

DISTRICT COURT : BHANDARA**WORKSHOP****SUMMARY/GIST OF PAPERS OF****1st WORKSHOP HELD ON 26th SEPTEMBER, 2015**

Subjects:- (1) Comparative and analytical study of Sections 10 and 11 of the Code of Civil Procedure and Section 115 of the Evidence Act, and
(2) Test identification parade, appreciation of evidence under sections 3 and 8 of Evidence Act.

The workshop on the subjects (1) Comparative and analytical study of Sections 10 and 11 of the Code of Civil Procedure and Section 115 of the Evidence Act, and (2) Test identification parade, appreciation of evidence under sections 3 and 8 of Evidence Act. was held on 26th September 2015 at District Court, Bhandara under the Chairmanship of Hon'ble Principal District and Sessions Judge, Bhandara. The discussion was opened by reading the summary of paper on the subject “ Comparative and analytical study of Sections 10 and 11 of the Code of Civil Procedure and Section 115 of the Evidence Act. Thereafter the discussion on the topic and case-laws relating to the subject was made. After completion of discussions on criminal subject summary of another paper on the subject “test identification parade, appreciation of evidence under sections 3 and 8 of Evidence Act” was read. Thorough discussions were made on both the subjects. Relevant case-laws were discussed. The difficulties raised by the Judicial Officers were discussed and solved.

QUESTIONS

Question No.1 : Whether the court can pass an order of consolidation of both the suits ?

Ans : Since the main purpose of Section 10 is to avoid two conflicting decisions, a court in an appropriate case can pass an order of consolidation of both the suits.

(Indian Bank v. Maharashtra State Coop. Marketing Federation Ltd.,(1998) 5 SCC 69: AIR 1998 SC 1952).

Question No.2 : Whether the decree passed in contravention of Section 10 is a nullity ?

Ans : A decree passed in contravention of Section 10 is not a nullity and, therefore, cannot be disregarded in execution proceedings. (AIR 1969 Bom).

Question No.3 : Whether the interim orders, such as, attachment before judgment, temporary injunction , appointment of receiver, amendment of plaint or written statement,etc. can be passed when the suit is stayed under section 10 of the Civil Procedure Code?

Ans : An order of stay of suit does not take away the power of the court from passing interim orders. Hence, in a stayed suit, it is open to the court to make interim orders, such as, attachment before judgment, temporary injunction, appointment of receiver, amendment of plaint or written statement, etc.

(Indian Bank v. Maharashtra State Coop. Mktg. Federation Ltd.,(1998) SCC-1952).

Question No.4 :Whether subsequent suit can be decided on merits ?

Ans : Section 10, does not take away power of the court to examine the merits of the matter. If the court is satisfied that subsequent suit can be decided purely on legal point, it is open to the court to decide such suit. (Pukhraj D. Jain v. G.Gopalakrishna, AIR-2004

SC 3504.

Question No.5 : Whether the identification of the accused for the first time in the court is permissible in law ?

Ans : Identification of accused for the first time in the Court is permissible in law but said principle has to be applied in the facts and circumstances of each case. (2015 CRI. L.J. 2944 SUPREME COURT) Ranjeet Kumar Ram alias Ranjit Kumar Das v. State of Bihar.

Question No.6 : Whether the identification of the accused through photograph is permissible instead of a test identification parade.

Ans : Identification of the accused through photograph can serve the same purpose as a test identification parade. The Supreme Court recognised this possibility by looking at the practices of Interpol and other crime detecting agencies for identification of criminals engaged in drug trafficking, narcotics and other economic offences and also in other international crimes. In such cases identification through photographs is the commonly used method. (Laxmi Rai Shetty v State of T.N.,AIR 1988 SC 1274 : 1988 Cr LJ 1783).

Question No.7 : Whether the statement of accused recorded under section 313 of Cr.P.C. Can be treated as evidence ?

Ans : The statement of accused recorded under section 313 of Cr.P.C. Cannot be treated as evidence.

Section 10 deals with stay of civil suits. It provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties and that the court in which the previous suit is pending is competent to grant the relief claimed.

Section 11, on the other hand, relates to a matter already adjudicated upon. It bars the trial of a suit or an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit.

