

promptly lodged F.I.R.¹² Moreover, question of false implication or mistaken identity of accused would not arise when accused was known to complainant who charged accused in promptly lodged F.I.R.¹³

6. **Identification parade—general.** It is not necessary that in each and every case, the accused should be put to identification test.¹⁴ Identification parade is held as a rule of law, but as a rule of prudence to eliminate possibility of any mistake. Holding of such parade/test is not only a check against false implication, but is also a good piece of evidence against genuine culprits.¹⁵ It is held to ascertain whether the witnesses can identify the culprits seen by them at the time of incident.¹⁶

Identification parade is to be conducted in accordance with requirements of Art 22, Qanun-e-Shahadat Order (1984) read with Chapter 11-C, High Court Rules and Orders, Volume III.¹⁷ Holding of identification test is not a requirement of law but only one of the methods to test the veracity of the evidence of an eye-witness who has had an occasion to see the accused and claims to identify him.¹⁸ Identification parade is held not as a rule of law, but as a rule of prudence to eliminate the possibility of any mistake.¹⁹ Sole purpose of identification is to ensure that an innocent person, either deliberately or by mistake, is not involved. Identification is not a legal requirement. However, when it is necessary, it is the duty of Court to examine that all possible steps were taken for holding fair identification and the witnesses at their own correctly picked up the culprits. In case of perfect strangers and where more than one person are involved in the commission of such offence, it becomes more necessary for the Court to know about the alleged role played by each culprit to finally determine their complicity in the commission of crime. It is an exercise to extract the truth from the heap of probabilities.²⁰

Mere discrepancy in F.I.R. and statement of complainant before Court relating to name of accused did not justify holding of any identification parade of appellant inasmuch as name of appellant was clearly mentioned in F.I.R. which was lodged within 45 minutes of incident and complainant made positive assertion both in F.I.R. and in his statement before Court that he had identified appellant as the person who had committed the offence. Absence of identification parade of appellant was, thus, of no consequence.¹ Process of identification of accused persons gains significance due to non-arresting of accused persons at the spot. While relying on such identification, a greater amount of care should be applied in order to avoid injustice

- 12. NLR 2002 Cr. 339=2002 SCMR 350=2002 UC 226.
- 13. 2003 SD 451 (SC).
- 14. 2002 AC 468=2002 SCMR 601.
- 15. 2003 P. Cr. L.J. 1256+PLD 2003 Kar. 470=PLJ 2003 Cr.C. 943.
- 16. 2003 YLR 1263 (DB).
- 17. 2000 Cr. L.J. 549=2000 YLR 600.
- 18. 2000 P. Cr. L.J. 1212+2000 P. Cr. L.J. 1227+1999 YLR 2444+1998 SCMR 2538+1999 MLD 514 (DB).
- 19. 1996 P. Cr. L.J. 287=PLJ 1996 Cr.C. 267+1996 MLD 1307=1996 Law Notes 783+PLD 1995 Lah. 229 (DB).
- 20. 2000 Cr. L.J. 173 (DB).
- 1. PLJ 2000 SC 771=2000 SCMR 785=2000 SCI 364.

and prejudice to the accused persons who have not been accurately identified but convicted by believing such evidence against them.² But when it is necessary, Court is duty bound to examine that all possible steps were taken for holding fair identification test and the witnesses, at their own, had correctly picked up the culprits.³ Identification parade is always held for two purposes, one to establish identity of the culprit and the second to pinpoint the role played by him in the commission of the offence.⁴ The main purpose of an identification parade is to let the person concerned identify the accused by recollection of their features.⁵

Before identification parade, the witness must disclose context in which he identified accused, part played by accused during commission of offence and as to how and under what circumstances he identified accused. If identity of accused was proved by other convincing evidence, non-identification or absence of identification test would be immaterial.⁶ For that it is necessary to establish that the witness had seen the occurrence. The fact that the role of accused at time of commission of offence was not described by witness was on inherent defect. Evidence of such witness identifying accused in identification parade lost its efficacy and was not relied upon.⁷

The whole object behind an identification proceeding is to find out whether the suspect is the real offender or not.⁸ Therefore whenever an accused person disputes ability of the prosecution witnesses to identify him, the Court should direct identification parade to be held save in the most exceptional circumstances.⁹

Identification parade when necessary. When accused were charged in the F.I.R. and in statements under S. 161, Cr.P.C. by the description of their structure then identification in a formal parade was a "must".¹⁰

If a witness gets momentary glimpse of an accused and claims that he would be able to identify him then after his arrest identification test becomes very essential which is to be conducted strictly according to guidelines and legal requirements enunciated by law.¹¹ Where accused was not previously known to witness and the witness had only a fleeting glimpse of accused, holding of identification test becomes essential.¹² Identification parade, in certain conditions becomes necessary where the accused were not previously known to witnesses and were not named in F.I.R. either. When identification parade is held, it is essential to rule out all chances of false

- 2. 2001 SD 73=PLJ 2001 SC 402=2001 SCMR 424.
- 3. 1999 MLD 514 (DB).
- 4. 1999 MLD 514 (DB)+1998 P. Cr. L.J. 746.
- 5. PLD 1963 SC 109=15 DLR SC 65.
- 6. PLD 1999 Quetta 61=PLJ 1999 Cr.C. 594 (DB).
- 7. 1988 SCMR 557.
- 8. 1991 P. Cr. L.J. 740+AIR 1953 All. 385=1953 Cr.L.J. 848.
- 9. AIR 1943 Lah. 303=45 Cr.L.J. 98.
- 10. 2004 SD 153=2003 P. Cr. L.J. 1928=PLJ 2003 FSC 39.
- 11. 2004 SD 153=2003 P. Cr. L.J. 1928=PLJ 2003 FSC 39.
- 12. 2003 SD 35=2003 YLR 110.

implication.¹³ But identification test would not be necessary when all P.W.s. have without any doubt mentioned the accused having participated in murder.¹⁴

Name of accused not mentioned in F.I.R. Identification test becomes necessary where names of the culprits are not given in the F.I.R. Holding of such test is not only a check against false implication but is a good piece of evidence against genuine culprits.¹⁵

Factors on which identification depends. The identification of a culprit by a person primarily depends upon the following factors:

- (i) on his situation relative to the object viewed, his nearness to or distance from it;
- (ii) also on his capacity to see with perfect or sufficient distinctness an object far off;
- (iii) he may be able to discern clearly things at a great distance from him, or to see distinctly only objects near to him; that is, he may be either far-sighted or near-sighted;
- (iv) his right perception of the object may also depend on the light by which it is seen and, therefore, at the time, whether day or night;
- (v) it may depend, also on the length or shortness of the time he has, in which to view the object;
- (vi) it may depend also on the freedom of his view from all obstruction at the time, from whatever cause, or momentary;
- (vii) the sun shining full in the face of a person may very much obstruct his sight. Same effect may be produced by falling snow or dense rain or smoke.¹⁶

