When the accused is not previously known to the witness concerned, then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigation agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in

court at the trial. From this point of view, it is a matter of great importance both for the investigating agency and for the accused.

Holding of test identification parade is one of the important steps during the investigation of a criminal case. In ***Hasib V. State of Bihar 1972 Crl.L.J. 233 SC*** it is held that;

“Now, identification parades are ordinarily held at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been concerned in the offence. Such tests or parades belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. It is accordingly desirable that the test parades are held at the earliest possible opportunity. Early opportunity to identify also tends to minimize the chances of the memory of the identifying witness fading away by reason of long lapse of time. But much more vital factor in determining the value of such identification parades is the effectiveness of the precaution taken by those responsible for holding them against the identifying witnesses having an opportunity of seeing the persons to be identified by them before they are paraded with the other persons and also against the identifying witnesses being provided by the investigating authority with other unfair aid to assistance so as to facilitate the investigation of the accused concerned”.

To sum up, in a criminal offence identification serves a twofold objects; firstly it is meant to satisfy the investigating authorities before sending up a case for trial to court that the person arrested, but not previously known to the witness, was one who committed the crime, or the property concerned was the subject of such crime; secondly it is to satisfy the court that the accused was a real offender or the article was concerned with the crime which was under trial, Identification proceedings, therefore, are as much in the interest of prosecution as in the interest of the accused.

When test of identification parade should be considered necessary to be held:

In case an identity of an accused is disputed, when the victim did not know the accused before the occurrence of crime test of identification is very much required. Where the culprits are unknown to the witnesses but the witnesses say in course of their examination by the Investigating Officer that they would be able to recognize some of the criminals if shown, a test of

identification parade of the suspects ought to be held at the earliest possible opportunity whenever possible before a Magistrate as held in ***Biray Singh v. State, 1953 Crl.L.J., 1817 (Allahabad)***.

The following points to be taken into consideration to decide for test of identification parade;

1. The accused is not known to the witness or victim before the occurrence of crime.
2. When the witnesses gave vivid description of the accused in their statements or in the F.I.R.
3. When the witnesses say in the examination by the investigating officer that they would be able to recognize some of the criminals.
4. When the accused was seen for a sufficient time by the witnesses and picked up his distinctive features etc., in order to recollect later on.
5. Surrounding circumstances like condition of light etc., were sufficiently favourable showing features of accused.
6. When there were peculiar features with respect of the accused and a mention was made in the FIR or statements etc.

TIP is a must for unknown accused: Where the culprits are unknown to the witnesses but the witnesses say in course of their examination by the Investigating Officer that they would be able to recognize some of the criminals, if shown, a test of identification parade of the suspects ought to be held at the earliest possible opportunity whenever possible before a Magistrate, as held in ***Biray Singh v. State, 1953 Crl.L.J. 1817 (Allahabad)***.

Non-holding of test of identification parade: Failure to hold Test of Identification Parade is not fatal in all cases. In *Awadh Singh V. State, 1954 Crl.L.J., 1546 (Patna)* it was held that non-holding of a test of identification parade, though may not be a ground to vitiate the trial, but is undoubtedly a very important feature in considering the trial, but is undoubtedly a very important feature in considering the credibility of the witness on the point of identification.

In *Khalak Singh v. State of M.P. 92, Crl.L.J. 1150* it was held that the purpose of the identification is to test the statement of witnesses made in the court, which constitutes substantive evidence, it being the safe rule that the testimony of the witness in court as to the identity of the accused requires corroboration in the form of an earlier identification proceedings. Such parades, which belongs to the investigation stage, serve to provide the authority with material to assure themselves if the investigation is proceeding on right lines and therefore it is desirable to hold them at the earliest opportunity. A further reason is that an early opportunity to identify also tends to minimize the chances of memory of the identifying witnesses fading away due to long lapse of time.

In ***Rameshwar Singh v. State of Jammu and Kashmir, AIR 1972 SC 102***, it was held that identification of accused by the witnesses soon after the former's arrest is of vital importance in the interest of justice on the fair play, both to the accused and the prosecution.

Can accused demand TIP:-

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*, 1955 Cr.L.J. 1547.

