



Doctrine of res Gestae: A critical analysis

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Abstract

The doctrine of res gestae, originating from Latin, refers to the spontaneous and immediate statements or actions closely connected to a criminal act. It allows such statements or actions to be admissible in court as evidence, providing insight into the context and authenticity of the event. Res gestae aims to capture the natural and unscripted elements surrounding a crime, enhancing the understanding of the circumstances during legal proceedings.

So through this article, I tried to analyze the general rule of relevancy and admissibility of direct evidences and also tried to answer whether doctrine of res gestae is admissible or not as an exception to the general rule. The following points have also been discussed through this article:

- Section 6 as a dimension of Res Gestae
- Points held in Kapoor Singh Rana v State of NCT of Delhi
- Sharad Birdichand Sharda v State of Maharashtra (1984 SC)
- Last seen together theory
- General discussion on meaning of Section 7 & 8

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Introduction

Section 6 - Relevancy of facts forming part of same transaction: Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

The Doctrine of Res Gestae is provided in Section 6 of the Indian Evidence Act, 1872 and it means matters happen in same transaction. However, this doctrine is an exception to the general rule where section 59 of the Indian Evidence Act, 1872 provides that the evidence must be direct. This doctrine is an exception to the hearsay clause which means hearsay evidence is still admissible if it forms part of same transaction.

Section 6 is a dimension of Res Gestae which is concept of English Law. According to

Taylor: Res Gestae means a fact, a transaction or an event. It will include everything that may be considered to be fairly connected with the event under consideration. Res Gestae may be defined as those circumstances which are automatic, undesigned and unfabricated. The events which are spontaneously connected with the main event will be considered to be a part of res gestae. In English law, the concept of res gestae is much broader and in context of Indian law section 6, 7 and 8 may broadly fall under the domain of res gestae. So all those facts which are part of same transaction has considered as relevant under section 6. The Basis test is the continuity of event where there are no chances of external interference or fabrication.

Section 6 makes any fact relevant which is a part of the same transaction in which the fact in issue took place. The word same transaction here does not have a rigid or precise definition rather in the circumstances of specific case, it will be seen whether a fact is a part of the same transaction. But it has to be automatic, natural, undesigned, unfabricated and

spontaneous. There should not be any external interference so as to artificially create that fact. Spontaneity is the main test.

It can be any communication made immediately before or after the incident or contemporaneous to the also. It can be any sound produced or it can be any spontaneous conduct of either of the parties or by stander.

Kapoor Singh Rana v State of NCT of Delhi, 2006 Delhi HC has held that:

1. The main evidence in the case is the statement made by the victim to the mother that Kapoor Singh Rana had thrown acid on her. The statement will be relevant under section 6 as part of the same transaction. Her statement is sufficiently corroborated by the record of the phone call that he had made to her immediately before the incident. It is also supported by the testimony of his presence in the apartment at the relevant point of time his signature in the register and the testimony of the mother that he was leaving in a hurried manner, sufficiently established his presence. Moreover, the accused has not offered any reasonable explanation as to why he had gone to the apartment.
2. The motive is sufficiently established by his illicit advances and the repeated phone calls that he used to make to the victim. Thus the chain of circumstantial evidences is complete and the accused stands to be convicted for the charge of section 325. (after amendment under section 326-B).
3. FIR cannot be used as substantive piece of evidence. It can be used for the purpose of contradiction and corroboration. However FIR is not admissible as evidence as the victim does not die because of that injury- hence it cannot be a dying declaration. The victim never appeared as a witness also; hence the FIR cannot be used for the purpose of corroborating her testimony under section 157 IEA.

4. As per explanation of section 162 CrPC an omission to state a fact in a statement may amount to contribution but such omission must be significant relevant.
5. One of issues in this case was that the mother in her statement to the police had not mentioned that her daughter had told her that Kapoor Singh Rana had thrown acid upon her but later on in her testimony in the court she states that her daughter had told her so. The defense sought to contradict her on the basis of the material omission that she had made in her statement made to the police. The contradiction was sought under section 145 IEA read with section 162 (1) proviso to the CrPC read with the explanation.

The court held that such contradiction would have been possible if the police statement had been recorded in the question answer form. When an ordinary person who does not know the details of law makes her statement in such mental trauma, one may tend to miss out upon some facts. That cannot amount to a material omission as such and hence the contradiction is not possible.

In Dhal Singh Dewangan Vs State of Chhattisgarh (2016 SC) the Supreme Court held that

1. A statement is admissible under section 6 of the Indian Evidence Act, 1872 on account of spontaneity and immediacy of such statement or fact in relation to fact in issue.
2. In case of circumstantial evidence the chain of evidence must be so complete as not to leave any reasonable ground of conclusion consistent with innocence of the accused and must exclude every possible hypothesis except the one proving the guilt of the accused.

Sawal Das v State of Bihar: (1974 SC)

It was observed by the court that section 6 of the Indian Evidence Act, 1872 is based upon the English doctrine of *res gestae*. In English it means “things said and done in course of a same transaction.” In India, this doctrine is embodied under section 6 of the Evidence Act and is exception to the rule against hearsay.

Sohan Lal v State of UP

It was held that in the absence of evidence to show which act of the accused cause the death of the murdered man it would neither be proper to convict the accused person under section 302 IPC.

G. Vijay Vardhan Rao v State of Andhra Pradesh (1996 SC)

If the statement is made after the act is over and its matter has had time for reflection and fabrication and if it's mere narration of the past events, then it's not relevant. The statement should be an exclamation “forced out of witness by the emotional generated by an event.”

