

Where the plaintiff has wrongly framed his suit and as a consequence certain irrelevant evidence becomes relevant, the evidence may be admitted on the assumption that he has by his mistake impliedly waived any objection to the inadmissibility of such evidence, because the plaintiff cannot be heard to object to the use of evidence to which the irregularity of his procedure gives relevancy and to which he apparently took no exception when it was tendered at the trial, although such evidence would otherwise be irrelevant.¹⁰

7. **Decision on objection.** In all cases regarding admissibility of a particular piece of evidence the material time, when admissibility has got to be decided is the time when the Court receives the evidence and not the eventual result.¹¹ Therefore a Judge should not admit tentatively a piece of evidence to which objection has been taken and reserve the question of the admissibility for arguments at the final stage. If he tentatively admits the documents the High Court will set aside the order in revision.¹²

(19) 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 the by-standers at the beating, or so shortly before or after it as to form parts of the transaction, is a relevant fact.

(b) *A* is accused of waging war against Pakistan by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals 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* for 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 persons successively. Each delivery is a relevant fact.

Evidence Act, 1872. The Article is exact reproduction of S.6 of the Evidence Act.

Synopsis

1. Scope and applicability.
2. Same transaction.

10. AIR 1920 PC 67.

11. AIR 1940 Nag. 340=ILR 1941 Nag. 110=42 Cr.L.J. 17 (DB).

12. AIR 1919 Lah. 184=20 Cr.L.J. 305 (DB)+AIR 1957 Andh Pra. 60.

3. Evidence admissible as *res gestae*.
4. Evidence not admissible as *res gestae*.
5. Illustration (a)

1. **Scope and applicability.** *Res gestae* has been 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 be properly understood. They are the events themselves speaking through the instinctive words and acts of the participants; the circumstances, facts and declarations which grow out of the main fact are contemporaneous with it and serve to illustrate its character. It has also been defined as including everything that may be fairly considered an incident of the event under consideration.¹³ The essence of the doctrine of *res gestae* in evidence is that the facts which though not in issue are so connected with the fact in issue as to form part of the same transaction and thereby become relevant like a fact in issue.¹⁴ Art.19 appears to provide for proof of statements which are more or less of a collateral nature. Not the principal fact but the subsidiary ones which are so connected with the facts in issue as to form part of the same transaction are relevant.¹⁵

Declaration must be spontaneous and immediate. Art. 19 and the succeeding articles embody the rule of admission of evidence relating to what is commonly known as *res gestae*. Acts or declarations accompanying the transaction or the facts in issue are treated as part of the *res gestae* and admitted as evidence. They are, roughly speaking, exceptions to the hearsay rule. The obvious ground of admission of such evidence is the spontaneity and immediacy of the act or declaration in question.¹⁶ Thus where a P.W. saw a boy being dropped from a cycle and he observed that he was weeping. He followed him immediately and asked him the reason for weeping and was told by him that he had been sodomised upon by the petitioner, the statement was admissible in evidence.¹⁷ But if it is separated from the fact by an interval which, though very slight yet allows of fabrication, it cannot be treated as substantially contemporaneous with it. If a declaration is made after such an interval of time from the act as to allow fabrication or to reduce it to a mere narration of a past event, it is not substantially contemporaneous with the act and is not admissible in evidence.¹⁸

Statement must be of person who has seen the occurrence. The statements must be of a person who has seen the actual occurrence and who uttered the same simultaneously with the incident or so soon after it, as to make it, reasonably certain that the speaker is still under the stress of excitement caused by his having seen the incident. Where the transaction is a single incident, a statement by a person who was

13. 2000 MLD 1290=PLJ 2000 Cr.C. 357=2001 AC 87+1993 P. Cr. L.J. 704=NLR 1993 Cr. 447 (DB).
14. 1994 P. Cr. L.J. 2102=NLR 1994 AC 469+AIR 1957 Cal. 709.
15. AIR 1958 Cal. 482=1958 Cr.L.J. 1170.
16. PLD 1975 Kar. 723+PLD 1971 Lah. 929+AIR 1958 Cal. 482=1958 Cr.L.J. 1170.
17. PLD 1971 Lah. 929.
18. 1969 SCMR 629=1969 P.Cr.L.J 1217+PLD 1975 Kar. 723+AIR 1958 Cal. 482.

perceiving the incident made simultaneously with the occurrence of the incident may be said to be part of the transaction inasmuch as it is the result of a spontaneous psychological reaction through perception.¹⁹ Thus statement made by an independent witness of murder occurrence would be relevant under Art. 19 for determining guilt of accused.²⁰