Section 10 declares that no court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the court before which the previously instituted suit is pending is competent to grant the relief sought. (AIR 1998 SC 1952; Maharashtra State Coop. Marketing Federation Ltd. v. Indian Bank, AIR 1997 Bom 186).

The rule applies to trial of a suit and not the institution thereof. It also does not preclude a court from passing interim orders, such as, grant of injunction or stay, appointment of receiver, (Indian Bank v. Maharashtra State Coop. Marketing Federation (1998) 5 SCC 69). etc. It, however, applies

to appeals.

The object of the rule contained in Section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.

The section intends to protect a person from multiplicity of proceedings and to avoid a conflict of decisions. It also aims to avert inconvenience to the parties and gives effect to the rule of res judicata. (*S.P.A. Annamalay Chetty v. B.A.Thornhill*, AIR 1931 PC 263; *Shri Ram Tiwary v. Bholi Devi*, AIR 1994 Pat 76).

It is to be remembered that the section does not bar the institution of a suit, but only bars a trial, if certain conditions are fulfilled. The subsequent suit, therefore, cannot be dismissed by a court, but is required to be stayed.

For the application of this section, the following conditions must be satisfied :

- (i) There must be two suits, one previously instituted and the other subsequently instituted.
- (ii) The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.
- (iii) Both the suits must be between the same parties or their representatives.
- (iv) The previously instituted suit must be pending in the same court in which the subsequent suit is brought or

in any other court in India or in any court beyond the limits of India established or continued by the Central Government or before the Supreme Court.

- (v) The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.
- (vi) Such parties must be litigating under the same title in both the suits.

As soon as the above conditions are satisfied, a court cannot proceed with the subsequently instituted suit since the provisions contained in Section 10 are mandatory, (**Manohar Lal Chopra v. Seth Hiralal**, AIR 1962 SC 527: 1962 Supp (1) SCR 450) and no discretion is left with the court. The order staying proceedings in the subsequent suit can be made at any stage. (**Life Pharmaceuticals (P) Ltd. v. Bengal Medical Hall**, AIR 1971 Cal 345).

Section 10, however, does not take away power of the court to examine the merits of the matter. If the court is satisfied that subsequent suit can be decided purely on legal point, it is open to the court to decide such suit. (**Pukhraj D. Jain v. G. Gopalakrishna**, (2004) 7 SCC 251 : AIR 2004 SC 3504).

The test for applicability of Section 10 is whether the decision in a previously instituted suit would operate as res judicata in the subsequent suit. If it is so, the subsequent suit must be stayed.

Explanation to Section 10 provides that there is no bar on the power of an Indian court to try a subsequently instituted suit if the previously instituted suit is pending in a foreign

court.

Again, as stated above, it is only the trial and not the institution of the subsequent suit which is barred under this section. Thus, it lays down a rule of procedure, pure and simple, which can be waived by a party. Hence, if the parties waive their right and expressly ask the court to proceed with the subsequent suit, they cannot afterwards challenge the validity of the subsequent proceedings.

Section 11

Section 11 of the Code of Civil Procedure embodies the doctrine of res judicata or the rule of conclusiveness of a judgment, as to the points decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. In the absence of such a rule there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses.

The doctrine of res judicata has been explained in the simplest possible manner by Hon'ble Das Gupta, J. in the case of Satyadhyan Ghosal v. Deorjin Debi in the following words :

“The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law, has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit

or proceeding between the same parties to canvass the matter again.

- (i) The doctrine of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than latter, come to an end. (**Lal Chand v. Radha Krishan, (1977) 2 SCC 88 : AIR 1977 SC 789**).(ii) The principle is also founded on justice, equity and good conscience which require that a party who has once succeeded on an issue should not be harassed by multiplicity of proceedings involving the same issue. Section 11 of the Code contains in statutory form,with illuminating explanations very salutary principle of public policy. (**Narayan Prabhu Venkateswara v. Narayana Prabhu Krishna, (1977) 2 SCC 181 : AIR 1977 SC 1268**).(iii) It embodies the rule of conclusiveness and operates as a bar to try the same issue once again. It hereby avoids vexatious litigation. (**Sulochana Amma v. Narayanan Nair,(1994) 2 SCC 14 : AIR 1994 SC 152; Workmen v. Board of Trustees, Cochin Port Trust, (1978) 3 SCC 119**).