In case of Sharad Birdichand Sharda v State of Maharashtra (1984 SC)

The SC lays down 5 golden principles on circumstantial evidence known as “Panchsheel of proof of a case based on circumstantial evidence” which are as follows:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The accused must be a not merely may be guilty before a court can convict him.

2. The fact so established should be consistency only with hypothesis of the guilt of the accused.
3. The circumstances should be of conclusive nature.
4. They should exclude every possible hypothesis except the one to be proved.
5. There must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with innocence of the accused and must show in all human probability the act must have been done by the accused.

Section 7: Facts which are the occasion, cause or effect of facts in issue.

Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Effect: Any consequence in the form of any mark of the incident where incident being either relevant fact or fact in issue would be called the effect of relevant fact or fact in issue. For eg -

- Marks of blood in case of shooting or stabbing;
- water in lungs- if drowned and dies;
- No water in lungs- if died first and then drowned.

Cause: i.e., Reason behind doing something which ignites some other incidence.

State of thing: Something which exists and repeat itself over a period of time.

Occasion and opportunity: Occasion is a circumstance which exists, and which may give to some person an opportunity to commit the wrong. Occasion is some surrounding circumstances which exist at the time of happening of the incident and which create the opportunity for the doing of the wrong. Opportunity is carved out of occasion.

Note: Opportunity is taking benefit of some circumstances. There is some circumstances exists and other takes benefit of that circumstance to commit the offence.

Last seen together theory

It is specie of the concept of opportunity. Whenever the accused was found in the company of the victim before the commission of the offence, if there are other corroborating evidences against the accused who committed the offence and the burden of rebutting that presumption (of section 114) may lie upon the accused. The court will examine the circumstances in which the two were found together including the time gap between the offence and the time including the time gap between the offence and the time when they were last seen together. The court may presume or may not presume, depends upon the circumstances.

Note: The main test is whether there was a possibility of any third person interfering. If yes, then the presumption will not be raised.

Section 8: Motive, preparation and previous or subsequent conduct.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto

Explanation 1. - The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. Any fact which shows or constitutes motive or preparation for relevant fact or fact in issue is relevant. Shows means to manifest something. Constitute means to create something For eg: fight between A and B - here fight may constitute motive for A killing B. but if in that fight if A says that I will take revenge, this shows motive.

Preparation is when someone prepares something to create a platform or circumstances to commit offence. i.e. collecting certain facts which convenience the commission. It is the taking of necessary steps towards committing a wrong i.e., the collection of certain facts which will ultimately enable the accused to commit the wrong. Technically preparation or motive in themselves is not relevant fact rather a fact which shows or creates the preparation or motive is relevant.

Note: preparation is just one step before attempt. i.e., Intention -> preparation -> attempt -> offence.

Conduct of parties/of agent/of victim is relevant if such conduct of parties or agent is in reference to relevant fact or in reference to fact in issue/ in reference to suit or proceeding. For Example, threatening witness or tampering with evidences etc.

But Conduct Of victim- if in reference to suit or proceeding is not relevant even if such conduct is either influenced by or influences relevant fact or fact in issue.

In reference to relevant fact or fact in issue- in santosh kumar singh- telling lie about fracture – as fracture was effect (relevant fact) of crime and to hide that i.e., in reference to relevant fact.

Example, B (co accused) made approver under section 306 CrPC. Now B becomes witness. – Here B becomes an approver and therefore becomes prosecution witness and therefore he is no more party to that proceeding. Thus his conduct will not be relevant under section 8 as conduct of witness is not relevant under section 8.

Example, A dugged B after causing his death. Try to prevent the Police officer from dragging the ground.

- The conduct of A as a party to the proceeding is in reference to the investigation proceeding and by doing that conduct he is trying to influence a relevant fact i.e., he is trying to prevent the finding of dead body from his house.
- i.e., conduct of burring the dead body is a relevant fact and the conduct of preventing the police officer from

digging the body is in order to prevent the police from finding the relevant fact of conduct of burring the body and the effect in form of dead body.

Example, as to conduct of party or agent in reference to suit or proceeding-

1. Failure of party to produce the evidence – as ultimately it would influence proof of facts in issue or.
2. Failure of party to appear before the court.
3. Destruction or non-production of document by a party
4. Attempt to prevent the prosecution
5. The demeanor of the accused including his bodily conduct of behavior.
6. Accused trying to abscond from arrest.
7. Accused presenting false evidence or alibi
8. Accused making contradictory statements
9. Conduct of victim of going to P.S. is relevant as subsequent conduct. He is making the conduct in influenced by fact in issue of hence relevant.

Note: the first Information Report (FIR) is just a statement of the victim and hence it is not relevant under section 8 per se. however if the statement in FIR explains the conduct of the victim and accompanies the conduct of the victim then it will become relevant under section 8 (by virtue of exp 1 to section 8).

Case: Aghnoo Nagesia v State of Bihar (1966 SC)

Confessional FIR. He killed his aunt, her daughter, son-in-law and daughter's daughter – to prevent devolution of property to them. Also got discovered the weapon and dead body. The conduct of the accused in pin pointing the places where the objects related to the crime are hidden is relevant as it is the conduct of a party and it is with respect to the investigation proceeding and it ultimately results into the finding of the effects of the crime. Hence it influences the finding of a relevant fact.

In conclusion, the doctrine of res gestae, a legal principle admitting spontaneous and closely connected statements as evidence, serves to enhance the reliability and authenticity of testimonies in legal proceedings. By allowing the inclusion of statements made in the heat of the moment, the doctrine seeks to capture the immediacy and truthfulness of events, contributing to a more comprehensive understanding of the circumstances surrounding a case. While its application requires careful consideration of relevance and reliability, the doctrine remains a valuable tool in ensuring a fair and just legal process.

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