

# LAW CAPSULE

For Law Competitive Exams



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## RES GESTAE AND EVIDENTIARY VALUE OF A TAPE RECORDED STATEMENT

### Introduction

*Res Gestae* is an English/Common Law Concept. The Indian Evidence Act defines *Res Gestae* in Section 6. The elements of *Res Gestae* are:

1. Fact not in issue
2. Connected issue
3. Part of same transaction
4. Same time and place or different times and places

Basis of Rule or Thumb Rule to identify a *Res Gestae* is that the concerned fact is so intimately interwoven as to be hardly separable from each other. However, it may be mentioned that hearsay statements are relevant if they form part of the same transaction.

### Test

Test to identify a *res gestae* is to ask a simple question- Whether the facts are linked together to present a continuous whole?

### Meaning of *Res Gestae*

- "Transaction" " Things done" " the subject-matter"
- They are the acts talking for themselves not what people say when talking about the acts
- The expression "*res gestae*" as applied to crime means the complete transaction from its starting point in the act of the accused until the end is reached and depends upon the circumstances of the case.

Transaction may consist of several acts and may involve one or any of the following:-

- (a) Proximity of time
- (b) Proximity of place
- (c) Continuity of action
- (d) Community of purpose

It also includes psychological act forming part of the transaction, or words accompanying physical acts. However, with regard to a statement in answer to a question it may be clarified that answer to a query after lapse of time not to be treated as *res gestae*. Further a statement of bystanders is relevant under Section 6 of the Indian Evidence Act.

In one of the cases (*Gulam v. R*, AIR 1930) the Rape victim-girl came home from the scene of occurrence and informed mother about the crime, the Court observed that the same is not *res gestae* under Section 6 of the Evidence Act. However, in another landmark case the Court held that the First Information Report (FIR) detailing about witness present at the scene of occurrence relevant as *res gestae*.

### Tape Recorded Statement

The validity of Tape Recorded Statement has been authoritatively decided by the Court by taking into consideration following sections together:-

- Section 6 of the Indian Evidence Act (*res gestae*)
- Section 6 to Section 55 of the Indian Evidence Act (Relevancy)
- Section 145 of the Indian Evidence Act (Cross examination- contradict)
- Section 157 of the Indian Evidence Act (Corroboration)

The most important case wherein the court laid down conditions governing Tape Recorded Statement is *R.M.Malkani v. State of Maharashtra*, AIR 1973 SC 157. Following are the conditions laid down by the Court:-

- Voice of person speaking – identified by the maker of the record
- Accuracy – proved by the maker of the record. Satisfactory evidence , direct and circumstantial
- Possibility of tampering – ruled out
- Subject-matter must be relevant [Sections 6-55]

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