In *Ashrafi v. State* AIR 1961 All. 153 it was held that it some times happens that witnesses claim to know an accused person, but he contends that they do not know him and applies to court for holding of his test identification to check the veracity of the witness. In *State v. Gulam Mohiuddibn*, AIR 1951 All. 475 it was held that the Court could not order the holding of an identification because there was no provision in the Cr.P.C. authorizing it to do so, but it was observed that it could in its discretion satisfy itself by asking the accused to stand among other persons present in court and then call upon the witnesses to identify him.

But in the later case of *Lijjaram v. State*, AIR 1955 All. 671 a Division Bench of this court went further and held that although the accused has no right to claim identification if the prosecution turns down his request for identification they run the risk of the veracity of the eye witnesses being challenged on that ground, and that the prosecution would be exposing the claim of such witnesses to the criticism that the test identification was shirked because the witnesses would not have been able to stand the test. It therefore appears to us that if the court reasonably comes to the conclusion that there may be force in what the accused contends, it should direct the holding of regular test identification in order that the witnesses veracity may be tested. We have no doubt that the court has ample power under Sec. 540 Cr.P.C. (new section 311 Cr.P.C.) to secure this evidence.

In *Awadh Singh and others v. State(Patna)* AIR 1954 Patna 483 it was held that the accused may or may not have legal right to claim for test identification and the holding of test identification but it is a rule of prudence. Test identification parade should be held personally when the accused person definitely assert that they were unknown to the prosecution witnesses either by name or by face and they requested the authorities concerned to have the test of identification parade held.

Police officer should not be present at the time of identification parade, whether it is of the accused or of the properties. If it is conducted in the presence of police officer, it amounts to a statement within the meaning of Sec. 162 Cr.P.C, and becomes inadmissible in evidence. It cannot be then used for the purpose of corroboration.

Do's and Dont's – in TIP

Do's.

1. The Test of 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. Identifier should also identify accused or property in Court, as Identification proceedings are not substantive evidence,
5. Identification of persons differs from identification of property.

Dont's

1. There should not be any delay in arranging of TIP, after arrest of accused since delay may lead to grant of bail to accused. Even if accused is released on bail, he has to attend the TIP but its sanctity will be lost.
2. The TIP should not be held by police, as it is hit by section 162 Cr.P.C.
3. There is no bar that private person should not conduct TIP but it is not advisable.
4. Do not show the suspects to the witnesses.
5. Do not show the photographs of the suspects to the witnesses.
6. The police officer should see that the photographs of the accused is not published in the news papers.
7. Do not allow the presence of police officer during the TIP.

General precautions and procedures hold by the Magistrate during the TIP.

1. After making all arrangements, police should completely leave the place to conduct actual identification proceedings.
2. 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.
3. The suspects should not be made to stand together.
4. The Magistrate or other person should satisfy that there are no other persons or police officer at the time of TIP.
5. 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.
6. If a witness makes a statement, it can be recorded.

7. Further details which took place at the time of identification should be recorded in the proceedings.
8. 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.
9. If the identification by one witness is over, the whole parade will be re-shuffled and the accused can take different positions.
10. If the accused is willing to change their dress, they should be allowed to do so.
11. If any accused makes any objection, it should be recorded.
12. 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.
13. 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.

Other precautions:

- (a) Mixing of suspects and innocent persons [non-suspects]:

The proper way to hold identification proceedings is to put up each suspect separately for identification mixed with as large a number of innocent men as possible, in any case not less than 9 or 10.

When several suspects are required to be identified and they are put up for identification separately, care should be taken to see that the innocent persons mixed up or changed with every change of suspect, for otherwise the benefit of holding separate identification proceedings would vanish -{AIR 1953 All. 385}.

- (b) 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 (AIR 1959 All 504, State v. Madanlaljaggi).

- (c) 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.

Criminal Rules of Practice and Circular Orders, 1990 :

Rule 34 : 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.

(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.

MODEL PROCEEDINGS OF TEST OF IDENTIFICATION PARADE.

**PROCEEDINGS OF TEST IDENTIFICATION PARADE CONDUCTED BY
Sri G. Prabhakar,, , I ADDL. JUDL. FIRST CLASS MAGISTRATE,, TENALI**

ON 08-01-2016

IN

CR.NO.122 OF 2015 OF DUGGIRALA PS,

at DISTRICT JAIL, GUNTUR.

