

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.

Illustrations:

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols (jails) are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. the goods were delivered to several intermediate person successively. Each delivery is a relevant fact.

Scope:

Under the definition of the word “relevant” in S. 3 one fact is said to be relevant to another when one is connected with the other in any of the ways

referred to in the provisions of the Act relating to the relevancy of fact. These particular ways which the law regards as relevancy have been described in S. 6 to 55 which deal with relevant facts.

Facts which are not themselves in issue may affect the probability of the existence of fact in issue and be used as the foundation of inferences respecting them; such facts are described in the Act as relevant facts.

Facts relevant to the issue have been arranged in the following manner:

1. Things connected with the fact in issue as part of the same transaction, occasion, cause, effect, and motive, conduct (S. 6 to 16).
2. Things said viz., admissions, confessions (S. 17 to 31)
3. Statements by persons who cannot be called as witnesses (S. 32 and 33).
4. Statements under special circumstances (S. 34 and 35).
5. Decisions in other cases (S. 40 to 44).
6. Opinions about fact in issue (S. 45 to 51).
7. Character and reputation of parties concerned (S. 52 to 55).

Basis of the rule:

Every fact is a part of other facts. There is no fact which is unconnected with other facts.

“The affairs of men consist of a complication of circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstance and in its turn becomes the prolific parent of others and each during its existence has its inseparable attributes and its kindred facts materially affecting its character and essential to be known in order to right understanding of its nature.”

Res Gestae---

The principle underlying Section 6 the following is sometimes termed as *res gestae*.

Section 6 deals with relevancy of “facts forming part of the same transaction”¹ and the principle behind the section is that when a Court is dealing

¹ Section 220 of CrPC dealing with “Trial for more than one offence” also employs a similar terminology and provides, inter alia: “(1) If, in one series of acts so connected together as to form the same transaction, more

with a transaction, naturally all the facts that constitute that transaction may have to be gone into. This principle is based on the English doctrine of res gestae and the Latin phrase means “things done”.

The use of the words res gestae has been avoided in Section 6 because of lack of specificity of the concept in English law.

The concept of Res Gestae has come to be used as meaning hearsay, circumstantial evidence and so on.

It must, however, be pointed out that though the Evidence Act does not employ the phrase res gestae anywhere, the spirit behind the doctrine of enlarging the focus of spotlight of relevancy to cover certain surrounding facts has been incorporated not only in S. 6 but also in S. 7 to 10.

‘Res gestae’ is a **Latin term** which means **a fact, a transaction, an event, thing done; the subject matter.**

The expression ‘res gestae’ means as including everything that may be fairly considered and incident of the event under discussion.

Res gestae may be **broadly defined** as matter incidental to the main fact and explanatory of it including acts and words which are so closely connected therewith as to constitute a part of the transaction and without a knowledge of which the main fact might not properly understood.

They are the events themselves speaking through the instinctive words and acts of the participants, the circumstances, facts and declarations which grow

offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.”

Section 223 CrPC also employs the terms “different offences committed in the course of the same transaction.” Thus, the term “transaction” is used in CrPC in a different sense so as to include under Section 220 “offences” committed in a “series of acts” forming part of a transaction.

Under Section 6 of Evidence Act each of the offences so committed will be a transaction by itself.

The term “transaction” occurs also in Section 13(a) of Evidence Act but its meaning there is wider than under Section 6.

For instance, a judgment is held to be transaction under Section 13(a) but it is not a transaction within the meaning of Section 6.

Section 32(1) also speaks of “circumstances of the transaction that resulted in death.”

See, for a discussion on the meaning of the term “transaction” in CrPC, **Andhra Pradesh vs. Cheemalapati Ganeswara Rao & Anr. AIR 1963 SC 1850.**

out of the main fact, are contemporaneous with it and serve to illustrate its character.

Res gestae of any case properly consists of that portion of actual world's happenings out of which the right or liability, complained or asserted in the proceeding, necessarily, arises.

Apparently the phrase is well established in the Law of Evidence. It is necessary therefore, to understand what it really means.