Test of bona fides of witnesses. Identification parades are held to satisfy investigating officers of bona fides of prosecution witnesses.¹⁷ Therefore, where the culprits were not known to the witnesses either by face or name an identification parade through such witnesses in presence of Magistrate was a must.¹⁸ But where the witness did not know the accused before, nor was the appellant put up in any identification parade for identification. His evidence is not of much value with regard to the identity of the accused.¹⁹ Similarly where the alleged eye-witness was not acquainted with the accused, in view of the light being at least dim, since the occurrence took place after sunset in a narrow street bounded by high walls on both

13. 2002 YLR 302 (DB).
 14. 2002 AC 468=2002 SCMR 601.
 15. 2000 YLR 80+1997 SCMR 971=PLJ 1997 SC 1992.
 16. 1996 P. Cr. L.J. 73 (DB)+1991 P. Cr. L.J. 1125 (DB).
 17. 1932 Mad WN 427 (DB)+AIR 1948 Mad. 113+66 Mad. LW 777.
 18. PLD 1992 FSC 390.
 19. PLD 1965 Kar. 31 (DB).

it was necessary that he should be put to an identification test.²⁰ It must be noted in this context that identification parades are resorted to for testing the power of the capacity of the witnesses to eliminate false assertions as also to guard against honest mistakes. Therefore it is not only the credibility of the witness that bears on the question of identification but it must be carefully judged what are the elements of possibility in a particular act of identification.²¹

Procedure for identification parade. Process of identification of accused persons gains significance when accused persons are not arrested at the spot. For a person to avoid injustice and prejudice to accused persons who have not been identified but convicted by believing such evidence against them, it is necessary to identify the identification parade is bound to follow the instructions contained in Chapter 11-C, Volume III, Lahore High Court Rules and Orders, to minimise the chances of mis-identification of the accused. Departure from these instructions would not be condonable because some of these instructions carry the imprimatur of the Supreme Court.²² Accused who is to be identified will be placed in a line along with other dummies and after completion of his identification parade, the accused who were confined in the same jail shall be brought if their identification parade is required to be done. Identification of accused in violation of this settled practice would have no evidentiary value.²³

Magistrate has to follow a certain procedure and canons of prudence require that witnesses should also specify role played by accused when they identified them. Identification parade, wherein a witness merely pointed out that he was the accused, in absence of other tenable material evidence on record incriminating the accused, would lose its evidentiary value.²⁴

Proceedings of identification parade are extrajudicial. The identification proceedings being in the nature of tests no provision for holding them is to be found in the Criminal Procedure Code or even in this Order. The proceedings are record of facts which establish the identity of anything or person and which may be relevant under Art. 22. The facts are to be proved according to law; and in the absence of such proof the identification proceedings are valueless. The facts, if proved can be used both for purposes of corroboration as well as for contradiction.²⁵ As the identification parades are tests for eliminating false assertions and to guard against honest mistakes of the witnesses, the Court require that they should be held under conditions most conducive to their being fair tests for the eliciting of truth, such as without undue

20. PLD 1964 SC 26=16 DLR SC 94=1964 (1) PSCR 189.
 1. AIR 1965 Madh Pra. 225 (DB).
 2. AIR 1951 Hyd. 97=52 Cr.L.J. 1123 (DB).
 3. 2001 AC 649=PLJ 2001 SC 402=2001 SCMR 424=2001 SD 73.
 4. 2001 SD 73=PLJ 2001 SC 402=2001 SCMR 424=2001 AC 649.
 5. 2001 AC 649=PLJ 2001 SC 402=2001 SCMR 424=2001 SD 73.
 6. 2002 YLR 302 (DB).
 7. 2002 P. Cr. L.J. 518=PLJ 2002 Cr.C. 695=2002 Cr.L.J. 354.
 8. AIR 1951 All. 475+AIR 1948 Madh 113=ILR 1948 Mad. 667=49 Cr.L.J. 89.

delay, when the impressions are fresh and other influences are less likely to have operated, without giving an opportunity to the witnesses to see the accused or to acquaint themselves with his features with the aid of photographs, sketches, descriptions or the like, by mixing the accused with persons of other persons to eliminate chance identification, by mixing the accused with persons of the same race, culture, age, height and position in life, so that he is not easily picked out by reason of any of the aforementioned characteristics, by allowing the accused to select his own position in the line, by concealing the distinguishing marks of the accused, if any, by not permitting the identifying witnesses on their leaving the parade to communicate with others who are yet to identify, by holding the parade free from the influence of the police and the prosecuting agency, etc.⁹ Identification test parade should be exclusively under the supervision of the Magistrate which would include the arrangements of dummies etc, so as to avoid possibilities of false implication of the accused.¹⁰ It is necessary that persons identifying should be kept apart and they should be invited one by one to identify the offender.¹¹

Police Rules, 1934. Identification is not only the preferred method of identification of suspects in the eyes of Courts, but is also the method stipulated by rule 26.32, Police Rules, 1934.¹²

Rule 26.32 of the Police Rules, 1934 reads as follows:-

26.32. *Identification of suspects.* (1) The following rules shall be strictly observed in confronting arrested suspects with witnesses, who claim to be able to identify them:

- (a) The proceedings shall be conducted in the presence of a Magistrate or gazetted police officer, or, if the case is of great urgency and no such officer is available, in the presence of two or more respectable witnesses not interested in the case, who should be asked to satisfy themselves that the identification has been conducted under conditions precluding collusion.
- (b) Arrangements shall be made, whether the proceedings are being held inside a jail or elsewhere, to ensure that the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called up to make their identification.
- (c) Identification shall be carried out as soon as possible after the arrest of the suspects.
- (d) The suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons

9. 2001 SD 73=PLJ 2001 SC 402-2001 SCMR 424+AIR 1965 Madh Pra. 225 (DB).

10. 2001 YLR 1546 (DB).

11. AIR 1937 Rang. 504-39 Cr.L.J. 193.

12. 2003 SD 35=2003 YLR 110+2003 P. Cr. L.J. 1928=PLJ 2003 FSC 39.

to one suspect. Each witness shall then be brought up separated to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for other communications to pass between witnesses who have been called up, and those who have not. If it is desired, through fear of revenge or for other adequate reasons, that witnesses shall not be seen by the suspects, arrangements shall be made for the former, when called up to stand behind a screen or be otherwise placed so that they can see clearly without being seen.