Statement must be part of the transaction. All spontaneous statements in some way connected with the transaction under investigation are not admissible. It must be shown that the statement is a part of the transaction. The spontaneity of the statement is no doubt, guarantee of its truth, but the reason for its admissibility under Art. 19 is that it is a part of the transaction and not merely that it is spontaneous.¹ Where the accused tried to put up a false defence regarding his conduct after the occurrence, namely, that he was weeping and was naming another person as culprit. It could safely be assumed that it was an after thought of the accused and such a conduct as also his other acts immediately after the occurrence, could be taken note of as highly relevant factors.²

Connection with fact in issue. The statement sought to be admitted under this section must be connected with a fact in issue. Reputation is not at all a necessary fact to be proved in a charge for defamation and hence it does not become a fact in issue. Therefore, evidence to show that the reputation of the complainant is so low that it cannot be injured by the imputation is not admissible.³

Evidence admissible under other sections of the Act. An act of statement not relevant under this Article may be relevant under other Articles of the Qanun-e-Shahadat.⁴

Value of evidence. Evidence admitted under this section can only be used as a link in the chain of evidence. Conviction cannot be recorded on it.⁵

2. Same transaction. A transaction is a group of facts so connected together as to be referred to by a single legal name as a crime, a contract, a wrong or any other subject of inquiry which may be in issue.⁶

It is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction ; but the circumstances which must bear on the determination of the question are proximity of time, unity or proximity of place, continuity of action and community of purpose or design.⁷ Thus if several persons conspire to commit offences, and commit overt acts

19. AIR 1951 Orissa 53=ILR 1950 Cut 509 (DB).

20. NLR 1995 Cr. 297=PLJ 1995 SC 277=NLR 1995 Cr. 321=1995 SCMR 693=1995 Law Notes (SC) 296.

1. AIR 1951 Orissa 53=ILR 1950 Cut 509 (DB).

2. 1992 SCMR 1187=PLJ 1992 SC 369=NLR 1992 SCJ 490=1992 Law Notes 405.

3. AIR 1954 Pat. 84=32 Pat. 276=1954 Cr.L.J. 124 (DB).

4. AIR 1938 Oudh 26=13 Luck 697 (DB).

5. PLD 1976 SC 291.

6. 1951 All L.J. 149.

7. AIR 1951 Orissa 53=ILR 1950 Cut 509 (DB).

in pursuance of the conspiracy these acts are committed in the course of the same transaction. The common concert and agreement which constitute the conspiracy, serve to unify the act done in pursuance of it.⁸ Where the transaction is a single incident, a statement by a person who was perceiving the incident made simultaneously with the occurrence of the incident, may, with justification, be said to be part of the transaction inasmuch as it is the result of a spontaneous psychological reaction through perception.⁹ A deed of adoption is not irrelevant to the decision of an issue of adoption. In the majority of cases, execution of a deed of adoption forms a part of the transaction of adoption itself, and is relevant under this Article.¹⁰

Hearsay evidence. Hearsay testimony would be admissible if it is proved that the object of the maker of the statement was to elucidate and explain the circumstances connected with the same transaction, provided the possibility of concoction or distortion to the advantage of the maker or to disadvantage of the accused is ruled out.¹¹

Evidence as to other offence. Events preceding and leading to assault on the deceased should be brought out in evidence by the prosecution to prove the guilt of the accused.¹² Evidence as to other offences would be relevant and admissible if there is a nexus between the offence charged with the other offence or the two acts form part of the same transaction so as to fall within Art.19. Where the accused was charged under section 302, Penal Code, with murder. According to the prosecution case, on the morning of the day of the incident a threat had been given by the accused that he would finish off the deceased and also finish himself off. The defence of the accused was one of *alibi*. His case was that he sustained serious injuries on that day as a result of an attack on him by another named person and that the injuries sustained by him were not self-inflicted, as was the case of prosecution. It was held that the evidence as to the manner in which, according to the prosecution, the injuries came to be sustained by the accused must be held to be closely connected with the offence charged against him as to form part of the evidence upon which the offence charged was sought to be proved. Therefore it was a part of the same transaction.¹³

3. Evidence admissible as 'res gestae'. The evidence about the fact which is also connected with the same transaction, cannot be said to be inadmissible or irrelevant. There is no provision of law which lays down that evidence can be led only in respect of that matter which is the subject-matter of the charge and of no other matter even though it is relevant to substantiate the charge.¹⁴ Facts forming part of the same transaction though not in issue but so connected with a fact in issue as to form part of the same transaction are relevant.¹⁵ Thus where a suit for possession against a licensee the nature of the licence was in issue, the letters passed in the

8. AIR 1938 PC 130=39 Cr.L.J. 452.

9. AIR 1951 Orissa 53=ILR 1950 Cut 509 (DB).

10. AIR 1962 Bom 175 (DB).

11. 2001 P. Cr. L.J. 1086.

