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## Doctrine of Res gestae: An analysis

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### Abstract

In any judicial proceeding, the case may be proved either by oral evidence or by documentary evidence. Oral evidence means the statement of the witness and documentary evidence means the document produced for the inspection of the court in support of the claim. The rule of best evidence enshrined in the provision of the law of evidence is that the evidence must be of the witness who says that he has full and complete knowledge of the fact in issue. This provision is enshrined under section 60 of the act. This section precludes the admission of evidences which are not directly related to the fact in issue. The evidence act also provides that hearsay evidence shall not be admitted however section 6 is an exception to the rule of hearsay. Section 6 provides that the facts which are not in issue may be relevant if they are the part of same transaction. The rule of same transaction is provided under English term res gestae. The facts which are to be proved must be different from the fact in issue but necessary for proving the fact in issue. In any proceeding all the evidences are not admissible. Only those facts are admissible which are connected to the facts in issue and relevant fact. Admissibility is different from the relevancy. All admissible facts are relevant but all relevant facts are not admissible. In the doctrine of res gestae, the facts which are directly connected to the facts in issue by establishing a chain of circumstances are admissible as evidence only.

Key words: Hearsay, admissible, relevant, transaction, documentary,

### Introduction

In the judicial proceedings only relevant facts are admissible. What is relevant fact is not defined under the act as relevant fact the act provides the way in which the fact is said to be relevant. Section 3<sup>2</sup> provides that “one fact is treated as relevant when that fact is connected with other fact in any of the ways referred to for relevancy of facts.

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<sup>2</sup> Section 3 Indian Evidence Act, Definition of Relevant Fact

The act does not provide a complete definition of the term relevant fact. The act provides that one fact will be deemed to be relevant to another in the circumstances provided from section 5 to 55. The circumstances are res gestae, conduct, motive, occasion, cause or effect, admission and confession, conspiracy, dying declaration, evidence relating to character etc. Section 5 of the act provides that evidence may be given of the fact in issue and relevant fact only.

## 1. Fact in issue

The definition of the term fact in issue is provided under the evidence act. Section 3 defines facts in issue as “facts in issue means and includes any fact from which either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right or liability or disability either asserted or denied in any suit or proceedings.

In the simple words, issue means the problem. Fact in issue means those facts which are in disputes between the parties. The facts which are asserted by one party and denied by the other party to the suit or proceeding. The fact in issue actually means the issue regarding the right or liability of a person and the issue regarding the existence or non-existence of such right or liability. When the facts in disputes are proved by the parties, their right or liability is either established or denied by the court. The explanation attached to the definition of the term fact in issue show that when any civil court records any issue of fact in any civil proceeding, the fact asserted or denied by the party in answer to such issue is a fact in issue. Evidence act provides that the person shall be entitled to give evidence of the existence of any fact in issue and relevant fact only. It means the person bound to produce evidence can give evidence either related to fact in issue directly or relating to those facts which relate to fact in issue.

## 2. Relevancy and Admissibility

Relevancy and admissibility are taken to be synonymous but both the term are different and separate from each other. These are two separate rules under the law of evidence. Evidence act provides that the evidence related to fact in issue and relevant facts will be admissible only. This provision may create a little confusion that all relevant facts will be admissible. But the rule of evidence is different because the evidence act itself provides that in some case, though the evidence is relevant but not admissible. This is the set rule of law of evidence that all admissible facts are relevant but all relevant facts are not admissible. Relevancy is the genus whereas admissibility is the species. Admitted facts produce the evidence based on the law. The illustration of evidence which is though relevant but not admissible is the privileged communications. The communicates made between the parties to the marriage during the continuation of their relationship<sup>3</sup>, communication regarding the affairs of the state<sup>4</sup>, official communications between the public officers<sup>5</sup>,

<sup>3</sup> Section 122, I E Act, 1872

<sup>4</sup> Section 123, I E Act, 1872

communication between the police officer and other person regarding the information of commission of crime<sup>6</sup> and the communication between the law personals and their clients<sup>7</sup> are the circumstances in which the evidence if permitted by the court or the law will be relevant but the evidence in such circumstances are not admissible. These are privileged communication and protection is given by law for saving the social as well as fiduciary relation between the parties. Such communications are made privileged for security of the nation also. Therefore the fact in dispute may be proved by proving the fact in issue or by proving the relevant fact.

