

DBRANLU LAW REVIEW 2025

CONTENTS

Articles

1. **Unraveling Backwardness: Analyzing The Dynamics of Development from Individual to Community Perspectives**
Abhinav K Shukla and Dr. Anukriti Mishra 1
2. **Towards Privacy-Centric Governance: Analyzing India's Data Protection Trajectory**
Divya Singh and Dr. Harish Tiwari 30
3. **Recognising 'Euthanasia' As A Human Right: National and International Concern**
Dr. Jaswinder Kaur and Mr. Birendra Singh 46
4. **Social Reintegration of Released Prisoners in India: An Analysis of The States of Kerala and Tamil Nadu**
Harsh Mahaseth and Pratham Shah 63
5. **Social Stock Exchange: Navigating Roles, Regulations, and Urgent Reforms**
Satakshi Gupta and Priya Nahar. 77
6. **Social Security for the Digital Age: Evaluating Provisions Contained in The Social Security Code of 2020 for the Protection of Gig Workers in India**
Shailesh Kumar Pandey and Dr Balwinder Kaur 90

7. **Dark Patterns that Plague Indian E-commerce**
Swathi S and Sadhana S 110
8. **Media Trial: A Double-Edged Weapon to Be Used Within Legal Parameters**
Swechha Malik 128
9. **Indian Education System and Inclusivity: Gaging through the Policies towards the Divyang Community**
Vijoy Kumar Sinha and Saheli Chakraborty 140
- Case Comment*
10. **Anil Kumar v. State of Kerala**
Priya Sharma 156

CASE COMMENT: ANIL KUMAR V STATE OF KERALA

- Priya Sharma*

ABSTRACT

The case¹ concerns the sexual assault and rape of a minor girl, which led to the accused's conviction under Section 376(2)(f) of the Indian Penal Code. The defendants challenged the validity of the victim's identification without conducting a test identification parade in an appeal to the Kerala High Court. During its deliberations, the court referred to important legal precedents, such as Amrik Singh v. State of Punjab and Malkhansingh v. State of M.P., to clarify the complex function of test identification parades in verifying witness identifications.

The victim's identification of the perpetrator, which took place in the dock and one and a half months after the assault, was examined in this case. The identification was deemed believable by the court since the witness knew the accused well; the idea that she was an entirely new person who had only seen her briefly was rejected. The court emphasized the heightened status of the prosecutrix's testimony in rape cases, citing precedents such as Lillu @ Rajesh v. State of Haryana and State of UP v. Pappu, therefore the absence of an eyewitness did not lessen the evidentiary value.

The legal study looked at how the court can conduct test identification parades and admit identification facts by using Sections 9 of the Indian Evidence Act and 54A of the Code of Criminal Procedure. The court ultimately upheld the conviction, recognizing exceptions, negotiating the complex legal terrain involving identification evidence, and emphasizing the critical role that test identification parades have in maintaining a strong criminal justice system.

Keywords: *Test Identification Parade, Indian Penal Code, Sexual Assault, Identification Evidence.*

* RGNUL

¹ 2023 INSC 965.

I. BRIEF FACTS OF THE CASE

On 1st January 2004, at about 7 a.m. in the morning, a minor girl went to her property which was near the accused's home, to attend nature's call and she was also engaged in picking up the cashew nuts. The accused threatened the girl, sexually assaulted her and raped her. The additional sessions judge convicted the accused and sentenced the accused for the offence punishable under Section 376(2)(f) of the Indian Penal Code² and he was sentenced to undergo rigorous imprisonment and to pay fine for the said offence and in default of payment of fine. The convicted appealed to the Hon'ble High Court of Kerala and the legal questions that emerged out the proceedings were that what is the best evidence to prove the identification of an accused before a court and in what circumstances, test identification parade shall be insisted as corroborative piece of evidence to act upon the identification of the accused by the occurrence witness. The Hon'ble High Court dismissed the appeal and ordered the appellant to undergo the sentence given by the trial court.