(e) The results of the test shall be recorded by the senior police officer present in Form 26.32(1)(e) as each witness views the suspect. On conclusion, the Magistrate, or other independent witness or witnesses, shall be requested to sign the form and certify that the test has been carried out correctly and that no collusion between the police and witnesses or among the witnesses themselves was possible. It is advisable that, whenever possible, an independent and reliable person unconnected with the police should be present throughout the proceedings to devote his attention entirely to the present and should be required to record his observations for the prevention of collusion. It is important that, once the arrangements for the proceedings have been undertaken, the officer investigating the case and any police officer assisting him in that investigation should have no access whatever either to the suspects or to the witnesses. Formal identification proceedings should not, if it can be avoided, be arranged without the orders of an officer of or above the rank of Inspector, and such officer should always be present and arrange the conduct of the proceedings himself if possible. The value of tests arranged by the investigating officer or his subordinates is inevitably liable to be called in question by the defence.

(2) Proceedings of the nature described above are extra-judicial. It is not the duty of the officer conducting them or of the independent witnesses to record statements or cross-examine either suspects or identifying witnesses, but they should be requested to question the latter as to the circumstances in which they saw the suspect whom they claim to identify, and to record the answer in column 4 of the form. While every precaution shall be taken to prevent collusion, the identifying witnesses must be given a fair chance, and conditions must not be imposed, which would make it impossible for a person honestly capable of making an identification to do so. In this connection attention is invited to paragraph 814 of the Punjab Jail Manual, which strictly prohibits the alternation in any way of the personal appearance of unconvicted prisoners, so as to make it difficult to recognize them.¹³

Under sub-rule (1) it has been provided that rules shall be strictly observed in confronting arrested suspects with such witnesses, who claim to be able to identify them and under Rule 1 (c) it has been made obligatory for police officers to arrange

13. PLJ 2003 FSC 39=2003 P. Cr. L.J. 1928.

for identification test of suspects soon after their arrest. Sub-rule (2) provides that though, it is not duty of officer conducting them or of independent witnesses to record statements or cross-examine either suspects or identifying witnesses. Yet, they should be requested to question latter as to circumstances in which they saw suspect whom they claim to identify.¹⁴

The identification parade shall be conducted in presence of a First Class Magistrate and two more respectable witnesses having no interest in the case. Arrangements shall be made to ensure that the identifying witnesses be kept separate from each other at such a distance from the place of identification so that it shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings until they are called up to make their identification. The identification shall be carried out as soon as possible/without any delay after the arrest of the suspect. The suspect shall be placed among other persons similarly dressed and of the same religion and social status. They should be of similar height, built, structure and colour. The proportion of dummies mixed with the under-trials shall be eight or nine to one. Each witness shall be brought up separately to attempt the identification. Care shall be taken so that the remaining witnesses are still kept out of sight and hearing and that no opportunity be permitted for communication to pass between witnesses who have been called up and those remain to be called or not been called. If it is desired, the fear of revenge or for other adequate reasons, that witness shall not have been seen by the suspect. The arrangement shall be made for the former when called up to stand trial behind a screen or be otherwise at a place so that they can see clearly without being seen. The result of the test shall be recorded by a First Class Magistrate present in Form 26.32(1)(e) as such the witness views the suspect. At the close of test, the Magistrate or other independent witness/witnesses shall be requested to sign the form and certify that the test has been carried out correctly and that no collusion between the police or witnesses or among the witnesses was possible. It is advisable, that whenever possible, an independent reliable person unconnected with the police should be present throughout the proceedings at the place where the witnesses are kept and should be required to devote his attention entirely to the prevention of collusion. It is important that once the arrangements for the proceedings have been undertaken. The Officer, investigating the case and any Police Officer assisting him in the investigation, should have no access whatsoever either to suspect or the witnesses. The identification proceedings should not be arranged without the orders of the First Class Magistrate and such Magistrate should always be present to arrange and conduct the proceedings himself. The value of test arranged by Judicial/First Class Magistrate is inevitable liable to be called in question by the defence.¹⁵

Re-identification not conducted--effect. Where re-identification of accused was not conducted in accordance with instructions issued by Punjab Government

published in Chapter 11-C, Volume III, Lahore High Court Rules and Orders, it would have no evidentiary value.¹⁶

An ideal identification proceeding is that which is held in the same conditions in which the offenders were seen by the witnesses.¹⁷

Role played by accused in crime. The role of the accused at the time of commission of crime is necessary to be established to achieve two-fold objects, firstly, that in which capacity he identified the person during identification parade, and, secondly, that his such evidence must be corroborated in the Court if he remains consistent to his statement which he made during identification of the accused, and, consistent to his statement which he made during identification of the accused, consistent to his statement which he made during identification of the accused, and if it disclose the role played by the accused at the time of commission of offence and if it was so disclosed he did not remain consistent to it while recording his statement in Court.¹⁸

Co-accused, identification by. The purpose of test identification is that they may serve as a corroboration of the testimony of witnesses when produced in Court, but a co-accused, unless made an approver, is not such a witness. Whatever may be the information which the police might gather from a co-accused by way of interrogation, they are not justified in including him amongst the proposed prosecution witnesses in an identification parade.¹⁹

Evidence of Magistrate conducting identification parade. If there is an identification parade in the presence of a Magistrate, it is the duty of the prosecution to see that particular Magistrate is produced and in Sessions case the Sessions Judge should also see that the particular Magistrate is produced before him. He must be examined like any other witness. He cannot merely refer to certain documents which are described as exhibits in which he states that his evidence is to be found. This method of recording of evidence is not only contrary to law but violates the first principles of evidence and such evidence has to be entirely ignored.²⁰

Accused applying for identification parade. The Code of Criminal Procedure does not contain any provision giving a right to an accused to claim test identification parade. However, the evidence of test identification parade is relevant under this article being a fact necessary to explain or to introduce relevant facts. It is well settled that an accused has to be given full opportunity to defend himself in accordance with law and, therefore, his right though not specifically given in law, to insist on an identification parade during investigation, was recognised. To insist on an identification parade, in most cases would amount to throwing a challenge to the prosecution. In case the prosecution fails to accept the challenge, the Court will be perfectly justified in raising presumption adverse to it.²¹ Therefore, if the Court

16. 2001 SD 73=PLJ 2001 SC 402=2001 SCMR 424=2001 AC 649.

17. AIR 1953 All. 385=1953 Cr.L.J. 848.

18. 2001 SD 73=PLJ 2001 SC 402=2001 SCMR 424=2001 AC 649 (SC).

19. IJR (1956) 1 All. 365.

20. AIR 1955 NUC (Punj) 1367.

1. 1986 P. Cr.L.J. 25=NLR 1986 Cr. 56.

