Course Name – LL.B 3rd 4th Sem
Subject –Law of Evidence
Teacher - Ram Kumar Bhardwaj
Concept Covered – UNIIT-1

History of Law of Evidence, Meaning Nature, Scope and Object of Evidence, Types of Evidence, Fundamental Rules of Law of Evidence, Fact in issue and relevant facts, Fact Proved,not proved, disproved (S. 3), Presumption(S-4), Relevancy of Facts (S-5-16), Res Gestae(Section6)

INDIAN EVIDENCE ACT, 1872

Introduction

Indian Evidence Act is adjective/procedural law. It can be enforced with retrospective effect. It is „Lex Fori". Lex Fori means the law of place where the question arises. For the example if the question arises whether person is competent witness or particular fact is admissible, it shall be decided according to the law of the country where Forum (Court) exist. Mainly it is procedural law. But section 115 of the Act is substantive law. In 1868 Mr. Henry Maine drafted but that was not suitable. In 1871 Sir James Fitzjames Stephen drafted Indian Evidence which converted into Indian Evidence Act, 1872 (1 of 1872). So Sir James Fitzjames Stephen is called father of „Father of Indian Evidence Act, 1872". He had written „A Digest of the Law of Evidence". Originally Indian Evidence Act contained 167 Sections, 11 Chapters and one Schedule. But in 1938 Schedule was repealed. Now, Indian Evidence Act contained 167 Sections, 11 Chapters.

Extent of Indian Evidence Act, 1872"

According to section 1 of the Indian Evidence Act, 1872" it extends to the whole of India. Before the commencement of Jammu and Kashmir Reorganisation Act, 2019 IEA was not applicable to the Jammu and Kashmir. But after the Act IEA is applicable to the whole of India including Union Territory Ladakh and Jammu & Kashmir.

The Fifth Schedule, Table 1S.No. 44 of Jammu and Kashmir Reorganisation Act, 2019 provides – „In sub-section 2 of section 1, word "except the State of Jammu and Kashmir" shall be omitted. This Act came on 31st Oct.2019. It is birth anniversary of Hon"ble Sardar Vallabhbhai Patel.

Application of Indian Evidence Act, 1872

Indian Evidence Act applies to all judicial proceedings in or before any Court, including Courts-martial, other than Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act, 1934 or the Air Force Act but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

Applicable –

(i) Judicial proceedings in or before any Court

(ii) Judicial proceedings in or before any Court including Courts-martial,

Not applicable

(i) Administrative Proceeding

(ii) Tribunal – In the case of *Union of India* v. *T.R. Verma* (1957) Supreme Court observed, "The Indian Evidence Act has no application to enquiries conducted by tribunals. The law only requires that tribunals should observe rules of natural justice.

(iii) Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act, 1934 or the Air Force Act

(iv) Affidavits. Although IEA is not applicable to affidavits but proving facts by affidavit is not barred. In practice facts are proved by affidavit.

(v) Proceedings before an arbitrator.

Enforcement of Indian Evidence Act, 1872"

According to section 1 of the Indian Evidence Act, 1872" it came into force on the first day of September, 1872. This is also date of enforcement of Indian Contract Act,1872. It can be make enforceable with retrospective effect.

Question – What do you understand by the word „Court" used in the Indian Evidence Act, 1872? Discuss with the help of decided cases.

Answer- According to Stephen, "In every Court, there must be at least three constituent parts-the actor, reus and judex; the actor or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy".