II. THE COURT CONTEMPLATED THE CONUNDRUM AROUND TEST IDENTIFICATION PARADE

While positing the necessity of test identification parade and the aftermath in consequence thereof, the court referred to the decision of the apex court in *Malkhansingh & Ors. v. State of M. P.*,³ the Apex Court while dealing with *Section 9 of the Indian Evidence Act*,⁴ held that "the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger

² *The Indian Penal Code 1860*, § 376(2)(f).

³ *Malkhansingh v. State of M.P.*, (2003) 5 SCC 746.

⁴ *Indian Evidence Act 1872*, § 9.

who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. But failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The identification parades belong to the stage of investigation, and there is no provision in the Cr.P.C.⁵ which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. These parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration.”⁶

In this connection, the Court also took into account a recent decision of the Apex Court reported in *Amrik Singh v. State of Punjab*⁷ where the Apex Court considered the consequence of non-holding of test identification parade, in this case, as per prosecution, appellants came on a scooter and after throwing red chilli powder into the eyes of the complainant and killing the deceased by firing shot at him, took away their scooter and cash amounting Rs.5 lakhs lying in the dicky of the scooter – In the FIR, the complainant merely stated that the accused were three young persons out of which two were clean shaven and the one Sikh (sardar) who had tied a thathi having the age of 30-32 yrs. Complaint also not stated in his first version that he had seen the accused earlier and that he will be able to identify the accused. While identifying the appellants in court, complainant tried to improve the case by deposing that he had seen the accused in the city on one or two occasions and he specifically and categorically admitted in the cross-examination that it is incorrect that the accused were known to him earlier. Hence, non-conducting of TIP, held, fatal in the case and the conviction based solely on identification of the appellants by the complainant for the first time in court, was held non sustainable and thus was set aside.

Therefore, in such cases the prior conducting of test identification parade becomes important. Further, while identifying the accused in court, if the witness says that he had seen the accused

⁵ *The Code of Criminal Procedure, 1973 (Act 2 of 1974).*

⁶ *Malkhansingh v. State of M.P., (2003) 5 SCC 746.*

⁷ *Amrik Singh v. State of Punjab, (2018) 14 SCC 245.*

on one or two occasions prior to the occurrence or the witness had occasion to identify the accused at the time of occurrence with certainty, without giving such a statement to police, the same is a serious omission to be read as contradiction to disbelieve the identification of the accused at the dock. The same is to be read as a vital and material improvement made by the witness/witnesses in Court, which would attract less probative value. In such cases, non-conduct of test identification parade (TIP), to be held as fatal and the conviction based solely on identification of the accused by the occurrence witness/witnesses for the first time in court is not sufficient.⁸

In the present case⁹, The victim of the crime testified that approximately 1.5 months after the incident, she and her mother were going to visit another home when she discovered the accused sitting in an autorickshaw. When the accused noticed her, he moved to the back of the vehicle and covered his face. So, identifying the accused as the one who had abused her sexually. Her father informed the matter to the police and the accused was caught by the police and afterwards the accused at the dock was also recognized by the victim. In this instance, the court decided that there was no reason to doubt the accused's identification because the identifying witness was not an unknown person who only saw the accused briefly and had no reason to recall him. Moreover, the identity is not presented in court for the first time.

III. ABSENCE OF EYE-WITNESS DOES NOT RENDER THE EVIDENCE OF RAPE VICTIM INSIGNIFICANT

In the present case, there was no eyewitness and only the victim of the crime gave evidence in support of the occurrence, and the said evidence also failed to be shaken by way of cross examination. Moreover, the evidence of the injuries sustained by the victim were presented. Therefore, the Hon'ble Court relied on the judgment of the Apex Court reported in *Lillu @ Rajesh and Another v. State of Haryana*¹⁰ and the decision reported in *State of UP v. Pappu*¹¹ and held that *a prosecutrix complaining having been a victim in an offence of rape is an accomplice after the crime and there is no rule of law that her testimony cannot be accepted*

⁸ *Amrik Singh v. State of Punjab*, (2018) 14 SCC 245.