14. PLJ 2003 FSC 39=2003 P. Cr. L.J. 1928.

15. 2002 P. Cr. L.J. 518=PLJ 2002 Cr.C. 695=2002 Cr.L.J. 354.

reasonably comes to the conclusion that there may be force in the prayer of the accused for test identification, it should direct the holding of a regular test identification in order that the veracity of a witness may be tested. The Court has ample power under section 540, Cr.P. Code to secure this evidence.² An application by a long absconding accused for identification should not be refused on the ground that his appearance might have changed.³

Refusal of accused to participate in parade. Where an accused person refuses to participate in an identification parade, his refusal would raise a presumption against him that he is guilty.⁴ But where the culprits, though they initially refused identification, subsequently made a request that they should be identified, and the request was refused for no valid reasons, and the Court identification was made long afterwards, it was held that the identification evidence in Court could not be relied on unless it was corroborated.⁵

Witnesses should have clearly seen the accused at the occurrence. Evidence of identity based on personal impression should be always approached by the Court with considerable caution, especially when the whole case hinges upon such evidence. The testimony of senses cannot be implicitly relied upon even when the veracity of the witnesses cannot be challenged. Chances of error in identification become greatly increased when the identification is based upon a momentary glimpse in the confusion and Pandemonium of the moment at night even though the night is moonlit.⁶ Where there were meagre opportunities for seeing the robbers, the evidence of identification is not safe to rely on.⁷ Relevant considerations for Courts in such case are, the availability of sufficient light, opportunity available to witness to have a close look or a dialogue with accused, intimacy of accused with witness, availability of an unobstructed view of accused to witness at the time of commission of offence. These considerations would determine quality and probative value of identification. Where the witnesses identified the accused in the light of electric bulb or lantern which was not produced in evidence by prosecution the prosecution case would fail.⁸ But where the spearhead of a roting mob attacked a police party with bombs from behind, it was held that the persons in the spearhead could be identified by the members of the police party.⁹

Witness having only momentary glimpse. When culprits were not known to the witnesses and they had only a momentary glimpse of the culprits at the time of occurrence, prosecution was bound to prove that culprits, soon after their arrest, were put to identification test and got them identified by eye-witnesses through an identification test/parade held in presence of a Magistrate.¹⁰ Identification of accused

2. AIR 1961 All. 153=1960 All Cr.R. 271=1961 (1) Cr.L.J. 340+AIR 1955 All. 671.
3. AIR 1945 Lah. 48=ILR 1944 Lah. 236=46 Cr.L.J. 550 (DB).
4. PLD 1966 Lah. 739 (DB).
5. AIR 1965 Punj. 146 (DB).
6. PLD 1956 Pesh. 50.
7. PLD 1956 Lah. 157=PLR 1956 Lah. 58 (DB).
8. 1997 SCJ 124=1997 SCMR 174.
9. AIR 1965 Cal. 89 (DB).
10. 2000 P. Cr. L.J. 1366.

would have no evidentiary value when it is conceivable that all the eye-witnesses could have managed to cast at culprits at that time would be just a fleeting glance while at the same time they would be trying to elude by crouching so as to save themselves from the assault in a state of shock, panic, fear and horror.¹¹

Identification evidence in Court. Identification of accused in Court is valid and can be relied upon.¹² It cannot be laid down as a proposition of law, that if no test identification parade is held, the evidence of the witnesses at the trial pointing out the accused as the culprit should be discarded altogether. It is important to note that there is no provisions of law which requires that a test identification parade must be held. Such identification parades are generally held as a precautionary measure. The Courts take into consideration the sworn testimony of the witnesses given at the trial. The statements made by the witnesses at the test identification parades are used only for the purposes of corroboration or contradiction of the evidence of the witnesses given in Court. The law does not permit the use of those statements as evidence at trial, unless the persons making those statements are called as witness at the trial.¹³ Identification of accused in Court during trial is generally accepted to be a weak type of identification. The fact that eye-witnesses whose evidence was recorded after seven witnesses had made their statements and on all these occasions eye-witnesses were present in Court would denude their evidence of reliability or acceptability regarding identification of accused.¹⁴

The main evidence of identification is the evidence of a witness given in Court as to how and under what circumstances he came to point out a particular accused person and the details of the part which that accused took in the crime in question.¹⁵ Identification made by abductees in Court has to be accepted as substantive evidence unless it was made out otherwise that their evidence was not confidence inspiring and was tainted with animosity coupled with motive to implicate the accused falsely.¹⁶ Therefore when on being questioned a witness states that he had identified the prisoner as the offender at a police 'show-up', objection is sometimes taken to the admissibility of the evidence on the ground that the statement is mere hearsay. The prevalent opinion, however, is that the statement is primary evidence of identity and not hearsay.¹⁷

No identification parade held--effect. Non-holding of identification parade of accused by witnesses would make their testimony of highly doubtful nature.¹⁸

7. Who can hold identification parade. Identification test parade should be exclusively under the supervision of Magistrate which would include the arrangements of dummies etc., so as to avoid possibilities of false implication of the

11. NLR 2003 Cr. 428 (DB).
12. 2002 AC 756 (DB).
13. PLD 1961 Lah. 502=PLR 1962 (1) WP 229.
14. NLR 2003 Cr. 428 (DB).
15. PLD 1957 Lah. 765=PLR 1958 (1) WP 244.
16. PLJ 2000 Cr.C. 63=NLR 2000 Cr. 210=2000 P. Cr. L.J. 920 (DB).
17. PLD 1958 SC 1=10 DLR (SC) 21.
18. 2000 Cr.L.J. 372=2000 MLD 1374 (DB).

accused.¹⁹ If there is no judicial supervision the case becomes one of further inquiry and accused, in the absence of other material, becomes entitled to bail.²⁰

Identification parade of an accused cannot be conducted by a police-officer in the police station.¹ Where the police arrange identification by *panch* witnesses it cannot be approved of as a matter of prudence and though, such identification may, in the circumstances of a particular case, be held as infirm and unsafe for reliance, the evidence cannot be struck down as inadmissible unless a police officer is present at the time when witnesses make the identification.²

An identification parade, if it has to have any value must be held by a Magistrate and in the absence of the police.³ Therefore where a Magistrate is available and is not called, the result of the identification parade, unless the circumstances be quite exceptional would be valueless and no Court will act on such evidence. The only effect that the needless introduction of such evidence into an otherwise strong case can produce is to confuse and divert justice from its true course.⁴

The parade must not be held in the presence of the police officers.⁵ The Magistrate who is conducting the test identification should not allow the police to do it.⁶ The principle underlying the exclusion of the police for the identification parade is two-fold, first, to remove any undue influence of the prosecuting or investigating agency on the identifying witnesses; and, secondly, to comply with the provisions of section 162 of the Code of Criminal Procedure which prohibits the conduct of identification parades by police officers.⁷ Presence of constables in the room where the identification is done,⁸ and the practice of having test identification at a Police Station where the Police Officers are in a position to advise the officer under whose guidance the test identification is held, is to be deprecated.⁹

