

Evidentiary Value Of Identification Parade

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Introduction

All that happens during the pre-trial stage, or the investigation stage, are quite important elements involved in the criminal justice system. What happens during the earlier stages is what determines the outcome or the result of the trial and the subsequent stages. The rights of the accused are taken into consideration and substantial evidence is considered necessary for the identification of the suspect in an identification parade. The purpose of identification parade is to satisfy the authorities of the fact that the person alleged is one of those who had committed the crime and that the accused, not known earlier to the witness is in fact the culprit.

Evidentiary value of identification parade is under section 9 of the Indian Evidence Act¹, 1872. The idea of the identification parade is to test the reliability and credibility of the witness that has claimed to have seen the accused of committing a crime and if that witness will be able to identify the person in a court of law without any other source of help. Test identification parade or police line-up is considered to be primary evidence and not substantive evidence. The Test Identification Parade (TIP) can only be used to corroborate the identification made by the witness in court. The purpose of this article is to explain the evidentiary value of identification parade clearly and the presentation of arguments aimed at the suggestion of clarity in the complicated process of Test identification Parade and the frequent hassles dealt with it. The article will deal with the topic and the content that revolves around three essential questions.

¹ The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

Research Questions

The aim of the article is to focus on the problem related to Test identification Parade, whether it is a compulsion and a necessary step involved in the proper functioning of the investigation.

- Can a case be carried out with TIP and still be accurate enough?
- Does Test Identification Parade violate Article 20(3) of the Indian Constitution? i.e. a person who has been accused of an offence cannot be compelled to be a witness against himself

Regulation and Enforcement of Pre-Trial Identification Procedures, 69 Colum. L. Rev1296, 1269-1396 (1969).

The author is of the article is of the view that certain standards are required to be laid down by the courts for the smooth functioning before the trial stage. Such formulation aims at educating both court and the police authorities. Also, if a witness makes an identification it would be required for the witness to dictate the factors that made him identify the person, he/ she identified. The police or the other authorities should, in no way should or help the witness about the suspect that they have in mind.

Further, the problem cannot be solved with standardized procedures only. These procedures can be refused as well. For instance, if a person is made to take a handwriting test, he/she may refuse to take the test. The appropriate response can be either to accept the refusal or enforce legal sanction for the suspect to take the tests. The refusal to cooperate by the suspect does not always portray guilt. In some cases, refusal is taken as an option by the suspect to not go for a painful examination or an examination that would hurt the person in any manner. Keeping this in mind, section 9 of Indian Evidence Act does not violate Article 20(3) of the Indian constitution because it is simply the fact that they are helping the

authorities to move into the right direction and stating or re-creating the facts. It is not a testimony, hence it does not lead to self-incrimination. This was also held in the case of A.P. v. V.K. Venkata Reddy, wherein the Supreme Court of India 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 TIP is only confirmatory of the testimony made before the court of law.” This means that it does not challenge the constitutional right under article 20 (3).

There is some relaxation on physical force by the authorities on the suspect at refusal but only in certain cases like the breath test or induced vomiting test. This is not possible for a writing test or a voice test. Physical coercion cannot amount to an accurate test in these cases in such cases only legal sanctions can force the accused for conducting the tests.

Research Methodology

Confirmatory research has formed the basis of the article for it involves literature review, case studies, case laws, case analysis, articles, journals, book chapters, etc. this makes the research more meaningful and backed by strong arguments. The research problems are process problems. To be precise, how people accommodate with the changes in standardised rules and find out one way or another to cause hindrance in the investigation or pre-trial stage, or use unfair means to charge a person with crimes leading to erroneous judgements.

The article involves a set of methods and procedures used to find the solution to the research problem. It involves up-close and detailed analysis of cases as cited since they are fact based and the judgements lead to an analysis of the interpretation made by the judicial system. Further there are observations made through journals, articles and cases where there exist certain problems even for an investigation tool like TIP which has certain standardized rules to be followed to help reach a certain conclusion to move onto the next stage with enough evidence.

Journals and articles are themselves a reliable source as the data is authentic and takes into consideration the awareness and perspective of those who claim to know about the subject. A thorough review of methodology and theoretical contribution to what and how TIP is considered an essential tool in the investigative process. The problem where the authorities misuse the power and how the courts go about standardising the rules to eliminate such unfair practice and taking into consideration the cases of Supreme Court of United States and how they are quite similar to the Indian cases. The problems faced by the authorities and the accused is similar in both the countries in fact in the whole world. The article is based on flexible designs that has derived its data from a lot of places and has been criticised as well as agreed upon by the author's opinion.

Research Analysis

Test Identification Parade - Necessary or Not

If TIP has not been conducted before the trial and if the witness identifies the accused, directly in the court, it will be considered valid if found genuine by the court. To support this argument a case has been cited; in the case *State of Himanchal Pradesh vs Prem Chand*² the witness knew the accused and the accused was his uncle whom he had seen entering his home on the day of the occurrence and the day before, so, the court did not question the validity of the identification as the eye witness could clearly identify him in court. In this case it was, for the stated reasons, not considered necessary for TIP to be held before the trial. Though it is a useful tool in the investigation and leads to the elimination of erroneous judgements, it is not an essential or a necessary tool that is used to reach the result. If the facts and evidences of the case leads the authority to the accused, TIP is not considered important in those cases.

