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TEST IDENTIFICATION PARADE : A STUDY IN THE LIGHT OF SUPREME COURT DECISION IN MULLA'S CASE*

By

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1. There is no provision either in Criminal Procedure Code or the Indian Evidence Act for holding test identification parades. They are merely tests to determine the memory of the witnesses based on the first impression of the accused involved in the crime, to truly testify that the accused was the one who is actually involved in the commission of the offence, to which the witness figures as an eye-witness. Further, it is also aimed at, to aid the prosecution to ensure that the investigation of the case is proceeding in the right direction. It is not relevant at the trial as to whether the witness have identified the accused or not, for the mere reason that the actual evidence regarding identification by the witness in the Court alone is relevant under Section 9 of the Indian Evidence Act 1872. In reality, the test of identification of the accused at an identification parade is a circumstance which would corroborate the identification in the Court.

2. The necessity to hold a test of identification parade arises only when the accused person are not previously known to the witness. The test is to check the veracity of identification of the accused at the time of occurrence, without aid from any other source. It is more a test of memory and the capacity of witnesses to remember what they saw, when they depose in the Court, at the trial. Identification tests do not constitute substantive evidence but primarily meant for the purpose of helping the investigating agency to assure, that it is proceeding on the right path or direction¹. In other words, the identification

can only be used as correlation of the statements made in the Court² and to enable the prosecution to cite the witnesses, as eye-witnesses in the Court proceedings.

3. Court has repeatedly stressed the need for holding the test identification parade as soon as possible, after the arrest of the accused. The reason for this, "is to eliminate any possibility on the part of the accused to allege that witnesses had opportunity to see the accused before the parade takes place. This makes the prosecution to be vigilant, to avoid or refute the allegation of the accused. However, there may be cases of delay, beyond the control on the part of investigating agency and if such delay can be explained to the satisfaction of the Court, it is not fatal to the prosecution case. In *Subash v. State of Uttar Pradesh*,³ there was delay of three weeks, after the arrest of the accused in holding the test identification parade and there was a gap of four months between the date of occurrence and the date of holding the identification parade and more so, no descriptive particulars were given at the time of FIR registration, evidence was rejected, as the witnesses failed to give the descriptive features when the face of the accused for fresh in their memory. More so, there was no corroborative evidence. It was held, if the delay in holding the test identification parade for which no valid explanation is given, the evidence cannot be acted upon⁴. If the deep impression on the

* *Mulla and another v. State of U.P.*, 2010 CrL LJ 1440

1. *Maitru v. State of M.P.*, AIR 1971 SC P. 1050

2. *Santosh Singh v. Izhar Hussain*, AIR 1973 SC P.2100

3. AIR 1987 SC P. 1222

4. *State of A.P. v. Dr. M.V. Ramana Reddy*, (1991) AIR SC P.2154

minds of the witnesses cannot be erased, when they had the occasion to see the culprit, it can be acted upon, as the crime itself is capable of creating such impression⁵. In *Rajesh Govind Jagesha v. State of Maharashtra*⁶, the accused had a beard and long hair at the time of lodging the FIR, yet the witnesses identified at the parade, when the accused removed the beard and long hair before the test identification parade. The Court has no hesitation to reject the evidence of identification. Had two or more persons resembling the accused as mentioned in FIR been included, it would have been otherwise. In *Daya Singh's case*,⁷ the test identification parade was held after 8 years of the occurrence of crime, as the accused could not be arrested for seven and half years for want of details regarding the accused, and the test being conducted after 6 months of the arrest of the accused, the evidence was held admissible, as the eye-witnesses had enduring impression on the identity in the mind and memory of the witnesses, as the son and daughter-in-law were the victims. Thus, ever-lasting deep impressions, even after delay, is not fatal. If the identification evidence is held reliable and truthful, it can be admitted even without corroboration.

4. In *Lalji Singh's case*,⁸ it was held that there is no hard and fast rule for holding the test identification parade, though it is desirable to hold the same as early as possible. If the delay is inordinate and the possibility of the accused being shown to witnesses, the Court may not act on the evidence of test identification parade. In *Anil Kumar's Case*,⁹ a mere lapse of a few days was not enough to erase the facial impression of the accused from the memory of father and mother,

who saw the accused person killing their son. The earlier ruling¹⁰, on deep impression created by the crime itself, was held sufficient to admit the evidence of identification.