Identification after challan. By its very nature test identification proceedings may be considered to form part of the investigation but once a case has been challenged the investigation is over, and if the prosecution desires to have a fresh identification it can do so only with the approval of the Court who is seized of the case.¹⁰

8. Record of identification proceedings. It is the duty of the Magistrate before whom the accused are produced for identification to make a faithful record of

- 19. 2001 Cr.L.J. 562 (DB).
- 20. 1989 P.Cr.L.J. 1956.
- 1. 2000 YLR 680.
- 2. AIR 1955 SC 104+AIR 1963 MP 106 (DB).
- 3. AIR 1953 Bilaspur 3=1953 Cr.L.J. 708.
- 4. PLD 1958 SC 1=10 DLR (SC) 21.
- 5. AIR 1953 Bilaspur 3=1953 Cr.L.J. 708.
- 6. ILR (1956) 1 All. 365+AIR 1965 MP 225 (DB)
- 7. AIR 1965 MP 225 (DB).
- 8. AIR 1934 Lah. 692=36 Cr.L.J. 679.
- 9. AIR 1945 Pat. 161=46 Cr.L.J. 613 (DB).
- 10. 1957 Cr.L.J. 243=ILR (1955) 5 Raj. 769.

the steps he takes at the time of identification. It is not easy to believe that after the lapse of a year or so a Magistrate before whom identification parade took place could say from his memory that he took a certain kind of precaution which is not noted in the proceedings.¹¹ A Magistrate must make a note of every objection made by the accused at the time of such proceedings so that the Court judging the value of the evidence may appreciate it in the light of such objections.¹²

Result of identification must be recorded. Where a Magistrate conducts an identification proceeding it is incumbent on him to note down the result of the proceeding in his own hand so that not only he but the trial Court also can be certain that the result has been recorded correctly. Where the Magistrate who conducted the identification proceeding did not take the trouble of filing the memorandum with his own hand but dictated it to his clerk, who might have committed a mistake in entering the result, and the memorandum is not read over in the presence of the suspects after it has been recorded and there is no opportunity for correcting any errors which he might have made in writing it, the identification is of no value.¹³

Magistrate to append certificate. After completion of identification test Magistrate holding rest has to append his certificate at the foot of identification memo. as contemplated in Chapter II-C, High Court Rules and Orders, Volume III,¹⁴

Note of distinctive marks of accused. Where the Magistrate did not make any note, in the identification memo, of the distinctive marks of the accused. It was held, that any competent Magistrate having experience of identification proceedings would have made a note about it if he had really paid attention to it. Such defects in the conduct of the identification proceedings reduce the value of the identification.¹⁵

9. Statement made at time of identification. If an identification parade is conducted by a Magistrate in his official capacity, namely, *qua* a Magistrate empowered to record statements under section 164 of Cr.P. Code, then unless the statements made to him by a witness have been recorded by him in conformity with the provisions of that section, such statements, even though relevant for the purpose of establishing the identity of a thing or person under Art.22 cannot be proved.¹⁶

Where identification is held by *panch* witnesses or other persons who are neither Magistrates nor police officers, statements involved in the process of such identification would be statements made by the identifying witnesses to the *panch* witnesses, therefore such statements would be outside the purview of section 162, Criminal Procedure Code, provided the process of identification was carried out under the exclusive direction and supervision of the *panch* witnesses and the police had completely obliterated themselves from the parade.¹⁷ But where the test identification is carried out by the police in their presence no distinction can be made

- 11. AIR 1953 Raj. 182=1953 Cr.L.J. 1452 (DB).
- 12. AIR 1935 Lah. 230 (DB) (Duty of Magistrate explained)+AIR 1942 All. 339 (DB).
- 13. AIR 1954 VP 42=1954 Cr.L.J. 1819.
- 14. PLJ 2002 Cr.C. 695=2002 Cr.L.J. 354=2002 P. Cr. L.J. 518.
- 15. AIR 1955 All. 138=1955 Cr.L.J. 394 (DB).
- 16. AIR 1965 MP 225 (DB).
- 17. AIR 1955 SC 104+AIR 1965 MP 225 (DB)+AIR 1963 MP 106 (DB).

between the statements made to the police officers when conducting the test identification parade witnesses called by the police officers when conducting the test identification parades. Similarly where the whole of the *parach* witnesses took a minor part in the parades. Similarly where the police officers and the *parach* witnesses were satisfied, it was held same and were there only for the purpose of guaranteeing that the requirements of the law in regard to the holding of the identifications, if any, involved in the process of that it could not be said that the statements by the police officers to the *parach* witnesses and not identification were statements made by the identifiers to the *parach* witnesses and not to the police officers as otherwise it will be easy for the police officers to circumvent the provisions of S. 162, Cr.P.C. by formally asking the *parach* witnesses to be present and contending that the statements, if any, made by the identifiers were to the *parach* witnesses and not to themselves. Hence the test identification parade would attract the operation of S. 162, Cr.P.C. and the evidence of identification at the parade would be inadmissible.¹⁸

Statements before police. Evidence about statement made by witnesses at identification parade held by the police during investigation is excluded by S. 162, Criminal P.C.¹⁹ This is so because the process of identification by the identifying witnesses involves the statement by the subject-matter of the offence or the persons identified properties identified were the subject-matter of the fact of identification by were concerned in the offence. All these statements express or implied including the signs and gestures would amount to a communication of the fact of identification by the identifier to another person. Such communications are tantamount to statements made by the identifiers to a police officer in the course of investigation and come within the bar of section 162, Cr.P.C. and is inadmissible in evidence, the only exception being evidence sought to be given by the identifier himself in regard to his mental act of identification which he would be entitled to give by way of corroboration of his identification of the accused at the trial.²⁰ Therefore, the accused is entitled to object to the evidence of the Sub-Inspector that the witness 'identified' the article to him or the evidence of the witnesses when they say that they 'identified' the article in the presence of the Sub-Inspector in so far as the latter expression is taken to mean and include not only that they recognised the article as theirs but conveyed that recognition to the Sub-Inspector.¹

Use of statement made at time of identification. The statement made at the time of identification in a parade can only be used to corroborate or contradict a witness. It is a statement without oath and without cross-examination and does not amount to evidence in the case.²

10. Mixing other persons with suspects. The best way to test the evidence of the witnesses regarding the identity of the accused is to mix the latter with other persons and to give the witnesses an opportunity of picking them out. Where this