That has been used in two senses-**in the restricted sense**-it means world's happening out of which the right or liability in question arises.

In the wider sense-it covers all the probative facts by which *res gestae* are reproduced to the tribunal where the direct evidence of witness or perception by the court are unattainable.

In restricted meaning *res gestae* imports the conception of actin by some person producing the effects for which the liability is sought to be enforced in action.

To be clear, in the restricted sense, "facts which constitute *res gestae* must be such as **so connected with the very transaction or fact** under investigation as to constitute a part of it."

Whatever act or series of acts constitute, or in point of time immediately accompany and terminate in. the principal act charged as an offence against the accused from its inception to its consummation and whatever may be said by either of the parties during the continuance of the transaction, with reference to it, including herein what may be said by the suffering party, though in absence of the accused during the continuance of the action or the latter, form part of the principal transaction and may be given in evidence as part of *res gestae* of it.

While, on the other hand, statements made by the complaining party, after all action on the part of wrong-doer has ceased and some time has elapsed donot form part of *res gestae* and should be excluded.

"The *res gestae* may be defined as those circumstances which are the automatic and undersigned incidents of a particular litigated act and which are admissible when illustrative of such act.

These incidents may be separated from the act by a lapse of time more or less appreciable.

A transaction may last for weeks. The incident may consist of sayings and doings; they may comprise things left undone as well as the things done. They must be necessary incidents of the litigated act in the sense that they are not produced by the calculated policy of the actors.

They are the acts talking for themselves not what people say when talking about the acts.

In other words they must stand on an immediate casual relation to the actual relation not broken by the interposition of voluntary individual witness seeking to manufacture evidence for itself.

The test of the admissibility of evidence as part of *res gestae* is whether the act, declaration or exclamation is so intimately interwoven or connected with the principal facts or even which it characterizes as to be regarded as a part of the transaction itself and also whether it negatives any premeditation or purpose to manufacture testimony”.

Res Gestae—Exception to Hearsay—

The doctrine of *res gestae* is considered to be an exception to the hearsay rule. Hearsay is sometimes classified into two kinds, viz.,

- (a) Individual Hearsay and
- (b) Composite Hearsay.²

Illustration (a) to S. 6 says:

“A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.”

Thus, “despite the frequent references in cases on *res gestae* to the evidence of the victim, it seems to be clear that any person’s evidence may be *res gestae*, including any witness and the accused”.

²Basu’s Law of Evidence, 6thedn., by P.M Bakshi, ed., Vol.2 (New Delhi, 1998), p. 1109.

A might say something in his anger and B might say something in agony or raise a hue and cry. Persons who gathered there might also give vent to their feelings of outrage at murder taking place right in front of them. If a witness deposes in the Court as to what was said by A or B, it is individual hearsay and where he testifies about what a group of by-standers have said, it is composite hearsay.

If A or B deposes as to what he said at the occurrence, that would be direct evidence but the deposition of the witness as to what A or B said is hearsay.

Again, it may not be possible to identify the bye-standers or call all of them as witnesses; consequently, witnesses may be called to testify as to what the bye-standers have said etc.

Here, “the word ‘bystanders’ means the persons who are present at the time of incident and not the persons who gather on the spot after it.”.

Same Transaction:

The term ‘same transaction’ has not been defined in the Evidence Act. A definition of the word is given **by Stephen**, who says,-

“A group of facts so connected together as to be referred to by a single legal name, as a crime, a wrong or any other subject of enquiry which may be in issue.”³

From its very nature the word ‘transaction’ is incapable of exact definition. It should be interpreted not in any strict or technical way but in its ordinary etymological meaning of “an affair” or “a carrying through.”

The rule of efficient test for determining whether a fact forms part of the same transaction or another “depends upon whether they are so related to one another in point of purpose, or as cause and effect, or as probable and subsidiary acts as to constitute one continuous action.”