PROCEEDINGS COMMENCED AT 10-30 A.m. ON 08-01-2016.

The Inspector of Police, Tenali Rural Circle submitted a requisition on 23-12-2015 to conduct test identification parade of the suspects

1. Samudrala Pavan Kumar @ Laddu s/o Krupavaram age 23 years, caste Mala, opp. Ambedkar statue Ithanagar, Tenali.
2. Ganjinapalli Subhani s/o Venkateshwarlu aged 23 years caste Rajaka, NSSM High School road, Ithanagar, Tenali.
3. Addanki Sudhakar @ Aritikaya s/o Srinu age 21 years, caste. Rajaka, NSSM High School Road, Ithanagar, Tenali.
4. Thumati Nagaraju @ Nani @ Killilu so Rambabu age 19 years, caste.Rajaka , NSSM High School Road, Ithanagar, Tenali.

Police returned summons which were served to witnesses. The following witnesses are present out side the Sub-jail premises.

L.W1: Ravula gopi s/o Venkateshwarlu aged 30 years, caste. Telaga, MLAs bazar, Chenchupet, Tenali town.

L.W:7 Avula Rajashekar Reddy s/o Brahma Reddy aged 28 years,caste. Reddy, Flat No. 305, Manasa Apartments of Chandramoulinagar, 6/2, Guntur.

L.W:8 Mannava Sai Krishna s/o Srinivasa rao aged 21 years, caste. Kamma, D.No.2-230, Pulladigunta village, Vatticherukuru mandal.

I selected the carridor of Old jail in the premises of District-Jail, Guntur, in front of canteen articles room, to examine the witnesses. Then I sent my office subordinate Sk.Kareemulla, to bring the said witness Ravula Gopi.

I questioned the witness as follows:

1. What is your name?

A. Ravula Gopi

2. What is your father's name?

A. Venkateshwarlu

3. How old are you?

A. 30 years

4. Where are you residing?

A. Tenali Village

5. What is your designation?

A. cook

6. Can you identify the persons who have committed offence?

A. I can identify by seeing them.

7. Do you admit prior acquaintance with them?

A. NO.

8. Can you give any specific identification particulars of those persons?

A. NO.

Identification marks of witness:

1. A mole on the right side of stomach
2. A mole on the left side of stomach.₂

SIGNATURE OF WITNESS No.1

After sending witness No.1 to a safe place, I sent my office subordinate Sk.Kareemulla, to bring the second witness Avula Rajashekar Reddy.

I questioned the witness as follows:

1. What is your name?

A. Avula Rajashekar Reddy

2. What is your father's name?

A. Brahmareddy

3. How old are you?

A. 28 years

4. Where are you residing?

A. Guntur Village

5. What is your designation?

A. Private employee

6. Can you identify the persons who have committed offence?

A. I can identify by seeing them.

7. Do you admit prior acquaintance with them?

A. No. I saw them on the date of incident only.

8. Can you give any specific identification particulars of those persons?

A. Nil

Identification marks of witness:

1. A mole above right eye brow.

SIGNATURE OF WITNESS No.2

After sending witness No.1 to a safe place, I sent my office subordinate Sk.Kareemulla, to bring the third witness.

I questioned the witness as follows:

1. What is your name?

A. Mannava Sai Krishna

2. What is your father's name?

A. Srinivasa Rao

3. How old are you?

A. 21 years

4. Where are you residing?

A. Pulladigunta Village of Vatticherukuru mandal

5. What is your designation?

A. Student

6. Can you identify the persons who have committed offence?

A. I can identify by seeing them.

7. Do you admit prior acquaintance with them?

A. No. I saw them on the date of incident only.

8. Can you give any specific identification particulars of those persons?

A. Nil

Identification marks of witness:

1. A mole on left hand near joint.

SIGNATURE OF WITNESS No.3

Then the jailer produced the suspects

1. Samudrala Pavan Kumar @ Laddu s/o Krupavaram age 23 years, caste Mala, opp. Ambedkar statue Ithanagar, Tenali.
2. Ganjinapalli Subhani s/o Venkateshwarlu aged 23 years caste Rajaka, NSSM High School road, Ithanagar, Tenali.
3. Addanki Sudhakar @ Aritikaya s/o Srinu age 21 years, caste. Rajaka, NSSM High School Road, Ithanagar, Tenali.
4. Thumati Nagaraju @ Nani @ Killilu so Rambabu age 19 years, caste.Rajaka , NSSM High School Road, Ithanagar, Tenali.