The doctrine of res judicata is based on three maxims :

- (a) nemo debet bis vexari pro una et eadem causa (no man should be vexed twice for the same cause);
- (b) interest reipublicae ut sit finis litium (it is in the interest of the State that there should be an end to a litigation); and
- (c) res judicata pro veritate occipitur (a judicial decision must be accepted as correct).

The doctrine of res judicata differs from res sub judice in two aspects :

- (i) whereas res judicata applies to a matter adjudicated upon (res judicatum), res sub judice applies to a matter pending trial (sub judice); and
- (ii) res judicata bars the trial of a suit or an issue which has been decided in a former suit, res sub judice bars trial of a suit which is pending decision in a previously instituted suit.

The doctrine of lis pendens is only one aspect of the rule of res judicata. Whereas the principle of lis pendens laid down in Section 52 of the Transfer of Property Act, 1882 is that an alienee pendente lite is bounded by the outcome of the litigation, the rule in Section 11 of the Code relates to matters which have passed into rem judicatam. Where a conflict arises between the doctrine of res judicata and lis pendens, the former will prevail over the latter. In other words, once a judgment is duly pronounced by a competent court in regard to the subject-matter of the suit in which the doctrine of lis pendens applies, the said decision would operate as res judicata and would bind not only the parties thereto but also the transferees pendente lite.

Let us understand this principle by an illustration. A files a suit against B for declaration that he is the owner of the suit property. During the pendency of the suit B transfers property to C. The doctrine of lis pendens will apply to such transfer and if a decree is passed in favour of A, C cannot claim title over A. But if in another suit by C against B regarding the same property, decree is passed in favour of B before the suit filed by A is decided, such decree will operate as res judicata against A notwithstanding the doctrine of lis pendens and transfer in favour of C during the pendency of the suit filed by A against

B.

Order 23, Rule 1 deals with withdrawal of suits. It enacts that where the plaintiff withdraws the suit or abandons his claim without the leave of the court, he will be precluded from instituting a fresh suit in respect of the same cause of action.

The distinction between res judicata and withdrawal of suit lies in the fact that while in the former the matter is heard and finally decided between the parties, in the latter the plaintiff himself withdraws or abandons his claim before it is adjudicated on merits.

The plea of res judicata has to be specifically pleaded and proved, and if a party fails to raise such plea it will be deemed to have been waived. Such plea cannot be raised for the first time at the stage of appeal or for the first time in appeal before the Supreme Court. This has been held in, “ ITC Ltd. v. Commr of Central Excise, New Delhi, AIR 2005 SC 1370”.

The doctrine of res judicata operates against both the parties to the suit and not against one alone. It also applies to all judicial proceedings and equally applies to a quasi-judicial proceeding before tribunals. Even a wrong decision can operate as res judicata between the parties. This has been held in, ' A.R. Antulay v. R.S.Nayak, AIR 1988 SC 1531”.

LAW OF ESTOPPEL :

The principle enunciated in Section-115 of The IE Act, 1872 is that when a person has by his declaration, act, or omission intentionally causes or permits another to believe a thing to be

true and to act upon such belief or supposition then, neither, he nor his representative shall be allowed to deny truth of it. In brief, it means that, when a person by his words or by his conduct represents to another that certain state of things is true and induces him to act on that belief and when the other person relying upon representation alters his previous position, then, the person who represents it would be estopped from denying the truth of his previous representation. If a person make wrong statement with the knowledge of consequences, there-of, he would ordinarily require to be estopped from pleading that, even, if a fact be disclosed, it would not make any material change.

Even then, the doctrine of res judicata differs in essential particulars from the doctrine of estoppel.

