

## DOCTRINE OF RES GESTAE : AN ANALYSIS

**AUTHORS** – SHAGUN TIWARI\* & SARITA YADAV\*\*, STUDENT\* & ASSISTANT PROFESSOR\*\* AT AMITY UNIVERSITY LUCKNOW CAMPUS

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### ABSTRACT

In any legal process, evidence can be provided either by oral evidence or by documentary evidence. Oral evidence means the statement of the witness and documentary evidence means the document submitted for review by the court in support of the application. The rule of best evidence laid down in the provision of the Bhartiya Saksya Adhiniyam is that the evidence must be that of the witness who claims to have full and complete knowledge of the fact in question. This provision is provided in section 55 of the law. This section prohibits the admission of evidence not directly related to the fact in question. The Bhartiya Saksya Adhiniyam also provides that hearsay evidence is not admissible, but section 4 is an exception to the hearsay rule. Section 4 provides that facts which are not in dispute may be relevant if they are part of the same transaction. The rule of the same transaction is provided by the English term *res gestae*. The facts to be proved must be different from the fact in question, but necessary to prove the fact in question. In any trial, not all evidence is admissible. Only facts that are related to the facts in question and relevant facts are admissible. Acceptability varies according to importance. All admissible facts are relevant, but not all relevant facts are admissible. According to the doctrine of *res gestae*, facts directly related to the facts in question that create a chain of circumstances are admissible only as evidence. In legal proceedings, only relevant facts are admissible. The law does not define what constitutes a relevant fact.

Keywords: Oral evidence, provision, admissible, *res gestae*, same transaction

### INTRODUCTION

Section 3 says that a fact is considered important when that fact is linked to another fact in one of the ways mentioned for the importance of the facts. The law does not provide a comprehensive definition of the term relevant fact. The law provides that a fact will be considered relevant to another in the circumstances provided for in sections 3 to 49. The circumstances are *res gestae*, conduct, motive, occasion, cause or effect, confession and admission, conspiracy, statement of the person who died, character evidence etc. section 3 of the law provides that evidence can only be given for the fact in question and the relevant fact. In simple words, the question implies the problem. The fact in issue means the facts that are the object of the dispute between

the parties. These are facts that are claimed by one party and denied by the other party in a suit or trial. The fact in dispute really means the problem concerning the right or the responsibility of a person and the problem concerning the existence or non-existence of this right or this responsibility. When the disputed facts are proven by the parties, their right or responsibility is confirmed or denied by the court. The explanation attached to the definition of the term disputed fact indicates that when a civil court records a question of fact in a civil proceeding, the fact asserted or denied by the party in answer to that question is a disputed fact. The B.S.A provides that the person has the right to offer evidence of the existence of any fact in issue and only the relevant facts.

**RELEVANCY AND ADMISSIBILITY:<sup>566</sup>**

Relevancy and Admissibility are considered synonymous, but the two terms are distinct and different from each other. These are two separate rules under the law of evidence. The B.S.A provides that only evidence relevant to the facts in question and relevant facts are admissible. This provision may create some confusion as to whether all relevant facts will be admissible. But the rule of evidence is different because the B.S.A itself provides that in some cases, even if it is relevant, it is not admissible. It is the settled rule of the law of evidence that all admissible facts are relevant, but not all relevant facts are admissible. Importance is the genus while acceptability is the species. Admitted facts produce evidence based on law. The presentation of evidence that is relevant but inadmissible is a privileged communication. Communications made between the parties to a marriage during the continuation of their relationship, communications related to state affairs, official communications between public officials, communications between a police officer and another person related to information about the commission of a crime and the communications between the employees of in order. and his clients are the circumstances in which the evidence, if permitted by the court or the law, will be relevant, but the evidence in such circumstances is not admissible. These are privileged communications and protection is ensured by law to preserve the social and fiduciary relationship between the parties.