### 3. Direct Evidence (Rule of best evidence)

The fact in issue may be proved by producing the evidences which are related the fact in issue directly. Such evidence is called direct evidence. Rule of direct evidence is the rule of best evidence. The definition of direct evidence is not provided under evidence act however section 60 and 64 of provides the circumstances of direct evidence. Section 60 provides about the directness of oral evidence and section 64 tells about directness of documentary evidence.

Oral evidence must be direct<sup>8</sup> is the rule of best evidence. Section 60 provides that “the oral evidence must be direct. The section further provides that if the evidence refers to the fact which can be seen, the evidence must be such person who says that he has seen the fact. If the fact refers to the fact which be heard, the evidence must of such person who says he has heard it. If the evidence refers to those facts which could be perceived by other senses, the evidence must be of such person who says that he has perceived the fact by any of the senses of the body. Expert opinions and the ground on which such opinions are based are also relevant if the person holding such opinion is incapable of giving evidence or can't be found. Therefore the facts can be proved by direct oral evidence and the indirect or hearsay evidence is excluded from admitted in the suit or proceedings.

Regarding the proof of documentary evidence section 64 clearly provides that the documents may be proved by primary evidence except the cases in which the secondary evidence may be given of the document with the permission of the court. Here primary evidence means the direct evidence. Regarding the primary evidence, section 62 provides that primary evidence means the document itself produced for the inspection of the court.

Therefore the rule of best evidence is enshrined in various sections of evidence act. But the legislature was quite aware about the fact that direct evidence may not be available in all the circumstances and therefore the

<sup>5</sup> Section 124, I E Act, 1872

<sup>6</sup> Section 125, I E Act, 1872

<sup>7</sup> Section 126, I E Act, 1872

<sup>8</sup> Section 60, I E Act, 1872

circumstantial evidence was permitted to be admissible if the series or chain of circumstances is completely established. The rule regarding relevancy of circumstantial evidence is given under section 6 of the act.

#### **4. Res gestae**

The term *res gestae* is an English term. This term is equivalent to Indian rule of circumstantial evidence. Section 6 provides first rule regarding the relevancy of fact as “facts which are though not in issue are so connected with the fact in issue as to form part of the same transaction, such facts are relevant. It does not matter that they occurred at the same time or at the same place or at different time and place.” The term “same transaction” is called *res gestae*. Relevancy of the facts of same transaction is an exception to the rule of hearsay evidence as well as the rule of best evidence. *Res gestae* includes the relevancy of those facts which are part of same transaction. Therefore it is necessary to examine what is the transaction. The starting of the series of facts and the ending of the series with the characteristic that each fact of such series must be related to the fact in issue is the important test for relevancy and admissibility of such facts.

##### **4.1. Same transaction**

The term same transaction is not defined in the act however the same is used to constitute a single act. That single act may be any crime, contract or wrong etc. The act possibly has been committed on different places or at different times. If the person who wants the court to give relief in his favour has to establish a chain of all those facts so complete as to form part of the same transaction.

In the case of *Atta Mohamad Khan vs. Crown*<sup>9</sup>, the high court held that following things are essential for admitting the facts as a part of same transaction. These are proximity of time, proximity of place, continuity of action and community of purpose. These rules jointly make the rule relating to same transaction more clear.

Therefore the evidence of all the fact part of a same transaction may be given. However the evidence of different facts occurred at different times and places may be given and admissible if there is nexus between them

#### **5. Case Laws on Res gestae**

This is the set principle of law that all admissible facts are relevant but all relevant facts are not admissible. The difference between the relevancy and admissibility was made clear by the judiciary by explaining about the evidences which are relevant and admissible and what are not.

<sup>9</sup> Cr. A., 1950, Lahore High Court, (lawerservices.in) pre-independence case

In the case of *Rattan vs. State of H. P.*<sup>10</sup> the deceased was the house wife. She was shot dead by the gun during the night when she was sleeping. The assailant was a retired army man charged with the murder. When he fired at the deceased, the deceased shouted and other members hearing the noise of the bullet as well as the woman entered her room. The woman said that she was shot dead by the appellant and died. The statement given by her was held admissible as a part of same transaction because the statement was the natural outcome of the incident.