The Jailer also provided the following non-suspects having similar feature of height and built of the suspects:

1. J. Praveen s/o Mathaiah aged 20 years, r/o Guntur.RP No. 9780.
2. Sk. Moulali s/o Subani aged 20 years, r/o Namburu. RPNo.916
3. A.Ankama rao s/o Yedukondalu aged 20 years r/o Vengalayapalem.RP No.376
4. B.Narendra s/o Amareshwar Rao aged 20 years r/o Kodada. RP No. 819
5. V. Durga Rao s/o Kanakachander Rao aged 20 years r/o Mangalagiri.RP 930
6. K. Yesudasu s/o Subba Rao aged 21 years, r/o Macherla. RP No. 507
7. M.Akbar Basha s/o Basha aged 28 years r/o guntur. RP No. 668.
8. P.Hari s/o Shankar aged 19 years r/o Guntur. RPNo.964.
9. B. Bhaskar s/o Thimmaiah age 20 years r/o Atmakur. RP No. 945.
10. K Ashok s/o Venkateshwarlu, aged 22 years r/o Ponugupadu. RP No. 494.
11. M. Santhosh Kumar s/o Yesubabu aged 22 years r/o Pedavadlapudi. RPNo. 850.
12. K.Sambashiva rao s/o Koteshwar Rao aged 21 years r/o Macherla.RPNo.509.
13. S. Bhanu Prasad s/o Ravi aged 19 years, r/o Nallapadu. RP No.

- 978.
14. V. Chittibabu s/o Sivaiah aged 19 years, r/o Kondapally.RP No. 375
 15. A.SRikanth s/o Mareppa aged 20 years r/o Bhuvanagiri.RP No.438.
 16. G. Ganesh s/o Subbarao aged 24 years r/o Guntur. RP; No. 778.
 17. D.Balakoteshwar rao s/o Nagamalleshwar rao age 22 years r/o Ponnur. RP No.335.
 18. D. Vijaya Sai s/o Venkat Rao aged 23 years r/o Mangaligiri. RP No. 9978
 19. D. Vamshimohan s/o Kananakaraju aged 20 years r/o Pedakakani.RP No. 962.
 20. L.Bharath Kumar s/o Srinivas aged 25 years r/o Tenali. RP No. 927.
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Suspect No.1-Samudrala Pavan Kumar @ Laddu is wearing white colour shirt with lines and a brown pant.

Some of the Non-suspects are wearing shirts of different colours and they are all wearing pants.

The suspect is not in any conspicuous dress. On enquiry the suspect and non-suspects showed their satisfaction in participating in test identification parade and did not raise any objection regarding the arrangements of test identification parade.

No jail guards and unauthorized persons are present at the parade.

I have selected the 1st five non-suspects and asked suspect No.1 (Samudrala Pavan Kumar @ Laddu) to stand in the row with the non-suspects at any place of his choice and I instructed the remaining other non-suspects and suspects to sit aside. The 1st suspect stood at 3rd place in the row from left to right.

(non-suspects are indicated with their serial number 1 to 20 in the row and suspects are indicated as S1, S2 etc, in the above order)

I have made the suspect No.1 mixed with five non-suspects i.e. in 1:5 ratio. Now the row is as follows:

1, 4, S1, 3, 2 and 5 .

Then I have sent process server Mr SK. Kareemulla to bring the first witness Ravula Gopi. He brought the said witness, then I asked the first witness to identify S1.

The witness after looking at the row for about 1 minute identified S1 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATGURE OF WITNESS No.1

Suspect No.2-Ganjinapalli Subhani is wearing red straps colour shirt with lines and a brown pant.

Some of the Non-suspects are wearing shirts of different colours and they are all wearing pants.

The suspect is not in any conspicuous dress. On enquiry the suspect and non-suspects showed their satisfaction in participating in test identification parade and did not raise any objection regarding the arrangements of test identification parade.

No jail guards and unauthorized persons are present at the parade.