The fact in issue may be proved by the presentation of evidence directly related to the fact in issue. This test is called a direct test. The direct evidence rule is the best rule of evidence. The definition of direct evidence is not given in the B.S.A, but sections 55 and 59 of the Act provide for the circumstances of direct evidence. section 55 deals with the direct nature of oral evidence and article 59 deals with

the direct nature of documentary evidence. Oral evidence must be direct, this is the rule of best evidence. Section 55 states that "oral evidence must be direct." Furthermore, the article stipulates that if the evidence concerns an obvious fact, it must be provided by a person who declares to have seen the fact. If the fact is in relation to something heard, it must be provided by a person who claims to have heard it. If the evidence deals with facts that can be perceived by other senses, it must be provided by a person who claims to have perceived the fact with one of the body's senses. Expert opinions and the reasons on which those opinions are based are also important if the person holding that opinion is unable to testify or cannot be found.

Therefore, the facts can be proven by direct oral evidence and circumstantial evidence or hearsay are excluded from admission in trial or process. As for the proof of documentary evidence, section 59 clearly states that documents can be proven by primary evidence, except in cases where secondary authentication of the document may be given with the authorization of the court. Here, primary evidence means direct evidence. Regarding the primary evidence, section 57 states that the primary evidence means the document itself produced for the inspection of the court. Therefore, the best evidence rule is enshrined in various sections of the Evidence Act. But the legislature was aware of the fact that direct evidence may not be available in all circumstances and therefore circumstantial evidence was allowed to be admissible if the series or chain of circumstances is fully established. The rule regarding the importance of circumstantial evidence is defined in section 4 of the law.

**RES GESTAE**

The term res gestae is an English term. This term is equivalent to the Indian rule of circumstantial evidence. Section 4 provides the first rule regarding the importance of the facts: "The facts which, although not discussed, are so

<sup>566</sup> <http://student.manupatra.com/Academic/Abk/Law-of-Evidence/Chapter2.htm#:~:text=Relevancy%20means%20what%20facts%20may,oP%20proving%20the%20rel%20evant%20facts.>

related to the fact in question as to be part of the same transaction, those facts they are important. It does not matter if it happened at the same time or place or in different times and places." The term "same transaction" is called *res gestae*. The relevance of the facts of the same transaction is an exception to the rule of hearsay evidence and the rule of the best evidence. *Res gestae* involves the relevance of facts that are part of the same transaction. It is therefore necessary to consider what the transaction is. The beginning of the series of facts and the conclusion of the series with the characteristic that each fact in this series must be related to the fact in question is the important test for the importance and acceptability of these facts.

#### SAME TRANSACTION

The term same transaction is not defined in the law, but it is used to constitute a single act. This single offence can be any crime, contract or misdemeanour etc. The offence may have been committed in different places or at different times. If the person who wants the court to grant relief, he must establish a chain of all these facts so complete that they form part of the same transaction. In *Atta Mohammad Khan v Crown*, the Supreme Court stated that the following elements are essential to admit the facts as part of the same transaction. These are the proximity of time, the proximity of the place, the continuity of the action and the community of objectives. These rules help clarify the rule regarding the same transaction. Consequently, proof of all the facts that are part of the same transaction can be provided. However, evidence of different facts occurring at different times and places may be provided and admitted if there is a connection between them<sup>567</sup>.

#### CASE LAW OF RES GESTAE

This is the legal principle that all admissible facts are relevant, but not all relevant facts are admissible. The distinction between relevance and admissibility has been clearly established

by the judiciary in explaining which evidence is relevant and admissible and which is not. In the case of *Rattan v. State of H.P.*<sup>568</sup>. The victim was a housewife. She was shot and killed overnight while sleeping. The attacker was a retired soldier accused of murder. When he shot the victim, she screamed and other family members heard the sound of the bullet and the woman entered her room. The woman said she was shot by the caller and died. The statement she made was found admissible in the same transaction because it was a natural result of the incident.

In the case of *Basanti v. State of H.P.*<sup>569</sup>, the appellant was married to a person who was seven years older than his wife. In the complainant's house there was a maid about 70 years old. The servant was the appellant's mistress. The dead husband knew about his wife's affair with the servant. He planned to marry another woman and wanted the marriage to be dissolved by divorce. For her part, the woman who complained thought to keep the situation as it was. But one day, when the situation intensified, the appellant and her lover conspired to commit the murder of her husband. In fact, they killed the victim by stabbing him in the neck. The husband's family filed a complaint for absence. During the investigation, the caller misled the police by saying that the victim had left the police station and would be back in 4 or 5 days. But when the body was found, his blood-stained tunic was also found. The prosecution produced circumstantial evidence regarding the incident, which was found admissible in both the trial court and the Supreme Court. The case ended up at the Supreme Court. The High Court held that after the incident, the appellant's conduct of leading all the villagers and other relatives of her husband on a false trail was admissible under the same transaction.