- 18. AIR 1955 SC 104=1955 SCR 903=1955 Cr.L.J. 196.
- 19. PLD 1954 Sind 279+AIR 1941 Mad. 675 (DB)+AIR 1955 NUC (Bom) 5305+AIR 1955 NUC (Bom) 5328.
- 20. AIR 1955 SC 104=1955 SCR 903=1955 Cr.L.J. 196.
- 1. AIR 1949 Cal 514 (DB).
- 2. PLD 1944 Lah. 218+PLD 1961 Lah. 502+AIR 1961 All. 153.

procedure is not adopted either by the Police or by the Magistrate and no explanation is forthcoming as to the omission, it is a very serious defect both in the investigation and the conduct of the case.³

Every effort should be made to minimise the possibility of chance identification which can be done by mixing as many under-trials as possible with the suspect.⁴ where the ratio was 1 to 3 or 1 to 1 the proportion of other persons with the suspects,⁵ or where the ratio was 2 to 7, the identification was held to be of no value.⁶ While no categorical observation that the ratio of 7 to 1 in the case of one or two suspects *ipso facto* destroys the results of identification can be made, yet it is considerably above board, it would not be prudent to place any reliance on such absolutely above board, it would not be prudent to place any reliance on such identification.⁷ A proportion of 5 to 1 is quite insufficient to eliminate the element of chance. Ordinarily the ratio should be that of one to nine or ten.⁸ Identification parade of three accused conducted from amongst seven dummies would not be in accordance with law and cannot be used in support of prosecution case. For an identification parade in accordance with law, accused who were three in number had to be mixed with dummies in the ratio of 1/10.⁹ But the ratio of nine or ten persons to one accused is not an inflexible ratio. However where the ratio is reduced, the prosecution must give some explanation for doing so. Where there was absolutely no explanation for departing from the normal rule, and, on the other hand, in the circumstance of the case, a departure from the rule was hazardous and fraught with danger to the accused, because the prosecution case rested on the evidence of a solitary witness, who had seen assailant for a brief moment. It would not be safe to rely on the corroboratory evidence of the identification parade.¹⁰

Identification parade becomes worthless in case the dummies and the accused are not equally/uniformly dressed or do not have similarity in features. Identification parade would be unreliable when all persons are differently dressed and also have different features.¹¹

Too many persons should not be mixed. As a rule of prudence, mixing of a fair proportion of outsiders with the suspects, considering the circumstances of the case should always be insisted upon by every Magistrate who is charged with the duty of conducting identification proceeding. If too large a number of persons is mixed with suspects or accused persons in a particular case there might be a danger of putting too

- 3. PLD 1961 Kar. 728+48 Cr.L.J. 522 (Lah) (DB)+AIR 1953 All. 123 (DB).
- 4. AIR 1945 Oudh 149+AIR 1936 All. 373 (DB)+AIR 1935 All. 653.
- 5. PLD 1961 Kar. 728 (See however AIR 1953 MB 87 (DB)).
- 6. 1969 P.C.L.J. 1317 (Kar).
- 7. AIR 1961 All. 50=ILR (1958) 1 All. 151=1961 (1) Cr.L.J. 22.
- 8. 1996 P. Cr. L.J. 73+PLD 1981 SC 142=PLJ 1981 SC 407=NLR 1981 Cr. 346+1969 P.C.L.J. 1317+PLD 1961 Kar. 728.
- 9. 2002 AC 768=2003 AC 443 (DB).
- 10. NLR 1981 Cr. 346=PLD 1981 SC 142=PLJ 1981 SC 407.
- 11. 2002 Cr.L.J. 745 (DB).

much strain on a witness's ability to pick out a suspect. He might get easily bewildered.¹²

Separate identification of each accused. Where several suspects are put up for identification 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 nine or ten. Care must be taken to see that the same innocent men are not mixed with each of the suspects.¹³ The innocent persons must be changed every time a fresh suspect is put up for trial.¹⁴ But it cannot be laid down as a general rule that wherever more than one suspect is put up in an identification parade, the identification made in such a proceeding should be held invalid. The chief thing which should be done is that as many persons as possible should be mingled with the prisoners so that the witnesses might pick out the real offenders without any extraneous aid. Each case must be decided on its particular facts and no hard and fast rules can be laid down in such a matter.¹⁵

11. Concealment of identification marks. Where there were scars on the face of the accused but the Magistrate supervising the identification parade did not take the precaution of pasting sticking plaster on his face and on the faces of those who were participating in the parade to obliterate the scars. It was obvious that the accused was identified by the prosecution witnesses because of the scars. The Court refused to rely on the identification parade.¹⁶ But the presence of distinguishing marks on the person of the accused does not render identification improper unless it is shown that advantage has been taken of such marks by the identifying witnesses.¹⁷ Only those marks which are so prominent or noteworthy that they are likely to be recognised by a verbal description should be covered by slips of paper. A maximum of ten slips of paper of 1/2" x 1/2" in size would be sufficient to just preserve the general contours of the face. Any number over and above ten would markedly alter the contours and in consequence genuine identification would become hazardous. In vast majority of cases such a number of slips would not be necessary if the Magistrates bore in mind that insignificant marks, or marks which cannot be described in words, do not stand in need of any concealment. If a suspect has a large number of prominent marks on his face, the marks should not be covered at all. Hence the Magistrate should not attempt to conceal the cox marks of the suspect but instead to make sure that number of innocent men in the parade bear such marks. So also no concealment of bored ears is required and all that is necessary is that the Magistrate should make sure that the parade contains a number of innocent men—much less the usual proportion of one to nine or ten—with similarly bored ears.¹⁸ But if the number of innocent men with bored ears is less than the required minimum, the

12. PLD 1961 Kar. 728+AIR 1953 All. 123+ILR (1953) 1 All. 856 (DB).
13. PLD 1981 SC 142-PLJ 1981 SC 407-NLR 1981 Cr. 346+PLD 1961 Kar. 728+AIR 1961 All. 50+AIR 1961 All. 153 (DB).
14. AIR 1961 All. 153.
15. 1956 Andh. WR 788.
16. PLD 1965 Lah. 288 (DB)+AIR 1959 All. 504+1950 All L.J. 355.
17. AIR 1933 All. 592=36 Cr.L.J. 1196.
18. AIR 1961 All. 153=1961 (1) Cr.L.J. 340+AIR 1959 All. 504.

identification will be worthless. Thus where the accused and two other persons who were put up for identification had their ears bored. At the identification parade although twenty-five men were mixed, amongst those who were mixed there were only ten persons who had their ears bored. No steps were taken to cover up the bored ears so that the witnesses had really to pick out three men, out of thirteen. It was held, that in view of the small number of under-trials with bored ears who were mixed at the parade, the assurance which flows from the mixing of a larger number was not available in this case.¹⁹