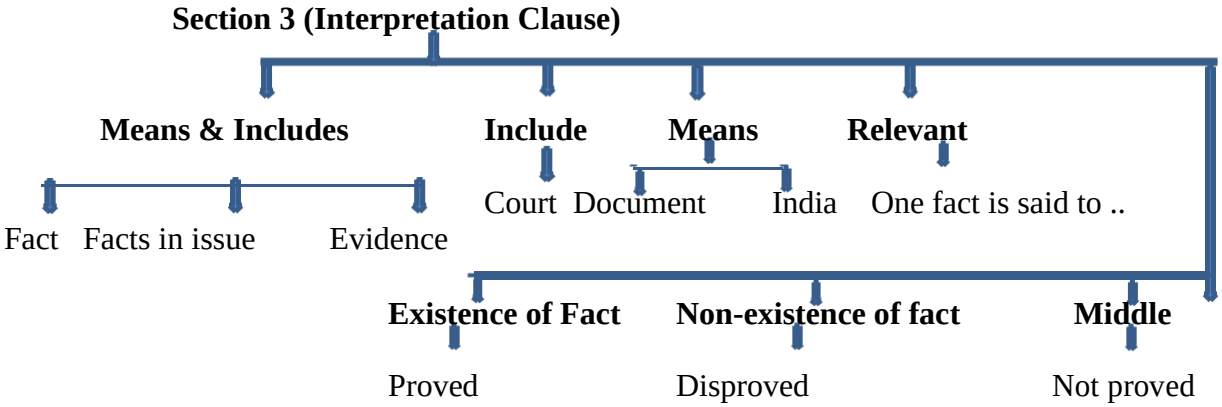
According to Section 3 of the Indian Evidence Act, 1872**,** "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

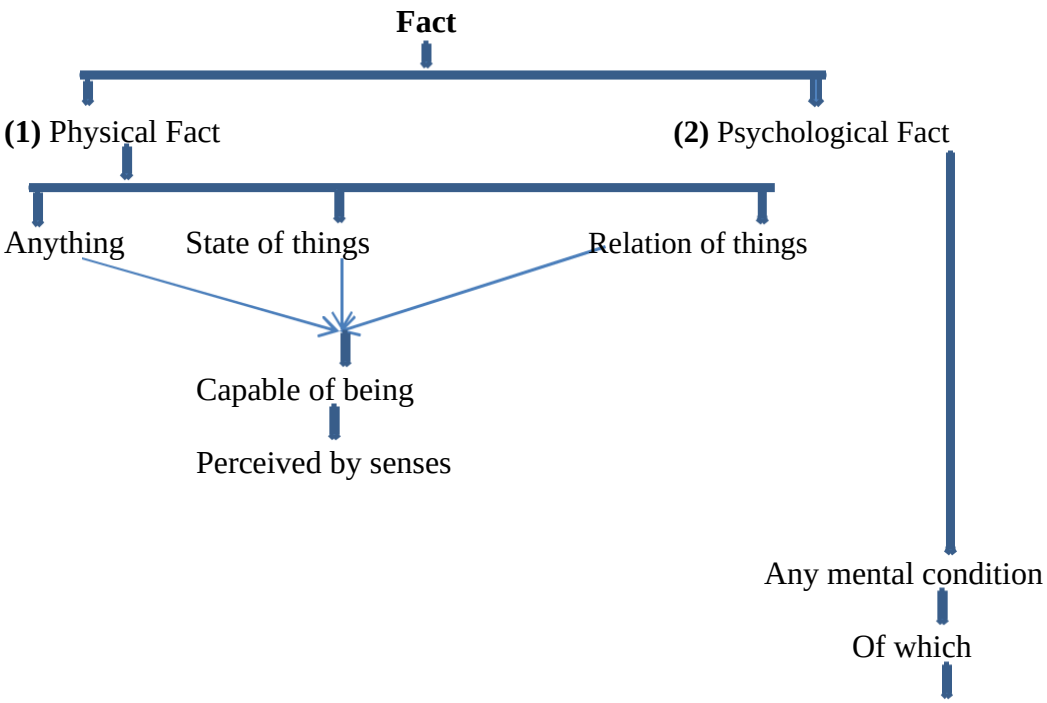
Name of the authority or institution is not important. Substance of the institution is important.

Brijnandan Sinha v. Jyoti Narain AIR 1956 SC 66

Definition of Court under Indian Evidence Act is not exahaustive.

It has been held that any Tribunal or authority whose decision is final and binding between the parties is a court. In the said decision, the Supreme Court, while deciding a case under Court of Enquiry Act held that a court of enquiry is not a court as its decision is neither final nor binding upon the parties.





Any person is conscious

There are two types of „Fact‟ namely; **(1)** Physical Fact **(2)** Psychological Fact

“Fact” means and includes-

(1) Physical Fact- anything, state of things, or relation of things, capable of being perceived by the senses;

Illustrations

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.
(*b*) That a man heard or saw something, is a fact.
(*c*) That a man said certain words, is a fact.

(2) Psychological Fact - any mental condition of which any person is conscious.