⁹ 2023 INSC 965.

¹⁰ *Lillu v. State of Haryana*, (2013) 14 SCC 643.

¹¹ *State of UP v. Pappu*, AIR 2005 SC 1248.

without corroboration in material particulars, for the reason, that she stands on a much higher pedestal than an injured witness. The Court also observed another decision of the Apex Court reported in, *Narender Kumar v. State (NCT of Delhi)*,¹² that held that “it is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of another witness; a high degree of probability having been shown to exist in view of the subject matter being a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the Court finds it difficult to accept the version of the prosecutrix on its face value, it any search for evidence, direct or substantial, which may lend assurance to her testimony.”

IV. LEGAL ANALYSIS

Section 9 of the Indian Evidence Act, 1872¹³ and Section 54A of the Code of Criminal Procedure, 1973¹⁴ deal with the procedure and the legality of the Test Identification Parade. Section 9 of the Evidence Act¹⁵ makes the test of identification of proper accused and properties admissible and relevant facts in a court of Law, but this act does not make it obligatory for the accused to present for the Test Identification Parade by the investigating officer.

The problem of Section 9 of the Evidence Act is tackled in Section 54A of the Code of Criminal Procedure, 1973. This section says that when the identification of an accused by the witness is considered necessary for investigation of such offense in which the accused is arrested, the

¹² *Narender Kumar v. State (NCT of Delhi)*, (2012) 7 SCC 171.

¹³ *Indian Evidence Act 1872*, § 9.

¹⁴ *The Code of Criminal Procedure 1973*, § 54 A.

¹⁵ *Indian Evidence Act 1872*, § 9.

Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the accused so arrested to subject himself to identification by witness or witnesses in such manner as the Court may deem fit.¹⁶

Moreover, by compelling an accused to stand up and show his face for the purpose of identification, Article 20(3) of the Constitution of India¹⁷ is not violated. Additionally, for the purpose of identification, he can also be ordered to disclose any scar or mark on his body.

Test identification parades are a common tool used by law enforcement to validate the reliability of witnesses, particularly in situations when the witness has only ever seen the accused at the crime site. When conducting a test identification parade, the judicial magistrate is also required to take certain safety measures. For example, the parade must not be done in broad daylight and must respect private property. There should be no police officers present. Prison guards should not be present at the parade site if they are being held behind bars. If an accused person is wearing a noticeable clothing, the magistrate should try to make arrangements for others to wear similar items, but if that isn't possible, they should persuade the suspect to take off the garment. The accused will have the opportunity to express any objections to those in attendance. The witnesses who have been called for the parade should not be allowed to see suspects prior to the march and should be kept out of sight throughout it. The witnesses will be called in one at a time to identify themselves. The witness who has successfully completed the Test Identification Parade procedure is not permitted to interact with the other witnesses who have not yet provided their identity. The witness will be questioned about whether or not he has previously known any of the suspects he plans to name. Every additional event related to the identification parade needs to be meticulously documented.¹⁸

¹⁶ *The Code of Criminal Procedure 1973*, § 54 A.

¹⁷ *INDIA CONST.*, art 20, cl.3.

¹⁸ Abhishek Kumar, 'Test Identification Parade An Evaluation Through Judicial Pronouncements, It's Utility and Veracity.' (Legal Service India) <https://www.legalserviceindia.com/legal/article-10860-test-identification-parade-an-evaluation-through-judicial-pronouncements-its-utility-and-veracity.html> accessed 30 January 2024.

V. CONCLUSION

One could argue that this example contributes to the deciphering of the mystery surrounding Test Identification Parade (TIP). It also emphasized its evidential importance and the situations in which it will be relied upon as supporting evidence when the occurrence witness identifies the accused. The Hon'ble Court made the correct decision when it determined that the lack of an eyewitness does not negate the significance of a rape victim's evidence. If the Court is unable to accept the prosecutrix's version of events, it may look for any direct or substantial evidence that could support the victim's testimony.