In the case of *Basanti vs. State of H.P.*<sup>11</sup> the appellant was married to a person who was seven years elder to the wife. There was a servant in the house of the appellant aged about 70 years. The servant was the paramour of the appellant. The deceased husband knew the fact of his wife's affair with the servant. He was intending to marry another woman and wanted to take the marriage dissolved by divorce. On the other hand, the appellant wife intended to carry on the situation as it is. But one day when the situation went out of control, the appellant and her paramour conspired to commit the murder of the deceased husband. They actually committed the murder of the deceased by striking blows on the neck of the deceased. The relatives of the husband lodged FIR for his missing. During the investigation, the appellant misled the police by telling that the deceased has went out of the station and will come back after 4 or 5 days. But when the body was recovered, her blood stained dupatta was also recovered. The prosecution produced the circumstantial evidences about the incident which were held admissible in the trial court as well as in the High Court. The case finally came before the Supreme Court. Hon'ble Supreme Court held that after the incident the conduct of the appellant of taking all the villagers and other relatives of her husband on a false track is admissible as a part of the same transaction.

*Rattan vs. Queen*<sup>12</sup> is an English case explaining the rule of res gestae very clearly. In this case, a phone call was received by the police headquarter with the lady on the phone call stating that kindly connect me to police officer. Before connecting the call to the police the call was disconnected. The police traced the phone call location and reached at the address of the alleged lady where the police found the lady as dead. The husband stated that he mistakenly fired at her wife and she died. The court held that the husband is liable for murder and the phone call made by the lady was held admissible as forming part of the same transaction.

*R vs. Foster*<sup>13</sup> is also an important case on the matter of res gestae. This case is an English case. In this case two persons were going on a road. They saw a car going at a very high speed at some distance from them. After a little of time, they heard the noise of a man, they reached to the spot of noise where they found a man severely injured. The injured man told that a car of a particular number crushed him and the man died. In the

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<sup>10</sup> AIR 1996, SC

<sup>11</sup> AIR 1987, SC, 1572

<sup>12</sup> English Case, 1971

<sup>13</sup> English Case, 1834.

trial the evidence of the deceased man's statement to the two persons were held admissible as a part of the same transaction.

In the case *R. vs. Bedingfield*<sup>14</sup> is a case opposite from the above mentioned cases. In this case the doctrine of res gestae was not accepted by Justice Cookburn. In this case a young girl was living with her friend named Herry. By the passing of the time, relation between them was strained. One day Herry cut throat of his friend. The girl went to the house of Herry's Aunt who was living at some distance of their house, she knocked the door and when the door was opened she told that aunt see, what Herry has done to me. During the trial the statement of the girl to the aunt was held inadmissible. The court opined that the statement during the occurrence was admissible as part of same transaction. Anything said after the incident is over though relevant but can't be admitted as part of same transaction.

### 5.1. Whether FIR can be treated as res gestae

One important question which has risen before the court is that whether lodging of FIR can be treated as part of same transaction. The question was answered by the judiciary by the judgment.

In the case of *Sawal Das vs. State of Bihar*<sup>15</sup> the deceased was the wife of the appellant. The marital relations between the appellant and the deceased wife were not good. One day, the deceased was taken to the room by the appellant. The father and mother of the appellant also followed him. After some time noise of crying of the deceased that "save me" was listened by a person who was present at the scene of occurrence immediately informed the police and lodged FIR. The police reached to the spot and found that the deceased was killed and burned by the appellant secretly. During the trial the FIR lodged by the neighbor was held admissible as part of the same transaction.

However the court also opined that FIR may be relevant but will not be admissible in all the cases. Where there is unexplained delay in lodging the FIR, it can't be admissible.

### 5.2. When both the hearsay and direct evidence are available

Doctrine of res gestae is hearsay evidence and therefore accepting the res gestae is the exception of rule of hearsay evidence. When the direct evidence is not available, the facts in issue and the relevant facts may be proved by circumstantial evidence which may also be called hearsay evidence. But some time the situation may arise when hearsay as well as direct both kinds of evidences are available, then which evidence can be given for proving the case. The problem was discussed and solved by Hon'ble Supreme Court.