² State of Himanchal Pradesh v Prem Chand , (2002), 10 S.C.C. 518 (India).

If the witness cannot name the accused and can only identify him/her through appearance then the test identification parade cannot be taken into consideration in the court of law. This was held in the case of *Ahmad bin Salam vs The State of Andhra Pradesh*³. Here, the witness could recognise the accused during police line-up. The police queried the witness as to whether or not, he would be able to identify the persons who were on the 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 TIP. This is something that is required to be kept in mind that most crimes that occur are not by those whom we know. The identification of name is particularly difficult in this scenario and the authorities must standardize the law keeping this in mind. It is an investigatory process stated under section 162 of criminal procedure code, 1973⁴ and must still be considered substantive evidence even if the witness cannot name the accused. The same was held in the case of *Raju Manjhi v. State of Bihar*.⁵

TIP has been in use for a long time to help aid the investigators. Where the witness states before the court that he or she could identify the accused it is dealt with smoothly, the problem arises when: 1. The witness is unable to identify the culprit at TIP but identifies him or her in court. 2. The witness is able to identify at TIP but is unable to do so in court. 3. The witness is unable to identify the culprit at both TIP and in the court. the conduction of TIP is used as corroboration by the magistrate in authority in the court so in cases 1 and 3 the magistrate cannot present the TIP as evidence but in case 2 is the only situation where the magistrate can corroborate the identification of the accused.

³ Ahmed Bin Salam v State of Andhra Pradesh (1999), 4 S.C.C. 111(India).

⁴ Criminal Procedure Code, 1973, No. 2, Acts of Parliament, 1974. (India).

⁵ Raju Manjhi v State of Bihar, A.I.R. 2018 S.C. 3592 (India).

The Test of Credibility:

There are certain cases where TIP can be of great help to the authorities and some cases where it is not considered credible, for instance, In the case of *Dastgir Singh vs The State of Karnataka*⁶ where X was raped by A, and, X was able to see A involved in the commission of crime, it was held that, TIP is necessary to test the veracity, reliability and memory of X, will not be necessary because in offences such as rape, the victim herself is a “natural witness” and the decision was similar to the case of *Awadh Singh v. State* ⁷ as the witness was the only person who could identify the accused and if TIP was not conducted it would become very difficult for the investigation to proceed.

On the contrary, in another case *Davinder Singh vs The State of Himanchal Pradesh*⁸ the Apex Court held that, because the crime of rape was committed at night, in the room of the victim, where there was no light, it is stated that the victim had a fleeting glimpse of the accused when torch was lit 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 TIP, and failure to do so was held to be fatal to the case of the prosecution. And since the witness could not recognise the accused, the witness was not considered a credible source to do the task.

Procedure and purpose Of Holding the Test :

The object is to place the suspect in a line with other individuals for identification. The purpose is to find out whether or not the suspect/accused is the culprit and if the witness can identify it. This is all the more essential in cases where the name and details of the accused

⁶ Dastagir Sab & Anr. v State of Karnataka (2004), 3 S.C.C. 106 (India).

⁷ Awadh Singh v State of Bihar (1954) .

⁸ Devinder Singh and ors v State of Himanchal Pradesh, A.I.R. 2003 S.C. 3365 (India).

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 TIP must be to help the police in their investigation. In the case of, State of A.P. v. V.K. Venkata Reddy⁹, the Supreme Court of India 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 TIP is only confirmatory of the testimony made before the court of law.” In accordance with the case, it can be deduced that it does not challenge the constitutional right under article 20 (3).

Though there must not be any delay in the identification process as the memory of the witness fades away and so it is considered essential to be set in procedure as soon as possible. But in a special case¹⁰ where the identification parade was considered necessary despite an unexpected delay, the court held that the test identification parade would still be considered as an evidence despite the delay.

The identification of a person by photograph is considered the same as identification by witness as the evidence of the test identification parade. The evidence given by the witness is identifying the accused by his or her voice is a reliable evidence and can be used to corroborate by the authorities in the court of law.

Conclusion

Identification parade is a necessary and an essential tool for effective justice provision by the judicial system. The people, the authorities, the court and society at large are quite clearly in favour of such a tool that leads to more of an efficient judgement rendering and makes further stages of an investigation easier and quicker. It is of great importance that the

⁹ State of Andhra Pradesh v K. Venkata Reddy, (1976) 3 S.C.C.454 (India).

¹⁰ Rajesh Govind Jagesha v State of Maharashtra (1999), 8 S.C.C. 428 (India).

suspect must be protected from the abuses and unfair treatments that are possible to lead to false accusations in the test procedure, despite the standardised set of rules laid down by the court of law. This article has made an attempt to suggest measures, through research, for such problems. It aims at proposing regulations or suggestions for the same to lessen the hardships, problems, abuses and errors faced by its practice. If the accused is misidentified by the identifier the entire investigation will be side-tracked and there are chances that the investigation cannot be solved and this is the major drawback faced while practicing TIP.

Specific course of action should be thoroughly explained to the witness during the time of the test. In certain cases the courts may accept the evidence of identification even without being proved as corroboration by the authorities in the court of law.