<sup>568</sup> <https://indiankanoon.org/doc/767636/>

<sup>569</sup>

<https://indiankanoon.org/doc/1092930/#:~:text=Basanti%20against%20the%20judgment%20of,of%20the%20common%20intention%20of>

<sup>567</sup> <https://bharatiyayasthanhita.online/ufaq/section-4-of-bsa/>



Rattan vs. The Queen <sup>570</sup> is an English case that explains the res gestae rule very clearly. In this case, a call was received from the police headquarters, where the lady on the phone asked him to contact a police officer. Before the call was connected to the police, the call was disconnected. Police traced the location of the call and went to the suspect's wife's address, where police found the woman dead. The man said he shot the woman by mistake and she died. The court found that the man was responsible for the murder and that the phone call made by the woman was admissible as part of the same transaction.

R vs. Foster <sup>571</sup> is also an important case on the issue of res gestae. This is an English case. In this case, two people were traveling on the same road. They saw a car moving at a very high speed at a distance from them. After some time, they heard the noise of a man. They arrived at the scene of the commotion and found a man seriously injured. The injured person said that a car of a certain number had hit him and he died. At trial, evidence of the deceased's statement to both persons was held admissible as part of the same transaction.

In the case of R. v. Bedingfield,<sup>572</sup> this is the opposite case to the cases mentioned above. In this case, the doctrine of res gestae was not accepted by Justice Cookburn. In this case, a young woman lived with her friend, Herrin. Over time, the relationship between them became sour. One day, Herri cut his friend's throat. The girl went to the house of Herri's aunt, who lived not far from her house, knocked on the door, and when the door opened, she said to her aunt: "Look what Herri got me made during the trial the statement of the girl for her aunt was considered unacceptable.

<sup>570</sup> [https://www.scribd.com/document/454626853/Ratten-vs-Queendocx#:~:text=1\)%20The%20case%20of%20Leith,charged%20with%20murdering%20his%20wife.](https://www.scribd.com/document/454626853/Ratten-vs-Queendocx#:~:text=1)%20The%20case%20of%20Leith,charged%20with%20murdering%20his%20wife.)

<sup>571</sup> <https://www.legionlawclasses.com/post/admissibility-and-section-6-res-gestae>

<sup>572</sup> <https://www.lawtopus.com/academike/doctrine-of-res-gestae-an-exception-to-hear-say-evidence/amp/>

### **SCOPE OF DOCTRINE OF RES GESTAE**

Whenever the question has arisen regarding the interpretation of the law, the judiciary has played a vital role in explaining the term of the law. The judiciary, through its jurisprudence, has expanded the scope of the doctrine of res gestae. This doctrine was intended to be applied in criminal cases, especially when a crime had been committed, but it was not possible to present a direct witness in court. In this case, the circumstances must be proven to prove the basis of the case. But over time, the court applied the doctrine of res gestae to crimes involving women and children. Matrimonial cases are also affected by this doctrine. In cases of matrimonial disputes, this doctrine assumes great importance. In conjugal relationships there is no direct evidence regarding their behavior towards others, because this relationship falls within the privileged relationship and therefore can only be produced according to the circumstances. In crimes against women, such as rape, sexual assault, indecent assault, it is not difficult to obtain direct evidence, since these types of crimes are committed in isolation.

The accusation must be based on circumstantial evidence and the statement of the victim. The doctrine of res gestae is also extended to the testimony of the child. A child of insufficient maturity is not capable of testifying. In addition, the child who is not able to testify due to fear, pressure or mental shock is able to become a witness. However, if he witnesses an incident, everything he says during the incident or shouts will be considered part of the same transaction.

In the case of Uttam Singh v. State of M.P.<sup>8</sup> The eye child of the event was the son of the deceased. He was sleeping with his father on the night of the incident. The accused came with an ax and hit the deceased on the neck. The boy was awakened by the sound of woodpeckers. The boy saw the incident and shouted to his mother and sister for help. His mother and sister entered the room and the boy

shouted again that the accused he called did the deed with his father. Other witnesses also gathered at the house. The testimony of the child was found admissible in the same case because this cry was a natural and probable consequence of the fact.

