

Acts evidence in a
prosecution for
bribery.



**ASSIGN
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Acts and declarations accompanying the transaction or the facts in issue as treated as *res gestae*, and admitted in evidence.

This is thus an exception to the rule of hearsay. The ground on which such evidence is admitted is the spontaneity or immediacy of the act or declaration. Thus, *res gestae* are those circumstances which are the instinctive and undersired incidents of a particular act.

Circumstantial facts are declared relevant and admitted in evidence, though such acts are not in issue, if they are so connected with the fact in issue as to form part of the same transaction, whether they occur at the same time and place or at different times and places. Such facts are admitted as forming part of *res gestae*, i. e.

, as being part of the original proof of what has taken place. The underlying principle of this rule is that as they form part of the transaction which is the subject of inquiry, they ought to be included. In a case decided by the Supreme Court, the talk between the accused and the police decoy was tape-recorded and sought to be used in evidence in a prosecution for bribery. The defence objected to its use as being a statement to the police. Rejecting the argument, the Supreme Court held that the dialogue formed part of the *res gestae* and was, therefore, relevant and admissible under S. 6 of the Act.

However, the Court also cautioned that as magnetic tapes are capable of erasure and re-use, the Court must also be satisfied that the tape had not been tampered with. (*Yusufalli v. State of Maharashtra*, A. I. R. 1968 S. C. 147) In *Agassiz v.*

London Tramways Co. (1872 21 WR 199), there was a tram collision and an action was brought against the Tramway Co. in respect of injury to a passenger. A remark by another passenger to the effect that the driver ought to be reported and the conductor's reply, " He has already been reported for he has been off the line five or six times to-day" were rejected, the transaction being over, and as the remarks referred not to the res, but to the past acts of the driver.

It should be noted that, in order to pass the test of *res gestae*, the statement uttered, or the act done, must be a spontaneous reaction of the person witnessing the crime and forming part of the transaction. The bystanders' declaration must relate only to that which was observed by them. The declaration must be substantially contemporaneous with the fact — and not merely the narration of a past event. Remarks made by persons other than eye-witnesses would be only hearsay. The statement must have been made either contemporaneously with the act or immediately thereafter, so that there is no time for reflection or fabrication.

In a leading case on the point, a man who was prosecuted for the murder of his wife, pleaded that the gun which killed her went off accidentally. The evidence showed that the deceased had picked up the telephone and requested the operator to connect her to the police. However, before the operator could do so, the distressed caller gave her address and the phone was abruptly disconnected. It was held that her call and her words were relevant as part of a transaction which brought about her death. Her distress call indicated that the shooting was intentional and not accidental.

As observed the court, the victim of an accident would not think of calling the police before the accident happened. (*Ratten v. The Queen*, (1971) 3 WLR 930) In another case, A was tried for the murder of B by shooting him with a gun.

The facts that the person, who was at that time in the same room with B, saw a man with a gun in his hand pass by a window of that room and thereupon exclaimed "There's the butcher" (— A was known by that name —) were held to be relevant. Importance of Res Gestae in Cases of Rape It has been held that the statement of the girl who has been ravished, made as soon as she had freed herself and is in a position to complain, is admissible as res gestae. (*Parvati Devi v. State of West Bengal*, AIR 1952 Cal. 831) But, if after being subjected to rape, a girl goes home and later makes a complaint to her mother, that statement cannot form a part of the transaction of rape and cannot be admitted as res gestae.

Such a statement (to the victim's mother) may, however, be relevant as constituting subsequent conduct under S. 8 of the Act or as a corroborative piece of evidence under S. 157 of the Act. It cannot, however, form a part of the transaction of rape, which is the fact in issue. (*Indru v. State of H. P.*, 1989 Cr.

L. J. 2238)