I have selected the second five non-suspects and asked suspect No.2 (Ganjinapalli Subhani) to stand in the row with the non-suspects at any place of his choice and I instructed the remaining other non-suspects and suspects to sit aside. The 2nd suspect stood at 3rd place.

(non-suspects are indicated with their serial number 1 to 20 in the row and suspects are indicated as S1, S2 etc, in the above order)

I have made the suspect No.2 mixed with five non-suspects i.e. in 1:5 ratio. Now the row is as follows:

6,7,S2,10, 8 and 9

Then I have sent process server Mr SK. Kareemulla to bring the first witness Ravula Gopi. He brought the said witness, then I asked the first witness to identify S2.

The witness after looking at the row for about 1 minute identified S2 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATURE OF WITNESS No.1

Then I asked the suspect Ganjinapalli Subhani to take his position in the row of his choice. I have made the suspects mixed with five non-suspects i.e. in 1:5 ratio. Now the row is as follows:

S2, 6, 7, 10, 8 and 9

Then I have sent process server Mr SK. Kareemulla to bring the second witness Avula Rajashekar Reddy, who is present out side the jail. He brought the second witness, then I asked the second witness to identify S2.

The witness after looking at the row for about 1 minute identified S2 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATURE OF WITNESS No.2

Ganjinapalli Subhani, second suspect did not change his shirt.

Some of the Non-suspects are wearing shirts of different colours and they are all wearing pants.

I have selected the second five non-suspects [2 to 10] and asked suspect No.2 Ganjinapalli Subhani to stand in the row with the non-suspects at any place of his choice and I instructed the remaining other non-suspects and suspects to sit aside.

I have made the suspects mixed with five non-suspects i.e. in 1:5 ratio. Now the row is as follows:

6, 7, S2, 10, 8 and 9

Then I have sent process server Mr SK. Kareemulla to bring the third witness Mannava Sai Krishna, who is present out side the jail. He brought the said witness, then I asked the witness to identify S2.

The witness after looking at the row for about 1 minute identified S2 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATGURE OF WITNESS No.3

XX
XX

Suspect No.3-Addanki Sudhakar is wearing black colour T-shirt with lines horizontally and a jeans pant.

Some of the Non-suspects are wearing shirts of different colours and they are all wearing pants.

The suspect is not in any conspicuous dress. On enquiry the suspect and non-suspects showed their satisfaction in participating in test identification parade and did not raise any objection regarding the arrangements of test identification parade.

No jail guards and unauthorized persons are present at the parade.

I have selected the third five non-suspects and asked suspect No.3 (Addanki Sudhakar) to stand in the row with the non-suspects at any place of his choice and I instructed the remaining other non-suspects and suspects to sit aside. The 3rd suspect stood at fourth place.

(non-suspects are indicated with their serial number 1 to 20 in the row and suspects are indicated as S1, S2 etc, in the above order)

I have made the suspect No.3 mixed with five non-suspects i.e. in 1:5 ratio. Now the row is as follows:

11, 12,S3, 13,14 and 15.

Suspect No.4-Thumati Nagaraju @ Nani @ Killilu is wearing black colour T-shirt without lines horizontally and a jeans pant.

Some of the Non-suspects are wearing T.shirts of different colours and they are all wearing pants.

The suspect is not in any conspicuous dress. On enquiry the suspect and non-suspects showed their satisfaction in participating in test identification parade and did not raise any objection regarding the arrangements of test identification parade.

No jail guards and unauthorized persons are present at the parade.

I have selected the third five non-suspects and asked suspect No.4 (**Thumati Nagaraju @ Nani @ Killilu**) to stand in the row with the non-suspects at any place of his choice and I instructed the remaining other non-suspects and suspects to sit aside. The 4th suspect stood at first place.

(non-suspects are indicated with their serial number 1 to 20 in the row and suspects are indicated as S1, S2 etc, in the above order)

I have made the suspect No.4 mixed with five non-suspects i.e. in 1:5 ratio. Now the row is as follows:

S4, 16, 17, 18, 19 and 20.

Then I have sent process server Mr SK. Kareemulla to bring the first witness Ravula Gopi. He brought the said witness, then I asked the first witness to identify S4.