- (i) Whereas res judicata results from a decision of the court, estoppel flows from the act of parties.
- (ii) The rule of res judicata is based on public policy, viz., that there should be an end to litigation. Estoppel, on the other hand, proceeds upon the doctrine of equity, that he who, by his conduct, has induced another to alter his position to his disadvantage, cannot turn round and take advantage of such alteration of the other's position. In other words, while res judicata bars multiplicity of suits, estoppel prevents multiplicity of representations.
- (iii) Res judicata ousts the jurisdiction of a court to try a case and precludes an enquiry in limine (at the threshold); estoppel is only a rule of evidence and shuts the mouth of a party.
- (iv) Res judicata prohibits a man averring the same thing twice in successive litigations, while estoppel prevents

him from saying one thing at one time and the opposite at another.

- (v) The rule of res judicata presumes conclusively the truth of the decision in the former suit, while the rule of estoppel prevents a party from denying what he has once called the truth. In other words, while res judicata binds both the parties to a litigation, estoppel binds only that party who made the previous statement or showed the previous conduct.

Section 300 (1) of the Code of Criminal Procedure, 1973 declares that a person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence cannot be tried again for the same offence so long as the acquittal or conviction operates.

Section 11 of the Code of Civil Procedure, 1908 enacts that once the matter is finally decided by a competent court, no party to such proceeding can be allowed to reopen it in subsequent litigation. The principle is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in subsequent proceeding to try a person for an offence in respect of which he has been acquitted or convicted. (**Bhanu Kumar v. Archana Kumar, (2005) 1 SCC 787 : AIR 2005 SC 626; Swami Atmananda v. Sri Ramakrishna Taporanam, (2005) 10 SCC 51**).

Res judicata and stare decisis are members of the same family. Both relate to adjudication of matters. Both deal with final determination of contested questions and have the binding effect in future litigation. Both the doctrines are the result of

decisions of a competent court of law and based on public policy.

There is, however, distinction between the two. Whereas *res judicata* is based upon conclusiveness of judgment and adjudication of prior findings, *stare decisis* rests on legal principles. *Res judicata* binds parties and privies, while *stare decisis* operates between strangers also and binds courts from taking a contrary view on the point of law already decided. *Res judicata* relates to a specific controversy, *stare decisis* touches legal principle. *Res judicata* presupposes judicial finding upon the same facts as involved in subsequent litigation between the same parties. *Stare decisis* applies to same principle of law to all parties.

The doctrine of *res judicata* also differs from Order 2 Rule 2 of the Code; firstly, the former refers to a plaintiff's duty to bring forward all the grounds of attack in support of his claim, while the latter only requires a plaintiff to claim all reliefs flowing from the same cause of action. Secondly, while the former rule refers to both the parties, plaintiff as well as defendant, and precludes a suit as well as a defence, the latter refers only to a plaintiff and bars a suit.

Section 11 is mandatory. The plea of *res judicata* is a plea of law which touches the jurisdiction of a court to try the proceedings. A finding on that plea would oust the jurisdiction of a court. If the requirements of Section 11 are fulfilled, the doctrine or *res judicata* will apply and even a concession made by an advocate will not bind a party.

COMPARATIVE STUDY

Sr. No	Section 10 of the C.P.C.,1908 Stay of Suit	Sec 11 of the CPC,1908 Res Judicata	Sec 115 of the Indian Evidence Act, 1872. Estoppel
1	Part of procedural law.	Part of procedural law.	Part of law of evidence.
2	The Court's jurisdiction is not ousted.	Oust the Jurisdiction of court to try subsequent suit.	Prevents person from contradicting himself.
3	Prevents courts of concurrent Jurisdiction from trying two parallel suits.	Has wide scope and is applicable to all proceedings under any law.	There should have been representation act and such act detrimental to interest of one who acted.
4	Matters in issue are same in two suits.	Matters in issue are same in two suits.	Depends upon existence of some duty.
5	Both, suits are pending.	One suit is finally heard and decided.	Has no application in criminal law.
6	Both suits between same parties and litigating under same title.	Parties must be litigating under same title.	There are three kinds of estoppel. Estoppel by matter of record, by Deed and by Conduct.
7	Interlocutory orders could be passed, even if, suit is stayed under this section.	Withdrawal of suit without adjudication would not operate as res-judicata.	If document is void abinitio then there is no question of estoppel.
8	Mixed question of fact and law.	Mixed question of fact and law.	Mixed question of fact and law.
9	Strictly applies to suits and not to other proceedings.	Often treated as branch of estoppel.	There is no estoppel on a point of law.
10	Based on public policy.	Based on public policy.	Rule of evidence.