If the Magistrate has reason to believe that in order to avoid recognition a bearded criminal after committing the crime got himself shaved, or vice versa is open to him to defer the identification of the clean shaven suspect until he has grown a beard of the appropriate size, or to get the bearded suspect shaved.²⁰

12. Putting marks on accused persons. No marks should be placed on an accused person to facilitate his identification by witnesses.¹ Where the accused was unconscious and the others were in their senses. He was bandaged. His face was covered and only eyes were visible. The prosecution witnesses were aware that one of the appellants had been injured in the firing by the Police, yet the only person in the parade, who was in bandages and was unconscious, was the accused. The identification was of no value.²

The accused has a right to dress himself in any manner he likes at the identification parade but this right to dress or to cover his face or marks on it, is subject to the right of the prosecution witnesses to see so much of his face as is necessary for their being able to identify him.³

13. Delayed identification. Suspect must be put to identification test at first opportunity because human beings have their own limitations and memory fades by lapse of time.⁴ No hard and fast rule can be laid down with regard to the period of time which may elapse between the occurrence and the identification of the culprit.⁵ But it is obligatory for Investigating Officer to arrange identification of the culprit.⁶ accused persons soon after their arrest.⁶ Specially when apprehension of accused on matter of identification test, seems to be one of common sense and prudence. It is calculated to ensure identification of accused free from all reasonable doubt. All precautions are to be observed to forestall any possible manipulations from the side of an overzealous police force. It is thus that any undue delay in holding such a test is

19. AIR 1958 All. 616=ILR (1958) 1 All. 194=1958 Cr.L.J. 996.
20. AIR 1961 All. 153=1961 (1) Cr.L.J. 340.
1. AIR 1942 Pat. 319=43 Cr.L.J. 742 (DB).
2. 1969 P.Cr.L.J. 1317 (Kar).
3. AIR 1959 All. 504=1959 Cr.L.J. 934.
4. 2004 SD 153=PLJ 2003 FSC 39=2003 P. Cr. L.J. 1928.
5. 1992 P. Cr. L.J. 1339 (SAC).
6. 2003 SD 35=2003 YLR 110 (FSC).
7. NLR 2002 Cr. 364=2002 P. Cr. L.J. 149 (DB).

warily looked at.⁴ Delay which matters in a T.I. parade is the delay from the date of occurrence and not from the date of arrest of the accused.⁵ Identification should be held at the earliest possible opportunity and all available witnesses should attend the very first parade.¹⁰ Human memory fades with lapse of time and when the T.I. parade is held after inordinate delay from the time of commission of the crime, the chances of mistake increase. This is a major reason for not depending on a T.I. parade held long after the incident.¹¹ Where identification parades are delayed for a long time without any plausible explanation then their object would be largely frustrated. Possibility that the witness had seen the culprit in police or judicial lock-up cannot be ruled out in such a situation.¹² Ordinarily identification parade must be held as early as possible after the arrest of accused, but not later than 15 days.¹³ Therefore the identification of the accused after 12/13 days of his arrest diminishes the evidentiary value of the test.¹⁴ Similarly test of identification held 35 days after the occurrence and 9 days after the arrest of accused would have no evidentiary value.¹⁵

Where the identification parade was held ten days,¹⁶ or some twenty days after the occurrence and it was on record that the witness who identified the accused had seen only a glimpse of the accused in torch light on the night of occurrence. It was held that the identification evidence could not be relied upon.¹⁷ A delay of thirteen months between the date on which dacoity was committed and the date on which identification test was held, would create a doubt in anybody's mind that the identification by the witnesses may be a mistaken one.¹⁸ Little or no value can be attached to the test identification held so long as 16 months after the event, particularly when the accused and the identifying witness belong to the same village.¹⁹

Where the witnesses had seen only partial glimpses of the faces of the dacoits and that too at a time when they were in a state of terror, an identification test held after eight months of the occurrence would not be of much value.²⁰ Where according to the six identifying witnesses they had last seen the accused during the course of the commission of a dacoity at which firing was taking place and they did not see him again till a year later. Still all of them identified him and not one of them made a mistake, the whole identification became suspicious.¹

8. 1989 P.Cr.L.J. 1956.
9. 18 DLR 427 (DB).
10. AIR 1934 Lah. 641+AIR 1942 All. 339 (DB).
11. PLD 1963 Kar. 1009 (DB)+18 DLR 427 (DB)+PLD 1969 Kar. 504 (DB).
12. 1991 P. Cr. L.J. 740.
13. 1997 P. Cr. L.J. 280=NLR 1997 Cr. 49 (DB).
14. PLD 1978 Quetta 191=PLJ 1978 Cr.C. 557 (DB).
15. NLR 2003 Cr. 428 (DB).
16. PLD 1995 SC 1.
17. PLD 1964 Kar. 275 (DB).
18. PLD 1967 Kar. 233.
19. AIR 1947 Pat. 107=47 Cr.L.J. 780 (DB).
20. PLD 1966 Lah. 643=PLR 1966 (2) WP 522.

1. AIR 1954 All. 795=1954 Cr.L.J. 1762 (DB).

Delayed identification, if may be accepted. Long interval in holding identification parade or identification of accused would not by itself be sufficient to discard the testimony when the testimony as regards identification itself was not challenged by the accused in cross-examination.² Whenever a test identification is discovered to have been held with delay the prosecution should explain it and the absence of a reasonable explanation will detract from the value of the test.³ Where delay in holding identification parade was not explained, identification was ruled out of consideration.⁴

If an identification test is all that there is connecting the accused with the crime, and such test is held, without explaining the delay, if any, in circumstances which lead to an inference that time was consumed to reveal the identity of the accused, in advance, to the prosecution witnesses the accused cannot be convicted.⁵ Where there is inordinate delay in holding the identification parade and there is no explanation whatsoever on part of prosecution as to why identification parade has been held after inordinate delay and there is every possibility that appellants who were thrown in lockup and were taken out for remand might have been seen by witnesses when both witnesses who claim to have seen accused persons during commission of offence were easily available at the place of wardat and yet no efforts were made by police to put appellants to identification parade immediately and the parade was conducted by officer not competent to exercise it, no reliance may be placed on it.⁶ However it is not correct to say that it is wholly unsafe to accept the testimony of witnesses who got to the identification parade after the lapse of a period of some months from the date of the commission of the offence. The question whether or not a certain set of witnesses who say that they have identified a particular accused or a group of accused persons should be believed is a question depending upon the facts and circumstances of each case and no hard and fast rule can be laid down with regard to the period of time which may elapse between the commission of a crime and the identification of the culprits.⁷ It is true that human memory is fallible and it is sometimes difficult to identify a person not very well known whom one sees with a rather different appearance at the time of identification proceedings. But this does not necessarily cause any infirmity in the evidentiary value of the witnesses who do, in spite of this difficulty, find it possible to identify the accused; nor is the value of the identification minimised because of the time gap between the occurrence and the identification proceedings. If in spite of fading memory and the effect of seeing the accused in a different appearance and the long gap between the time of occurrence and holding of identification proceedings, the witnesses do identify the accused, there should be no justification whatsoever for discarding their evidence.⁸