Illustrations

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
(*e*) That a man has a certain reputation, is a fact.

Section 3- Facts in issue

“Facts in issue”.— The expression “facts in issue” means and includes - any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

***Explanation* -** Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

- A is accused of the murder of B.
- At his trial the following facts may be in issue:—
- That A caused B‟s death;
- That A intended to cause B‟s death;
- That A had received grave and sudden provocation from B;
- That A, at the time of doing the act which caused B‟s death, was, by reason of unsoundness of mind, incapable of knowing its nature.

There are two ingredients of facts in issue –
(1) There must be fact.
(2) That fact must be disputed between parties.

The expression “facts in issue”
(a) means and includes -
(b) any fact from which, *either by itself or in connection with other facts,*
(c) Four Points -the existence, non-existence, nature or extent of
(d) Three Points (**RLD** Party) -any right, liability, or disability,
(e) Two Points (Dispute/Opposite Claim) - asserted or denied
(f) Suit means Civil Matter and Proceeding means Criminal Matter - in any suit or proceeding,
(g) Main constituent -necessarily follows.

Illustrations

A is accused of the murder of B.

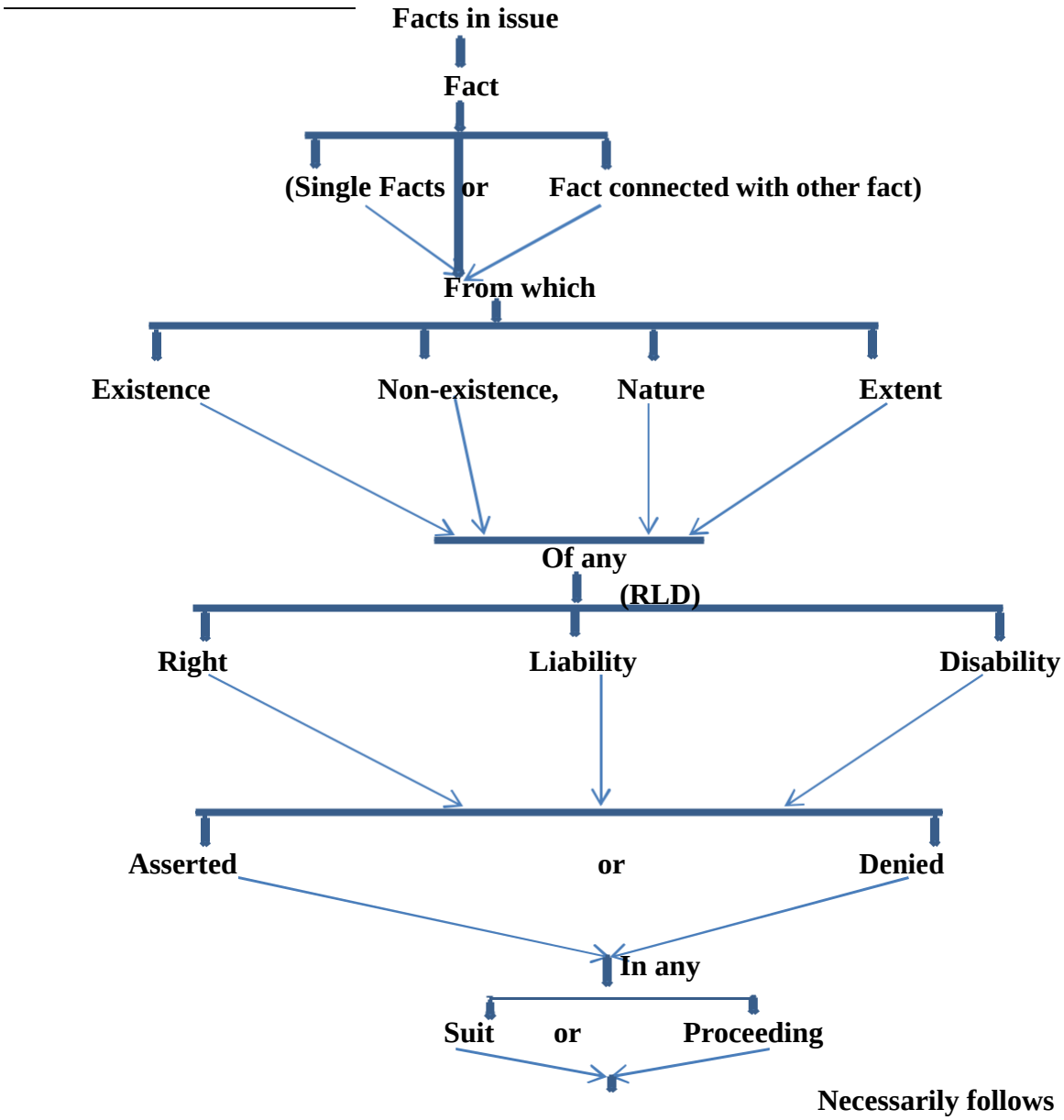
At his trial the following facts may be in issue:—