TEST IDENTIFICATION PARADE

Apart from section 9 of Evidence Act, we did not have earlier any specific provision pertaining to test identification parade. But by the amendment made in 2005 in Code of Criminal Procedure, a new Section 54A pertaining to identification was inserted which runs as follows :

"Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer-in-charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit."

One of the methods of establishing the identity of the accused is "test identification parade". The idea of the parade is to test the veracity of the witness on the question of his capability to identify, from amongst several persons made to stand in a queue, an unknown person whom the witness had seen at the first time of the occurrence. It is only an aid to investigation. The practice is not borne out of procedure but out of prudence. The purpose is to test and strengthen the substantive evidence of the witness in the court. Such evidence is used for corroboration.

Whether test identification parade is necessary or not depends upon peculiar facts and circumstances of a

particular case. The question of holding an identification parade would arise only in event of the witness claiming to be in a position to identify a person who she had not seen before the incident. The aspect of identification parade belonging to the investigation stage, there is no provision in the Code of Criminal Procedure which obliges the investigation agencies to hold or confer a right upon the accused to claim the same.

The condition precedent for accepting the evidence of identification is that it should be fair and beyond reproach. It should not only be fair but also seen to be fair and every precaution must be taken to exclude any suspicion of unfairness or erroneous identification through the witnesses attention being directed specially to the suspected person instead of equally to all the persons being paraded. It is well settled that the evidence of identification can only be relied upon if all the chances of the suspects being shown to the witnesses prior to their test identification are eliminated. To secure that, it has to be ensured that prior to the test identification parade the suspect had not been shown to the identifying witness. The prosecution needs to adduce link evidence to the effect that right from the time of the arrest of suspects the victim had no opportunity of seeing their faces and the identification was held in the manner stipulated by the criminal manual issued by the High Court.

The relevant factors to be taken into consideration in connection with identification are whether there was opportunity for the witnesses to see the accused at the time of the incident, whether they could remember by face the accused persons and whether

they could identify them by such memory in the Court. Where a parade of this kind was held within two days of arrest under the supervision of a Judicial Magistrate and with all the necessary precautions, the evidence so obtained, the Supreme Court held, should not have been rejected on the accused telling the Court that he was shown to the witnesses before-hand. All this is for the accused to prove. (**Sone Lal v. State of U.P. AIR-1978 SC 1142 : 1978 Cr.LJ-1122**);

The Magistrate has to satisfy himself that the accused was not shown to the witnesses and that the parade was otherwise fair and not a farce. Evidence of identity so obtained can in circumstances be the sole basis of conviction. (**Jugal Gopal v State of Bihar, (1979) 3 SCC 272 : 1981SC 612**). But generally such evidence is only of supporting nature. It can be used as corroborative evidence. The identification parade must be held by the investigating agency with reasonable despatch. The identifying witness has to appear personally to depose. It is not necessary for him to tell what role was played by the person whom he identified. Where, identification parade is not held, identification in the Court for the first time does not serve much purpose.

Where the occurrence took place near about sunset and there was little opportunity to see the faces of the culprits and the witnesses did not mention special features of the miscreants in their statements before the police, there was the possibility of the accused having been shown to them. Such evidence cannot be relied upon. (**Girja Shankar Misra v State of U.P., AIR 1993 SC 2618**).

The one area of criminal evidence susceptible or miscarriage of criminal justice is the error in the identification of the criminal. The major source of the error is to be found in the identification of the accused by the victim of the crime. The emotional balance of the victim or eye-witness is so disturbed by his extraordinary experience that his powers of perception become distorted and his identification is frequently most untrustworthy.

Where the conviction which was based on the evidence of eye-witness which was found reliable, could not be set aside on the ground that T.I. Parade was not reliable. (**Mullagiri Vajram v State of A.P., AIR 1993 SC 1242 : 1993 Cr LJ 169**). Prosecution evidence cannot be rejected because of minor discrepancies and not holding of T.I. Parade. (**State of Karnataka v Deja Shetty, 1993 SCC(Cr) 242 : 1993 Supp (1) SCC 14**).