2. PLD 2001 SC 398+1999 MLD 2477 (FSC).
3. AIR 1961 All. 153+AIR 1951 Hyd. 97 (DB).
4. NLR 2001 Cr. 272 (SC)+PLD 1977 Kar. 695=PLJ 1977 Kar. 552 (DB).
5. 1989 P. Cr. L.J. 1956.
6. PLJ 2001 Cr.C. 826.
7. AIR 1948 All. 241=49 Cr.L.J. 287.
8. AIR 1964 All. 139 (DB) (Identification held 10 months after occurrence--relied upon)+AIR 1948 All. 241.

Where identification parade was conducted after a period of more than two years after occurrence. Evidence of other witness who was associated in identification parade along with others as dummies was also not admissible, being based on position of other one who witnessed identification parade had produced its of offence. The Magistrate who witnessed identification parade had produced its memo. without identifying accused in Court. Magistrate had identified his signatures in identification parade form but neither he proved contents of identification parade form nor gave details of process of identification parade. The identification of accused was not arranged through an independent source, evidence to that effect from mouth of a person who himself was an accused was not admissible, unless he had been made "approver". The results of the parade were not relied upon.⁹

Witness should depose as to role of accused. Simple identification of accused in delayed identification parade would not be material unless the witnesses inform positively the role of the person so identified.¹⁰ In another case it was held that picking up of the accused in the identification parade without describing the roles played by them in the crime is illegal which renders the proceedings unreliable and of no evidentiary value.¹¹

Likelihood of the accused having been seen by witnesses. Where the possibility that the accused was shown to the identifying witnesses who was not known to them and there is no other evidence to show that such a thing had been done. It was held that the evidence of identification could not be disregarded.¹²

Single witness identification. It is in general dangerous to rely upon identification by a single witness where the test identification is held five months after the occurrence and the identifying witness is not cross-examined and it would not be proper to convict the accused only on the strength of such identification.¹³

Identification in Court. Identification in Court long after the incident is of little value in a case where the wrong-doers are strangers and unknown to the victims at the time of the incident. Corroboration by an identification parade to be held soon after the arrest of the suspected person and under circumstances which do not give an opportunity to the witnesses to see the accused before the parade is held, necessary in such a case.¹⁴

Effect of delayed identification of one of the accused. Normally the result of identification proceedings in which a particular accused was put up must alone be taken into consideration in deciding whether the identification is good and reliable or fit to be discarded. Other identification proceedings in which the particular accused was not put up for identification and other accused were put up, are immaterial except in so far as an inference may be drawn against the power of observation of the

This inference may be drawn from those other identification proceedings witnesses were held either prior to the identification proceeding relating to the when they accused or simultaneously with or shortly after it. But no conclusion can be drawn from those other identification proceedings if they were held long afterwards, because by the lapse of time a witness may lose that freshness of impression which he might have retained at the time when the proceeding connected with the particular accused was held.¹⁵

14. Suspect seen or known before identification. Identification parade is never conducted about culprits who are already known to witnesses.¹⁶ Where a witness had fleeting glimpse of an unknown culprit, then identification test was necessary, but if accused was known to the witness previously or he had seen accused several times or had ample opportunity to see accused then in such situation identification test was not necessary.¹⁷ In order to ensure that identification parade was conducted fairly and properly it was incumbent upon prosecution to adopt such measures so as to eliminate possibility of identifying witnesses to see accused after commission of offence till identification parade is held immediately after arrest of accused persons as early as possible.¹⁸ It is only where the accused are seen for the first time at the place of the incident by a witness that it becomes necessary to put up such a witness at a test identification parade. If an accused is already known by face although not by name, it is unnecessary to put him up to a test identification, because at the parade he only identifies by face and not by name.¹⁹ When the accused is already shown or known to the identifying witness the evidence of identification is valueless.²⁰ Where the accused were identified by the P.Ws. at the spot and before the registration of the case. Holding of test identification was neither necessary nor desirable and this omission does not affect the prosecution case adversely at all.¹ Where the accused was known to the witnesses for a long time the mere fact that he identified them in defused torch-light is not of much value.² Where in a case of kidnaping, the witness (kidnapee) had remained with the accused persons during captivity and had clearly seen their faces, holding of an identification parade was not a mandatory requirement.³

First and the foremost condition for such test is that the witnesses had no occasion or opportunity to see the culprits before the identification test is held which gives strength, and sanctity to it. Such strength and sanctity cannot be given to the

9. 1999 P. Cr. L.J. 1474=PLJ 1999 Cr.C. 1448 (DB).
10. 1996 P. Cr. L.J. 991=PLJ 1996 Cr.C. 587.
11. 1996 P. Cr. L.J. 503=NLR 1996 Cr. L.J. 369 (DB)+1996 P. Cr. L.J. 662=PLJ 1996 FSC 66+1995 MLD 1097=PLJ 1995 FSC 68=NLR 1995 SD 310.
12. AIR 1959 Dacca 504 (DB)+AIR 1964 All. 139 (DB) (But see AIR 1953 Raj. 49).
13. AIR 1947 Pat. 157=25 Pat. 227 (DB).
14. AIR 1965 Punj. 146 (DB)+ILR (1953) 3 Raj. 183.

15. AIR 1953 All. 314 (DB)+ILR (1958) 1 All. 151 (DB)+1958 All. L.J. 431 (DB).
16. 2003 Cr.L.J. 38=2002 SCMR 1439.
17. 2003 YLR 2273 (DB).
18. PLJ 2001 SC 402=2001 SD 73=2001 SCMR 424.
19. PLD 1995 SC 1+1974 SCMR 175+PLD 1975 SC 275.
20. NLR 2000 Cr. 210=2000 P. Cr. L.J. 920=PLJ 2000 Cr.C. 63 (DB)+NLR 1983 UC 69=1983 P.Cr.L.J. 1955 (DB)+1971 P.Cr.L.J. 1230=1971 DLC 588 (DB).
1. 1983 P.Cr.L.J. 2060=NLR 1984 Cr.L.J. 181 (DB).
2. 2000 P. Cr. L.J. 920=PLJ 2000 Cr.C. 68=NLR 2000 Cr. 210 (DB)+AIR 1934 Cal. 744=36 Cr.L.J. 129 (DB).
3. 1995 SCMR 1793.