(i) Whether A caused B‟s death; (Causing death – Physical Fact)

(ii) Whether A intended to cause B‟s death; (*Intention –Psychological Fact. Whether death was caused with intention. Intention (Fact) converts facts in issue. So all facts in issue are fact but all facts are not facts in issue.*

(iii) Whether A had received grave and sudden provocation from B;

(iv)Whether A, at the time of doing the act which caused B‟s death, was, by reason of unsoundness of mind, incapable of knowing its nature.



"Proved"

A fact is said to be proved when, ***after considering the matters before it***, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

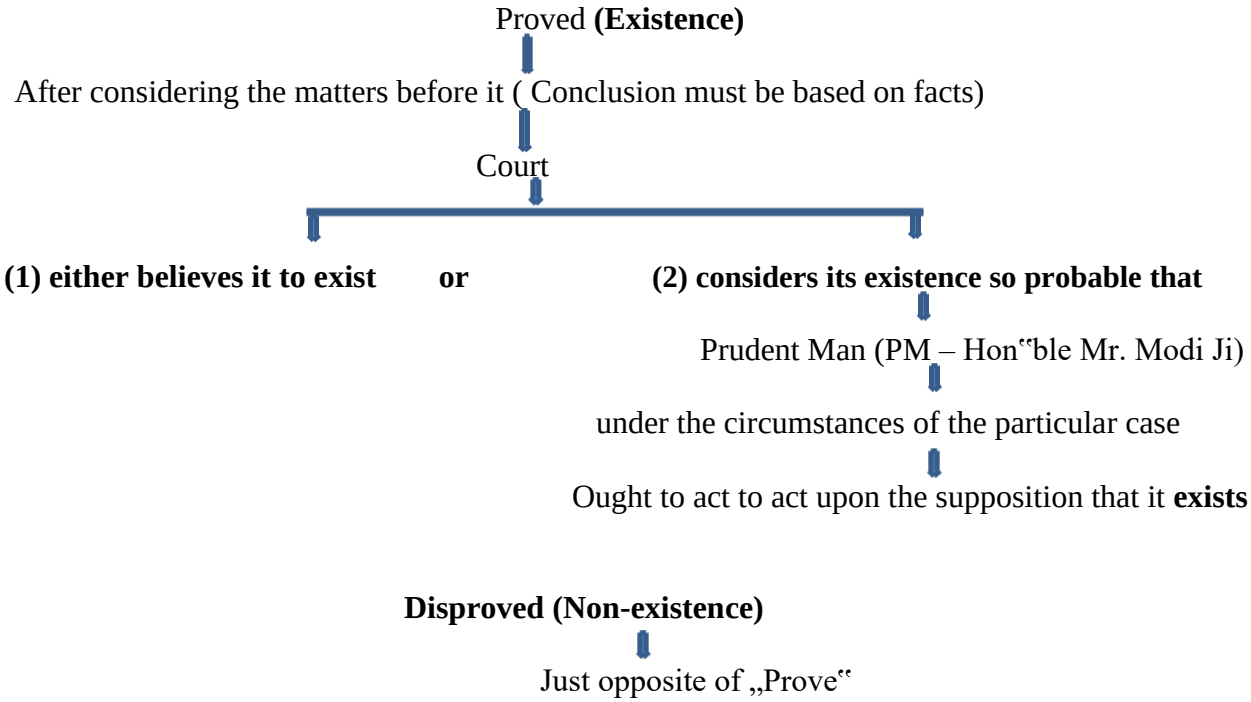
"Disproved"

A fact is said to be disproved when, ***after considering the matters before it,*** the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved".