12. AIR 1934 Rang. 44=35 Cr.L.J. 855 (DB).

13. AIR 1961 Bom. 114 (DB).

14. 1957 All L.J. 141.

15. 1994 P. Cr. L.J. 2102=NLR 1994 AC 469 (DB).

course of the negotiations between the parties for the settlement of the terms of the licence, or the extension of the original licence are admissible in evidence under Art. 19 as *res gestae*.¹⁶ Where injuries were inflicted on the deceased and soon after he stated that they had been inflicted by the accused. The statement was admissible under Art. 19 as it was made by the deceased very shortly after he sustained the injuries.¹⁷ Where a witness reported what he had seen to his own father, another eye-witness who supported him. There was no such enmity between the parties so as to imply that this witness or his father would falsely implicate the appellants. Moreover, the timing and locale of the occurrence is such that it must have made various links in the same chain of *res gestae* and thus the evidence was admissible.¹⁸

Person present at commission of crime. Evidence of P.Ws. whose presence at time of murder is established would be relevant under Art. 19 as *res gestae*.¹⁹

Statement by accused. Statements, utterances and declarations in order to be admissible/relevant as '*res gestae*' should be contemporaneous with the occurrence/incident in issue, i.e. interval should not be such as to give time or opportunity for fabrication and they should not amount to be mere narrative of past occurrence. Declarations, statements and utterances which do not satisfy the said test are rejected as hearsay.²⁰ Where the accused gives a spontaneous explanation right at the moment when the crime is committed, the explanation becomes *res gestae* within the meaning of this Article.¹

Letter written prior to dispute. A letter written prior to dispute, contemporaneously with events mentioned therein and produced on record, can be relied upon as *res gestae* under Art. 18.²

Sexual offences. In cases of sexual offences against woman statements made to third parties are admissible; but they must be complaints made voluntarily and at the earliest convenient moment, even then they are received not as evidence of corroboration of fact complained of, but as evidence of credibility of the complainant's testimony to the facts alleged, and where consent is a defence, to negative such consent.³ If a woman, without making a complaint, i.e., without wishing some action to be taken, merely states that she has been ravished, that statement is not relevant under Art. 12, though it may be relevant under Art. 153.⁴

Sodomy. In a case of sodomy disclosure made by victim to prosecution witnesses regarding incident being a statement made under immediate influence of transaction is admissible as *res gestae* under Article 19 of Qanun-e-Shahadat Order

16. AIR 1950 Pat. 134=29 Pat. 19 (DB).

17. AIR 1964 Assam 53.

18. PLD 1991 SC 397=NLR 1991 SCJ 403=1991 PSC 565.

19. NLR 2000 Cr. 617 (DB).

20. PLD 2003 SC 368=PLJ 2003 SC 113=NLR 2003 Cr. 281.

1. AIR 1959 All. 483=1959 Cr.L.J. 924.

2. 2003 AC 127 (DB).

3. AIR 1939 PC 146+AIR 1953 Cal. 332=1953 Cr.L.J. 748.

4. PLD 1950 Lah. 189=PLR 1950 Lah. 294.

1984.⁵ Rule of *res gestae* incorporated in Art. 19 would make evidence of father of victim of sodomy admissible in evidence.⁶

Unlawful assembly, statements made by member of. In a prosecution of promoters of an unlawful assembly the statements of members made at that time are admissible to prove its unlawful purpose.⁷

4. Evidence not admissible as 'res gestae'. Evidence which does not form part of the same transaction is not admissible in evidence as *res gestae*. Thus the statement of a person, differing from written report handed over by him but written by another, is inadmissible against a person writing a report as it does not form part of the transaction, namely, making the report.⁸

A statement arising out of accidental facts occurring in the course of a chain of events which constitute the transaction are not to be treated as part of the transaction and cannot be admitted in evidence under Art.19.⁹ Where a witness learnt about the murder of the deceased and went to the spot and saw that the dead body was being removed by some persons. His statement that he learnt that the deceased had been murdered by the accused or that he was told by various witnesses that the accused had murdered the deceased and had run away, was held to be inadmissible in evidence because they did not form part of *res gestae*.¹⁰