5. In *Pramod Mandal's case*,¹¹ the Supreme Court ruled that it was neither possible nor prudent to lay down any invariable rule as to the period within which the test identification parade must be held. If any new such rule is made prescribing the period, it would only benefit the professional criminals, in whose cases the arrests are delayed due to police not having clear clues about the identity of the accused. The Court also ruled that no specific number of witnesses can be prescribed to correctly identify the accused. This is consistent with the rule that evidence shall be assessed on the basis of quality and not on the basis of quantity. In other words, it is within the discretionary power of the Court to decide these issues depending upon the facts and circumstances of each case. The ratio in *Mulla's case*,¹² can be summarized as follows :

- (i) No provision in the law for holding the test identification parade;
- (ii) Test identification is only to help the investigating agency to ensure that they are proceeding on the right direction;
- (iii) What is relevant is the identification evidence offered in the Court by the witnesses and the earlier identification at the parade corroborates the evidence in the Court;
- (iv) Test identification parade is of no value when the witnesses know the accused earlier;
- (v) Test identification parade must be held as early as possible, otherwise it may prove fatal to the prosecution's case.

5. *Brij Mohan and others v. State of Rajasthan*, (1994) AIR SC P.578

6. 1999 AIR SC P.4246

7. *Daya Singh v. State of Haryana*, 2001 AIR SC P.936

8. *Lalji Singh v. State of U.P.*, (2003) 12 SCC P. 554

9. *Anil Kumar v. State of U.P.*, 2003 AIR SC P.977

10. *Supra* Note 5

11. *Pramod Mandal v. State of Bihar*, (2004) 13 SCC P.150

12. *Supra* Note

It is in the interest of the prosecution, to answer the allegation of the accused that witnesses had the opportunity to see the accused;

- (vi) If valid reasons are given for the delay; test identification parade may be admitted;
- (vii) From the nature of crime itself, everlasting impression about the facial feature of the accused exist in the mind of the witnesses and in their memory, delay is not fatal and corroboration also is not necessary;
- (viii) There can be no time limit for holding the test identification parade, as such a limit will help professional criminal, to avoid arrests and thereby make the time limit to prevent identification;
- (ix) It is within the discretionary power of the Court to decide the various issues relating to the test identification parade,

depending upon the facts and circumstances of each case;

- (x) The evidence of test identification parade if reliable and true, it can be acted upon; and
- (xi) That no number of witnesses are required to identify the culprit.

6. These recent rulings will be of considerable help to Judges, Prosecutors and Investigation Agencies to conduct the tests required without delay, fairly and without any motives to involve an innocent person as well as in accordance with due procedure.

7. It may be necessary to point out regarding identification, that caution must be exercised with regard to persons who closely resemble each other or in the case of twins, when they look almost similar and identical. May be the Forensic Science can be used to determine accurately in such cases, in order to protect an innocent person as against the guilty actually involved.

THE INDIAN CONSTITUTIONAL CRISES AND JUDICIAL ACTIVISM IN INDIA — A PERSPECTIVE

By

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I: Real Meaning of Judicial Activism:

There cannot be and there is no judicial activism *per se*. Judiciary has always remained active. It cannot afford to be passive. While other two wings of the Government, i.e. executive and legislature, sometimes remain passive and sometimes become overactive, but judiciary functions within its framework and is bound to work within its parameter because of constitutional device of division of powers. The main and prior function of the judiciary is to deliver justice to all without fear or favour. The judiciary endeavours to

protect oppressed, powerless, poor and helpless people against the injustice committed by omnipotent persons, authority or body. Judiciary protects the weakest persons from the oppressive acts of either executive or legislatures. When judiciary protects and provides justice to the poorest people against oppressive acts of a private persons, authority or body, there is no hue and cry but when it protects against tyranny of the Government, everyone thinks about judicial activism.

The judicial activism is very deeprooted. The earliest example is found in *Bonhen's* case,