<sup>14</sup> English Case, 1879

<sup>15</sup> AIR 1974, SCR (3) 778

In the case of *J. D. Jain vs. S. B. I.*<sup>16</sup> the appellant was the cashier in the Meruit branch of the bank of S. B. India. One Mr. Dinesh came to the bank for cash withdrawal of Rs. 500/-. He filed a withdrawal form for the amount of Rs. 500/-. The filed form was taken by the appellant and the amount was also given by him. After some days Mr. Dinesh went for passbook entry which revealed the withdrawal of Rs. 1500/- in the place of 500/-. He made a complaint to the managing staff of the bank. During the examination Mr. Dinesh was neither heard nor given opportunity to show the bank receipt of Rs. 500/- and the matter was decided against him. Mr. Dinesh filed an appeal to H. C. and the matter in the High Court was decided in his favour. The appellant filed an S. L. P. in the Supreme Court against the decision of the High Court stating that the witnesses who gave statement in his favour can't be overlooked. But Hon'ble Supreme Court opined that when direct evidence is available, hearsay evidence can't be taken in to consideration. In the present case, the receipt issued by the bank is the direct evidence and there is no need of other evidence. The appellant was held liable in this case.

### **Scope of the Doctrine of Res gestae**

Whenever the problem relating to interpretation of the law has arisen, judiciary has played its vital role in explaining the term of the law. hon'ble judiciary through its various case laws has widened the scope of the doctrine of res gestae. The doctrine was meant to apply on the criminal cases mainly when any crime had been committed but it was not possible to produce any direct witness before the court. In such case, the circumstances were to establish to prove the case. But the passing of the time, the court has applied the doctrine of res gestae in the offences relating to women and children. The matrimonial cases were also come in the scope of this doctrine. In the cases of matrimonial disputes, the doctrine is of much importance. In the relation of husband and wife, direct evidence regarding their behavior to each other are not available because such relation comes under privileged relation, therefore based on circumstances can only be produced. The offences relating to women such as rape, sexual harassment, outraging the modesty, it is little difficulty to get direct evidence because such types of offences are committed in isolation. The prosecution has to rely upon the circumstantial evidence and the statement of the victim. The doctrine of res gestae has extended to testimony of the child also. The child of the age of insufficient maturity is not capable of giving evidence. Moreover the child who due to fear or pressure or any mental shock is not able to give his testimony is capable of becoming a witness however if he is the witness of any incident, anything said by him during the incident or his shouting will be considered as a part of same transaction.

In the case of *Uttam Singh vs. State of M. P.*<sup>17</sup> the child who was the eye witness of the incident was the son of the deceased. He was sleeping with his father on the night of the occurrence. The accused came with an axe and gave blow on the neck of the deceased. The child awakened by the sound of the blow. The child saw

<sup>16</sup> AIR 1982, SC, 673

<sup>17</sup> AIR 2002, M.P. High Court, 79

the incident and shouted for his mother and sister for help. His mother and sister entered in the room and the child shouted again that the accused named by him has committed the act with his father. Other witnesses also gathered in the house. The evidence of the child was held admissible as part of the same transaction as such shout was the natural and probable consequence of the fact.

### **Conclusion & Suggestion**

Providing a set of rules as “Law” is the duty of ever welfare state and the purpose of the law is providing justice to all. The wrongdoer should not be left untreated due to non-availability of evidence. Very often the evidence is not easily available because the crimes are committed in isolation. Proving the case is the duty of the prosecution and prosecution has to rely upon the circumstantial evidence. Prosecution tries to prove the case by establishing the chain of circumstances which prove the occurrence of the incident. If the chain of circumstances is completely established, the accused may be punished even on the circumstantial evidence. But examining the chain of circumstances is a very crucial duty. In various cases judiciary has fulfilled its duty of examining such circumstantial evidence. But it may also be possible that there may be gap between the occurrences which may make the case of the prosecution very weak. It is therefore suggested that the scope of the doctrine of res gestae should be little extended. Some transactions which have taken place after some time of the main occurrence must be taken in to consideration as res gestae if they are the consequential facts of the main transaction. The strength of the doctrine of res gestae enshrined under section 6 is its unclear nature. What can be included in the term “same transaction” is a question of fact depends upon the circumstances of each case. Therefore this section must be interpreted in such a way that maximum justice can be provided to the people so that the duty of a welfare state can be completely fulfilled.