The High Court has issued clear cut instructions in Criminal Manual Chapter I, Para 16 regarding the manner and procedure to be followed while conducting the identification parades. All those guidelines which have been given in the manual are expected to be followed while carrying out identification parades.

The number of dummies per accused person should be in the ratio of 1:4 or 1 : 6. Where six accused persons were set up for identification in a parade and only four dummies had been used to stand along with the accused and further, dummies were not of similar height or features as that of the accused, the evidence of the parade

was discarded on account of legal infirmities. (**Thambi Nasir v State 2003 Cr LJ-493 (Bom)**).

Known persons can be recognised by the timbre of their voice and gait. *State v. Harishchandra Tukaram Awatade*, 1997 Cr LJ 612 (Bom). Where the accused persons were close relatives of the witnesses, it was held that they could be recognised even in the absence of light by gait, timbre of voice etc. (**Shankar Sridhar Kavale v State, 1998 Cr LJ 4491 (Bom)**, **Shivaji Ganu Naik v State of Maharashtra, 1999 Cr LJ 471 (Bom)**). There can be identification by the shape of the body, gait, manner of walking, or even by voice. (**Kedar Singh v. State of Bihar, 1999 Cr LJ 601 : AIR 1999 SC 1481**).

Identification of the accused through photograph can serve the same purpose as a test identification parade. The Supreme Court recognised this possibility by looking at the practices of Interpol and other crime detecting agencies for identification of criminals engaged in drug trafficking, narcotics and other economic offences and also in other international crimes. In such cases identification through photographs is the commonly used method. (*Laxmi Rai Shetty, v State of T.N.*, AIR 1988 SC 1274 : 1988 Cr LJ 1783). The Supreme Court in *Ram Lochan v. State of West Bengal*, held that the superimposed photograph of the deceased over the skeleton of a human body recovered from a tank was admissible to prove the fact that the skeleton was that of the deceased.

A TI parade was considered necessary where a sole child witness to the murder of his mother told the police that 3 assailants were involved. Where the identification parade was held four months after the incident, the Supreme Court held that it was not a reliable evidence.

The great care is required to be taken while acting on belated test identification parade in a court by witness who can not be said to be a independent or unbiased witness. Test identification parade if held promptly, & after taking necessary precautions to ensure it's credibility would lead required assurance which the court ordinarily seeks to act on it. In absence of test Identification parade it would be risky to rely on identification made for the first time before the court after lapse of time (Vilas V.Patil Vs. State Of Maharashtra 1993 (2) MH.L.R. 523 S.C.).

A week's delay in holding the parade was held to be not a material delay. Two injured eye-witnesses identified the accused in the parade. Where the witnesses did not identify the accused in the first round, it was held that it was not a case of total non-identification, hence the importance of identification, could not be minimised. Where the accused dacoits spent considerable time in the house, giving ample opportunity to the witnesses to recognise them and a delay of 20 days in conducting T.I. Parade was explained, evidence of identification was reliable. Evidence of identification of witnesses cannot be rejected merely because they did not enumerate the features or marks of the accused.

Sometimes offender refuse to submit himself for identification parade. It was held in the case of *Sunil V. State of Haryana reported in air 1994 SC 1536* that non participation of the suspect would not in any way detract the evidence of the prosecution witnesses when ample opportunity existed for the witnesses to identify the assailant who participated in the occurrence. But where the accused refused to participate in identification parade on ground that he was shown to the witness and this fact was admitted by the police constable with the investigation of the accused, in such cases the accused would be justified in not participating in the identification parade but otherwise not in every case a suspect can refuse to participate in the identification parade. In *Suraj Pal V. State of Haryana, reported in 1995 2 SCC 64* it is clearly laid down that no one can be compelled to line up for the identification parade and if the accused refused to submit for it, they do it on their own risk. The prosecution could not be blamed for not holding the identification parade.

The effect of refusal was explained by Hon'ble Supreme Court in *Suraj Pal Vs. State of Haryana 1995 (2) SCC 64* wherein it was held that if the applicants had in exercise of their own violation chosen not to stand the test of identification without any reasonable cause they did so at their own risk for which they could not be heard to say that in the absence of test parade identification was not proper and should not be accepted if it was otherwise found reliable.