The witness after looking at the row for about 1 minute identified S4 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATURE OF WITNESS No.1

Then I asked the suspect **Thumati Nagaraju @ Nani @ Killilu** to take his position in the row of his choice. I have made the suspects mixed with five non-suspects i.e. in 1:5 ratio. S4 stood at sixth place in the row. Now the row is as follows:

18, 17, 16, 20,19 and S4

Then I have sent process server Mr SK. Kareemulla to bring the second witness Avula Rajashekar Reddy, who is present out side the jail. He brought the second witness, then I asked the second witness to identify S4.

The witness after looking at the row for about 1 minute identified S4 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATURE OF WITNESS No.2

Thumati Nagaraju @ Nani @ Killilu , fourth suspect did not change his dress.

Some of the Non-suspects are wearing shirts of different colours and they are all wearing pants.

I have selected the third five non-suspects [16 to 20] and asked suspect No.4 **Thumati Nagaraju @ Nani @ Killilu** to stand in the row with the non-suspects at any place of his choice and I instructed the remaining other non-suspects and suspects to sit aside.

I have made the suspects mixed with five non-suspects i.e. in 1:5 ratio. S4 stood at second place. S4 stood at second place. Now the row is as follows:

18, S4, 16, 17, 19 and 20

Then I have sent process server Mr SK. Kareemulla to bring the third witness Mannava Sai Krishna, who is present out side the jail. He brought the said witness, then I asked the witness to identify S4.

The witness after looking at the row for about 1 minute identified S4 as one of the suspects . Then I instructed the witness to again go to jailers room.

SIGNATGURE OF WITNESS No.3

XX

Then I instructed the witnesses to leave the place and thereby they went away. Then I obtained the signatures/thumb impressions of the non-suspects.

- | | |
|-----|-----|
| 1. | 2. |
| 3. | 4. |
| 5. | 6. |
| 7. | 8. |
| 9. | 10. |
| 11. | 12. |
| 13. | 14. |
| 15. | 16. |
| 17. | 18. |
| 19. | 20. |

Then I enquired the suspect 1 as follows:

1. Do you want to say anything?

A. The suspect S1 expressed his satisfaction over the manner of conducting of Test Identification Parade. But he reported that when he was arrested and kept in Vemuru police station, the police have shown him to the witnesses and also took his photograph, so the witness is identifying him in the parade.

Identification marks of S1/Samudrala Pavan Kumar @ Laddu.

1. A mole on right palm
2. A mole on left index finger

SIGNATGURE OF S1

(Samudrala Pavan Kumar)

Then I enquired the suspect No.2 Ganjinapalli Subhani as follows:

1. Do you want to say anything?

A. The suspect S2 expressed his satisfaction over the manner of conducting of Test Identification Parade. But he reported that when he was arrested and kept in Vemuru police station the police have shown him to the witnesses and also took his photograph, so the witness is identifying him in the parade.

Identification marks of S2/Ganjinapalli Subhani

1. A mole on left hand in between index and thumb fingers on back side
2. A mole on the back at left collar bone.

SIGNATGURE OF S2

(Ganjinapalli Subhani)

Then I enquired the suspect No.3 Addanki Sudhakar @ Aritikaya as follows:

1. Do you want to say anything?

A. The suspect S3 expressed his satisfaction over the manner of conducting of Test Identification Parade. But he reported that when he was arrested and kept in Vemuru police station the police have shown him to the witnesses and also took his photograph, so the witness is identifying him in the parade.

Identification marks of S3 Addanki Sudhakar @ Aritikaya

1. A mole on right hand near thumb finger
2. A mark on left side of chest..

SIGNATGURE OF S3

(Addanki Sudhakar @ Aritikaya)

Then I enquired the suspect No.4 Thumati Nagaraju @ Nani @ Killilu as follows:

1. Do you want to say anything?

A. The suspect S4 expressed his satisfaction over the manner of conducting of Test Identification Parade. But he reported that when he was arrested and kept in Vemuru police station the police have shown him to the witnesses and also took his photograph, so the witness is identifying him in the parade.

Identification marks of S4/Thumati Nagaraju @ Nani @ Killilu

1. A mole on back of shoulder
2. A mole on left side of ribs.

SIGNATGURE OF S4

(Thumati Nagaraju @ Nani @ Killilu)

Proceedings closed at 11.00 AM, typed by me personally on my personal laptop on this the 8th day of January, 2016.