Statement made some time after the occurrence. A statement by the complainant made some time after the occurrence is not admissible on principle of *res gestae*. The declaration to be admissible as *res gestae* must be contemporaneous with the transaction in issue.¹¹ Where the prosecution is for an offence of making a false complaint a statement at a subsequent police investigation is inadmissible as *res gestae*, because the investigation was an occurrence separate in time and place from the crime itself and the remarks of a witness at investigation were not occasioned by the crime or did not spring spontaneously out of it, but were the result of police enquiry.¹² Similarly evidence of witnesses to whom a complaint was made long after the incident is not admissible, as it is not *res gestae*.¹³ Where the prosecution is for teasing a girl, the evidence of a person who reached the spot after the incident and was told by the girl the words used by the accused is not *res gestae* and is not admissible in evidence.¹⁴

Rape cases. Where a prosecutrix in a rape case makes a statement some time after the crime, that she was raped by the accused the statement is not covered by Art.19, because whenever there is opportunity for reflection, the statement ceases to

5. PLJ 2001 FSC 46.
6. 2001 AC 87=PLJ 2000 Cr.C. 357=2000 MLD 1290.
7. AIR 1925 Rang. 354=26 Cr.L.J. 1622=3 Rang. 352 (DB).
8. AIR 1919 All. 110=20 Cr.L.J. 311.
9. AIR 1951 Orissa 53=ILR 1950 Cut. 509 (DB).
10. AIR 1953 Punj. 218=1913 Cr.L.J. 1427 (DB).
11. PLR 1950 Lah. 294=PLD 1950 Lah. 189+AIR 1942 Oudh 130.
12. AIR 1925 Mad. 579=26 Cr.L.J. 721=48 Mad. 640 (DB).
13. PLD 1950 Lah. 189=PLR 1950 Lah. 294+AIR 1934 Cal. 17 (DB).
14. AIR 1965 J & K 37.

be part of the offence. The statement cannot be said to form part of the offence as the offence.

Post occurrence narration of The evidence of what happened in respect of the transfer of shares of third persons is not admissible on the point of bad faith and mala fides in respect of a subsequent independent transaction in respect of the transfer of shares to the plaintiff which is in issue in the case.

5. **Illustration (a).** In order to make the statement of a bystander admissible it must have been made, as contemplated by Art 19 and Illustration (a) to Art 19 at the time the transaction took place or so shortly before or after as to form part of that transaction. A statement would be irrelevant if made after the transaction is complete, because admissibility depends on continuity of a transaction.¹⁶ Remarks by persons gathered on spot after the incident are hearsay and hence not admissible.¹⁷ When statements of persons neither accused nor witnesses in the case made to Police Officer during investigation and reproduced at trial by Investigating Officer in their evidence are hit by this Article and is inadmissible in evidence.¹⁸ But such statement may in certain cases be admissible not to prove the occurrence but to prove a relevant fact, e.g., the statements made by the bystanders soon after or before the occurrence. Thus where at the place where a murder was committed was occupied by a number of persons, apart from the deceased and the eye-witnesses. These persons came up immediately after the murder and they were informed by the eye-witnesses as to who the two accused had seen. These persons were not produced as witnesses in the case. Their non-production was explained upon the hypothesis that they did not actually see the culprits. It was held, that assuming that these persons did not actually see the accused their evidence was material, not with a view to prove the actual 'fact' of murder, which was in issue, but to prove the 'relevant fact' namely, that just after the event the eye-witnesses disclosed the names of the accused to those who came. This relevant fact is so connected with the fact in issue in view of Art. 19, Illustration (a), as to have necessitated the giving of evidence on that relevant fact itself as required by Art. 19.²⁰

20. *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.

16. P.L.R. 1950 Lah. 294-P.L.D. 1950 Lah. 189-AIR 1950 Lah. 337-32 Cr.L.J. 63-AIR 1951 Lah. 288 (statement of girl to neighbours inadmissible).
 17. AIR 1957 Cal. 709.
 18. 1962 P. 13 Cr.L.J. 1317-1960 SC MR 620-AIR 1964 Lah. 569 (DB).
 19. P.L.J. 1969 Pesh. 333 (DB)-P.L.D. 1964 Pesh. 50 (DB)-AIR 1945 Lah. 46-AIR 1944 Lah. 461 (DB)-AIR 1953 Lah. 378 (DB).
 20. 1984 P. 17 Cr.L.J. 1 (DB).
 21. AIR 1958 All. 328-1955 Cr.L.J. 892 (DB).