Proximity of time is not so essential as continuity of action and purpose. On the one hand, the mere proximity of time between several acts will not necessarily constitute them parts of the same transaction, on the other hand, the

³James Fitzjames Stephen, A Digest of Law of Evidence, (1876, London), Article 3.

mere fact that there are intervals of time between the various acts will not necessarily import want of continuity.

To ascertain whether a series of acts are parts of the same transaction, it is essential to see whether they are linked together to present a continuous whole.⁴ Section 6 lays down that facts, which form part of the same transaction are relevant.

A transaction may be looked at from different angles:

1. A transaction may consist of not one fact but a set of facts which are connected to each other and constitute a whole. Stephen's definition highlights this aspect.
2. Sarkar says: "A transaction may constitute a single incident occupying a few moments or it may be spread over a variety of acts, declarations etc, occupying much longer time⁵ and occurring on different occasions".⁶ Sarkar is emphasizing that a transaction might be comprised of plurality of (a) durations, (b) acts etc, and (c) occasions.
3. But here a distinction must be made:
 - i The existence of a tree is a state of things,
 - ii Falling of a tree is an event and
 - iii Felling of a tree is an act.⁷

All the three are facts.

A "state of things" need not consist of inanimate objects only. For, instance, "drunken driving" as a "transaction" is a state of things and the law can make it, per se, punishable irrespective of whether it causes injury to somebody, and if it causes injury the law can make that "act" also punishable.

However, a "transaction" does not consist of all kinds of facts, events or occurrences but only those which are the outcomes of exertion of human will

⁴ Ram Chandra vs. Emperor, AIR 1939 Bom. 129.

⁵ In Protima Dutta vs. State, 1977 (81) Cal. WN 713, the Calcutta High Court held that in cases concerning sustained cruelty by husband towards his wife that leads to her suicide, the "transaction" of systematic ill-treatment for years after the marriage might extend even to a period of three years.

⁶ Sarkar's Law of Evidence, eds. M.C. Sarkar et al., Vol. 1 (New Delhi, 2003), p. 121. An "Act" is defined by S. 3 of the General Clauses Act, 1897, as: "'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions."

⁷ Jeremy Bentham said: "An act or action, is...an event in so far as it comes to be considered as having had the human will as the immediate cause of it."

whether they fall under “state of things” or “acts” to which the law attaches a label as, for instance, a “contract”, “tort” or an “offence”.

Within the meaning of S. 6 that a man ‘fell’ from the toop of a tower is an event and not a transaction but that he “jumped” or was “pushed” from it and died is a transaction.⁸

Again, a “transaction” like “murder” may consist of “physical fact” of killing and also the “psychological fact” of mensrea within the meaning of definition of “fact” in S. 3.

4. A transaction can be a one-of event like a gun-shot or it can be a continuing offence⁹ or tort like trespass, terminable at the will of the doer or by the intervention of law. “Continuing offence” as a transaction can be looked at from three angles: continuity from the point of commission (a) over a period of time (b) of different acts, and (c) at different place, the Court in those areas can exercise concurrent jurisdiction.¹⁰

Unless the Court looks at the entirety of those facts, it will not be able to come to a conclusion as to the nature of the transaction.

⁸ The word transaction is derived from the Latin *transactus*(past participle of *transigere*) to carry out, accomplish. Though the dictionary meaning of the term is generally related to a business “deal”, under S. 6 it has a wider legal connotation.

⁹ In Bihar vs. DeokaranNenshi, AIR 1973 SC 908: 1973 SCR(3) 1004, SC. observed: A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with.” An example is the offence of non-payment of employer’s contribution under the Employees’ Provident Fund and Family Pension Fund Act, 1952: BhagirathKanoria vs. Madhya Pradesh, AIR 1984 SC 1688: 1985 SCR (1) 626.

In Ajay Agarwal vs. Union of India, 1993 (3) SCC 609: AIR 1993 SC 1637, it was held that criminal conspiracy is a continuing offence: “the agreement does not come to an end with its making but would endure till it is accomplished or abandoned or proved abortive.”