Paper Presented by

Sri G.Bhupal Reddy,
Chief Metropolitan Magistrate,
Vijayawada.

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. During the investigation test identification parades are arranged by the police either in jail or at some other place. Certain persons are brought to such a place and the accused person mixed with them. In case of Property, the property recovered is mixed with some other properties/articles of similar description. Then the Magistrate or the Panch witnesses will ask the witness to identify the property in question or the accused person.

3. In all criminal trials, the two most intrinsic points of determination are : whether the alleged offence was committed, and, if so, who committed the offence. One of the ways employed to establish the identity of a person as the doer of a particular act is by way of identification parades. Evidence by way of identification parades is taken under Section 9 of the Indian Evidence Act, 1872.

4. **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 an inference or relate 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.

5. The purpose of identification parade is to test the veracity/trustworthiness of the evidence of the witness. The main object of conducting a Test Identification Parade is to satisfy the court that the that the person arrested, who was not previously known to the witness, was in fact one of those who committed the crime and in fact he is the culprit. The whole idea behind test identification parade is to test whether or not the witness who claims to have seen the culprit/culprits at the time of occurrence/commission of the offence is thoroughly reliable and can identify the culprits from midst of other individuals without any aid and/or other source. This practice of test identification parade is not borne out of procedure, but out of prudence.

6. WHY TEST IDENTIFICATION PARADE:

Usually, there is a stretched time gap between the commission of an offence and the trial of the offence, 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 TIP: 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. Evidential value: 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, for example, 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 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 A.P. v. 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 v. 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 v. 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 vide 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 v. 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 v. State of H.P* 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 v. State of U.P* 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 v. 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 v. 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 v. 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 v. 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 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 identification prepared by him;
12. The judicial/executive magistrate must mention in the 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 v. 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 vrs. 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 yearsâ€™ 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 V.Suresh, (2000) 1 SCC 471**, while considering the scope of test identification parade categorically held and laid down the law of land 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 â€™Katlaâ€™ 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:

Identification of the accused through a photograph can take the place of a formal TIP (**LAXMI RAJ SHETTY V. STATE OF T.N., AIR 1988 SC 1274**)

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 (*MALKHAN SINGH V. STATE OF M.P.*, AIR 2003 SC 2669

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;

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 (***ANIL KUMAR V. STATE OF U.P., (2003) 3 SCC 569***)

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

Incorrect identification of the accused by a witness in the court of law has no bearing if the case of the prosecution stands proved by virtue of other evidences. In the case of, ***SIMON STATE OF KARNATAKA AIR 2004 SC 2775***, the court held that, there can be variety of reasons for failure to identify, that is, the witness might have been won over, or, might have lost memory because he had seen the accused on the crime scene several years ago;

If the accused is caught red-handed from the scene of crime then no question of TIP arises (***KISHORE PRABHAKAR SAWANT V. STATE OF MAHARASHTRA, (1999) 2 SCC 45***)

In ***KIWAN PRAKASH PANDURANG MOKASH V. 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 V. 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;

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 (***SURAJ PAL V. STATE OF HARYANA, (1995) 2 SCC 64***)

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 TIP 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 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. (**STATE OF BOMBAY V. KATHI KALU OGHAD, AIR 1961 SC 1808**)

In the case of **VISVESWARAN VRS. 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 VRS. 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 V.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 VRS. 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 V. 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 V. STATE OF MAHARASHTRA (1998) 3 SCC 625** and in **KUNJUMON @ UNNI V. 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 V. 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. Honorable High court of Judicature at Hyderabad in its Division Bench Judgment in between **RAJAMOORI RAM REDDY VS STATE OF 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 lose 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 mask 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 height, age, behavior and the way in which they were talk etc. In between **SHAIK SANTHAI MADAR @ JAFFAR @ SINTHA ETC., VS. STATE REPRESENTED BY INSPECTOR OF POLICE REPORTED IN 2016 (1) ALD (CRIMINAL) 903 (SC)** Honorable Supreme court Rule that there is no invariable Rule but two accused person cannot be made part of same TIP as joint TIP.

Finally it can be concluded that the purpose of TIP is to ensure that the investigation is going on right track. It is merely a corroborative evidence. Actual Identification is to be down in a court and that was a substantial evidence.