A fact is said not to be proved when it is neither proved nor disproved.

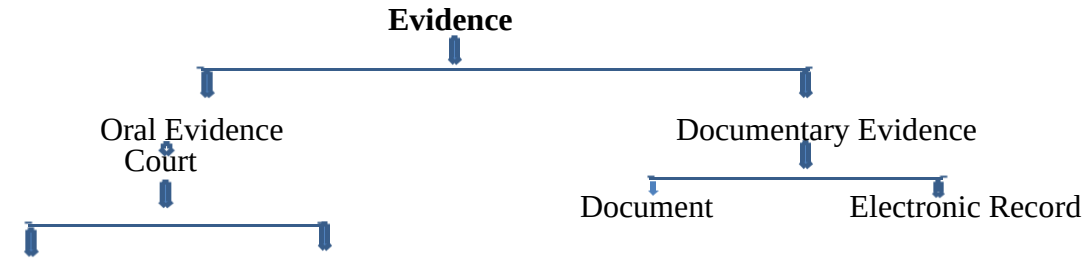
Remarks – *after considering the matters before it* …It is mandatory for the Court first of all to consider (Perusal) the matters before it, then come to the conclusion regarding existence or non-existence of fact. *after considering the matters before it*….this compels judges to take rational decision. It controls capricious mind of judges.



"Evidence" "Evidence" means and includes -

(1) Oral Evidence - all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
such statements are called oral evidence;

(2) Documentary Evidence - all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.



Permit or **Require** (Even you are not interested but Court may compel you to give evidence

By witness

***R.M. Malkani* v. *State of Maharashtra* (22/09/1972)**

- Admissibility of „Tape Recorded" Evidence.
- Admissibility of „Evidence" in illegal manner.

Facts- Facts of case can be divided into five parts –
First Part -Jagdish Prasad Ramnarayan Khandelwal was admitted to the hospital of Dr Adatia on May 3, 1964. Operation was performed by Aditya. But his condition became serious. He was removed to the Bombay Hospital on 10.05.1984. Treatment was done by Dr. Motwani. He died on 13.05.1964.
Second Part - Coroner[27]"s Court conducted inquest on 13.05.1964. R.M. Malkani was on leave. So there was delay in inquest.
Third Part- R. M. Malkani issued notice to Dr.Aditya. After some time he started to demand bribe. He threatened that otherwise he would charge for medical negligence even though you are innocent. He demanded 20000 rs. from Aditya through Motwani. When Aditya refused to pay money, Malkani reduced the money.
Fourth Part -Dr. Aditya and Motwani lodged complaint to Anti Corruption Bureau on 05.10.1964. Mugwe was directior of ACB. He suggested them to be in contact with Malkani.
Fifth Part - Mugwe arranged his staff at residence of Motwani with tape recording equipment to record telephonic conversation. Conversation was recorded. According to Malakani there was some share of other public officer. When they went to give money, Malkani did not take money due to delay in payment of money.
Charge- He was charged under sections 161, 385, 420 and 511 of IPC.
Contention of Malkani –There were following contention of Malkani –

1. Evidence was illegally obtained.
2. It was violation of Article 20(3) and Article 21.
3. It was during investigation. So hit by section 162 of Cr.P.C.
4. There was no attempt to obtain gratification.
5. Sentence should be modified.

Reply -

- **(1)** It was not violation of section 25 of Indian Telegraph Act.

Reason –It was recorded after consent of Motwani.

(2) Admission of evidence collected in illegal manner- Evidence is admissible even though it was collected through illegal manner.
Reason- Indian Evidence Act does not say that Evidence must be collected in legal manner. This Act is silent regarding manner of collection of Evidence. It concentrate on relevancy of facts

English Case

Kwruma, Son of Kanju* v. *R.
The Judicial Committee in *Kwruma, Son of Kanju* v. *R.* dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches.
The defendant appealed against his conviction for unlawful possession of ammunition, saying that the evidence had been obtained by unlawful means, and should not have been admitted against him.

Lord Goddard held, "The test to be applied both in civil and in criminal cases, in considering whether evidence is admissible, is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained."