#### Can the FIR be treated as a moral thing?

The court was asked an important question: Can the filing of FIR be treated as part of the same transaction? The judgment answered this question. In the case of *Sawal Das v. State of Bihar*<sup>573574</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 brought into the room by the appellant. The complainant's father and mother also followed him. After some time, a person present at the scene heard the dead man's voice shouting "save me". She immediately notified the police and filed an investigation report. The police went to the scene and found that the deceased was killed and burned by the complainant secretly. At trial, the investigation report submitted by the neighbor was deemed admissible as part of the same transaction. However, the Court also held that the FIR may be relevant but will not be admissible in all cases. In case of inexplicable delay in the presentation of the FIR, it cannot be accepted.

#### When both direct evidence and circumstantial evidence are available?

The doctrine of *res gestae* is hearsay evidence and therefore the admission of *res gestae* is an exception to the rule of evidence of the *felt say* – *say*. When direct evidence is not available, the facts in question and related facts may be proved by circumstantial evidence, which may also be called hearsay evidence. But sometimes it can happen that hearsay evidence and direct evidence is available, in which case the evidence can be provided to prove the case.

<sup>573</sup><https://lawsuitcasefinder.com/casedetail?id=U2FsdGVkX1plo2mxUa54cbGplo2VI46Dyc0DFIDJtqHrVKQFYMGs5>

<sup>574</sup><https://lawbhooni.com/sawal-das-vs-state-ofbihar/#:~:text=In%20the%20case%20of%20Sawal,did%20not%20specify%20the%20sentence.>

The matter was discussed and decided by the Supreme Court. In the case of *J.D. Jain v. S.B.*<sup>1575</sup>. The petitioner was a cashier in the Meruit branch of S. B. India Bank. To Mr. Dinesh came to the bank to withdraw 500 rupees cash. He filled out a withdrawal form for an amount of 500 rupees. The applicant received the form and also gave the amount. After a few days, Mr. Dinesh went to look for an entry in his passbook, which revealed a withdrawal of Rs 1,500 instead of Rs 500. He filed a complaint with the bank's management staff. During the interrogations, Mr. Dinesh was neither questioned nor given an opportunity to show the bank bill of Rs 500 and the case was decided against him. Mr. Dinesh appealed to the Supreme Court and the case was decided in his favor. The appellant filed a charge S.L. P. before the Supreme Court against the decision of the Supreme Court that the witnesses who gave a statement in his favor cannot be ignored. But the Supreme Court ruled that when direct evidence is available, hearsay evidence cannot be considered. In this case, the receipt issued by the bank is direct evidence and there is no need to have other evidence. The appellant was responsible for this matter.

#### **CONCLUSION AND SUGGESTIONS**

Providing a set of rules as "laws" is the duty of every social state and the purpose of the law is to establish justice for everyone. The perpetrator should not be left without an address for lack of evidence. Too often, evidence is not available because crimes are committed in isolation. The burden is on the prosecution to prove the guilt of the accused and rely on circumstantial evidence. The prosecution tries to prove the guilt of the accused by creating the chain of circumstances that proves the occurrence of the event. If the chain of circumstances is fully proven, the accused can be convicted even on the basis of circumstantial evidence. But examining the chain of circumstances is a very important task. In some cases, the judicial bodies have fulfilled their duty to consider this

<sup>575</sup><https://www.the-laws.com/Encyclopedia/browse/Case?caseId=001891694000&title=j-d-jain-vsmanagement-of-state-bank-of-india>

circumstantial evidence. It is also possible that there is a discrepancy between the facts that could significantly weaken the prosecution's case. It is therefore suggested that the scope of the doctrine of res gestae be slightly extended. Certain transactions carried out after a certain time after the main event must be considered as res gestae if they constitute consequential facts of the main transaction. The strength of the doctrine of res geatse enshrined in section 4 lies in its vague nature. What may be included in the term "same transaction" is a matter of fact which depends on the circumstances of each case. Therefore, this article must be interpreted in a way that imposes maximum justice on the people so that the duty of a welfare state is fully fulfilled.