Also see, State vs. Nalini, 1999 (5) SCC 253, para. 25: AIR 1999 SC 1640; U.S. vs. Kissal, 218 US 601; etc. where the appellants drove the car on to the foot of a person, rested the car wheel on his foot and switched off the ignition, the Court held that this was a case of continuing battery.

Recently in R. vs. Vu, 2012 SCC 40, the SC of Canada held: “Kidnapping is a continuing offence’ and “while the crime of kidnapping may be complete in law when the victim is initially apprehended and moved, the crime will not be complete in fact until the victim is freed.”

¹⁰ Thus, S. 178, CrPC provides: “**Place of inquiry or trial**—(a)...(b)..(c)...where an offence is a continuing one, and continues to be committed in more local areas than one,...it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

Section 472 of CrPC deals with limitation for “Continuing Offence” and states: In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.” Where dowry harassment took place within more than one jurisdiction, it was held that it was a continuing offence and the Courts in any of those areas could entertain the case. Sujata Mukherjee (Smt) vs. Prashant Kumar Mukherjee, (1997) 5 SCC 30: AIR 1997 SC 2465.

Section 6 lays down that the facts which are so connected with the facts in issue that they form part of the same transaction are relevant facts.

Sections 6, 7, 8, and 9 give the various ways in which the **facts are so related to each other to form component of the principal facts.**

These sections enact the law which usually laid down in England in these terms namely, that acts, declarations and incidents which constitute or accompany and explain the fact or transaction in issue are admissible for or against either party as forming parts of the *res gestae*.

The section renders relevant facts which form part of the same transaction as the fact in issue. Even hearsay statements are admissible under this section if they form part of the transaction.

The facts given in illustration (a) show that event of A murdering B by beating him consists of not only the act of beating but also certain surrounding facts like the utterances of A, the cries of B in agony, and the spontaneous outpourings of the bystanders. But they have all occurred at the time of beating or “shortly before or after” it, as the illustration says.

The acts and utterances have all occurred at about the same time and place.

The utterances are spontaneous and contemporaneous. On the other hand, illustration (b) deals with the offence of “waging a war against the Government of India” committed by A, as part of which property is destroyed, troops are attacked and jails are broken open, obviously in concert with different persons and at different times.

While in the ‘transaction’ of murder in illustration (a) the facts are ‘connected’ to each other by unity of time and place, in the ‘transaction’ of waging the war in illustration (b) the factor that connected together the persons, their acts and events was not the coincidence of time and place but the common intention and design that ran through like a thread. In fact, “waging the war against Government of India” is a “continuing offence” in the sense mentioned above.

The Courts appear to have applied different tests for bringing facts within the ring-fence of *res gestae* depending on whether the facts are physical facts or psychological facts.

Physical Facts forming a part of a transaction:

The facts forming the part of the same transaction with the fact in issue are relevant 'Res gestae' means the complete transaction from its starting point in the act of the accused until the end is reached. What in any case constitutes a transaction depends wholly on the character of the act and the circumstances of the case.

A transaction in its ordinary sense is some business or dealing which is carried on or transacted between two or more persons. Such of those statements made whether at the same time and place or at different times and places, as are connected with a fact in issue also form part of the same transaction. Facts leading to circumstances as to the nearness of the place, continuity of the act and the purpose or design have been considered as part of the same transaction.

Following **test** have been applied **to identify the nexus between 'facts forming part of the same transaction:**

- a) The cause and;
- b) Occurrence at the same time;
- c) Occurrence at the same place; and
- d) Common purpose and design¹¹

As mentioned earlier, illustration (b) to S. 6 and the illustration to S. 10 clearly demonstrate that, in the case of waging the war against the Government of India, destruction of property, assault on troops, breaking open of the jails, publication of material advocating the aims and objects of the operation etc. are all part and parcel of the same transaction called "waging the war against Government of India", though these acts have been done by different persons, at different places and different times. In fact S. 6 itself says that facts may form part of the same transaction "whether they occurred at the same time and place or at different times and places."

¹¹ In *Haduv State*, AIR 1951 Ori 53, the Orissa High Court (per B. Jagannadha Das, J.) said:

"Where the transaction consists of different acts, in order that the chain of such acts may constitute the same transaction, they must be connected together by proximity of time, proximity or unity of place, continuity of action and community of purpose or design."

In *Andhra Pradesh vs. Cheemalapati Ganeswara Rao & Anr*, AIR 1963 SC 1850, in the context of the use of "same transaction" in S. 220 and 223 of CrPC, the Court said: "where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for transaction to be regarded as the same."

Community of purpose and design is the cementing factor that put all those acts and facts in the basket of *res gestae*.

The time:- No uniformity exists in the length of time over which the transaction shall properly be held to extend. An act may occur within a few seconds. Another act may take some months together. In case where an agreement between the parties has been reached by a series of negotiations, extending over months or even years, the time covered by the transaction will be extended.

Space: The transaction may take within a room, or within a country or beyond the boundaries. No limitation can be imposed as to the territorial boundaries within which the transaction must occur. Those of sudden quarrel, shooting or stabbing may occur at one place and like a rebellion, or other movement may cover the breadth of a country or of continent.

Psychological acts forming part of the transaction, or “words accompanying physical acts”:-

Psychological acts forming part of the transaction or words accompanying physical acts may form the part of the same transaction.

The words spoken by the person doing the act, or by the person to whom they were done or by the bystanders are relevant as a part of the same transaction, but it should be borne in mind that such statements or declarations, as they are called, in order that they might be admissible as *res gestae* should be contemporaneous with the transaction in issue, that is the interval should not be made as to give time and opportunity for fabrication and connection and they should not amount to mere narrative of past occurrence.

They are admitted, when they appear to have been made under the immediate influence of some principal transaction relevant to the issue and are so connected with it as to characterize or explain immediate influence of some principal transaction relevant to the issue.

A bare statement of the complainant to the third person is not admissible; it is the power of perception unmodified by recollection that is appealed to and not of a recollection modifying perception.

Whenever recollection comes in whenever there is opportunity for recollection and explanation the statement cease to be part of the transaction.

A declaration must be substantially contemporaneous with the fact and if it is separated from the fact by an interval which, though however slight allows of fabrication, it cannot be treated as substantially contemporaneous with it and would not the statement of its effect as *res gestae* and would reduce it to the status of a complaint or narration of a past event.¹²

The statement is not admissible only because it is uttered in the course of the transaction. To be admissible it must be a part of the transaction.

If 'A' assaults 'B' on the neck with a knife and this is seen by bystanders who exclaim, 'A' is killing 'B', the exclamation is as much part of the transaction of murder as the gushing out of the blood from the wound inflicted on the neck with the only difference that the latter is physical reaction to the act whereas the former is the psychological reaction through perception.

While no doubt the spontaneity of the statement is guarantee of the truth the reaction for its admissibility under S. 6 is that it is part of the transaction and not merely because it is spontaneous.

In R. vs Bedingfield,¹³

A woman with a throat cut came out of the room suddenly and said to the witness "Aunt see what Bedingfield has done of me". C.J. Cockburn held it to be not admissible as *res gestae* because the statement was made after the incident was over.

In R. Vs. Christie,¹⁴

A statement made by a young boy to his mother shortly after indecent assault on him by the offender was held not to be *res gestae* as it being so separate by the time and circumstances could not be said to be part of the same transaction.

In Rutten vs. Regina,¹⁵

The caller a woman giving her address in distress requested the telephone operator to connect the police but call could not be completed as it ended suddenly. When the police came to her house, she was found there dead. Her

¹²Kameshwar Prasad Singh vs. Rex, 1951 ALJ 149.

¹³ (1695) 6 Skin 402.

¹⁴(1914) AC 545, Per Lord Atkinson.

¹⁵(1971) 1 WLR 801 (PC).

husband, who was charged of killing her by shooting, took the plead that the fire was accidental but it was held to be intentional on the basis of her call to the operator to connect the police as no victim of accident would think of getting the police prior to the incident . The call by the woman and whatever she said was held to be res gestae.