R.* v. *Maqsud Ali

The admissibility of evidence procured in consequence of illegal searches and other unlawful acts was applied in a recent English decision in ***R.* v. *Maqsud Ali* .** In that case two persons suspected of murder went voluntarily with the police officers to a room in which, unknown to them, there was a microphone connected with a tape-recorder in another room. They were left alone in the room. They proceeded to have a conversation in which incriminating remarks were made. The conversation was recorded on the tape. The Court of Criminal Appeal held that the Trial Judge had correctly admitted the tape-recording of the incriminating conversation in evidence. It was said "that the method of the informer and of the eavesdropper is commonly used in the detection of crime. The only difference here was that a mechanical device was the eavesdropper". The Courts often say that detention by deception is a form of police procedure to be directed and used sparingly and with circumspection.

(3) Tape recording conversation is admissible- Tape recorded conversation is admissible provided:

- **Firstly,** the conversation is relevant to the matters in issue;
- **Secondly,** there is identification of the voice; and,
- **Thirdly,** the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.

A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under **Section 8** of the Evidence Act. It is ***res gestae*.** It is also **comparable to a photograph** of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under **Section 7** of the Evidence Act.

The conversation between Dr Motwani and the appellant in the present case is relevant to the matter in issue. There *is* no dispute about the identification of the voices. There is no controversy about any portion of the conversation being erased or mutilated. The appellant was given full opportunity to test the genuineness of the tape recorded conversation. The tape recorded conversation is admissible in evidence.

***Shri N. Sri Rama Reddy Etc* v. *Shri V. V. Giri* (27 April, 1970)**

This case is known as „Presidential Election Case". A tape recorded conversation between the witness and the petitioner was sought to be given in evidence by playing the tape-record to impeach the credit of the witness.

Supreme Court said, "Tape itself is primary and direct evidence admissible as to what has been said and picked up by the recorder". Supreme Court observed, "a previous statement, made by a person and recorded on tape, can be used not only to ***corroborate*** the evidence given by the witness in Court but also to ***contradict(Section 153, Exception 2)*** the evidence given before the Court, as well as to ***test the veracity(Section 146)*** of the witness and also to ***impeach his impartiality [Section 155(3)]***".

Conclusion of *Shri N. Sri Rama Reddy Etc* v. *Shri V. V. Giri* **&** R.M. Malkani Case are „Tape Recorded Conversation" is relevant under….	1. Section 6- Res Gestae 2. Section 7 3. Section 8 4. Section 146 5. Section 153 6. Section 155 7. **Comparable to a photograph**

(4) No violation of Article 21- The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or highhanded interference by tapping the conversation.

The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. In the present case there is no unlawful or even irregular method in obtaining the tape-recording of the conversation.

(5) **No violation of section 162-** He did not make statement to police.

Conclusion –*R.M. Malkani could not get remedy.*

Question **-** Is „Confession of co-accused" evidence under definition of „Evidence" under Evidence Act, 1872?

Answer- In the strict sense confession is not evidence. According to definition of „Evidence" under Evidence Act, 1872 oral evidence can be given only by witness. In the case of *Mohd. Khalid* v. *State of West Bengal (*2002) Supreme Court observed, "The confession of a co-accused does not come within the definition of evidence contained in Section 3 of the Evidence Act. These are following reasons -

- It is not required to be given on oath,
- nor in the presence of the accused, and
- it cannot be tested by cross-examination".

Distinguish between direct and circumstantial evidence. Can a person be convicted on circumstantial evidence alone?

Answer- In the case of *C.Parshwanath* v. *State of Karnataka* (August 18, 2010 S.C.) Supreme Court observed, "The evidence tendered in a court of law is either direct or circumstantial". Evidence can be classified into two parts-

1. Direct or positive evidence
2. Indirect or circumstantial evidence

(1) Meaning of direct evidence- According to Mr. Monir, " Direct evidence is that which goes expressly to the very point in question and proves it, if believed, without aid from inference or deductive reasoning.

In the case of *C.Parshwanath* v. *State of Karnataka* Supreme Court observed, "Evidence is said to be direct if it consists of an eye-witness account of the facts in issue in a criminal case".

Example- Eye witness to the murder is direct evidence.

(2) Indirect or circumstantial evidence – Circumstantial evidence does not prove the point in question directly but establishes it only by inference.

In the case of *C.Parshwanath* v. *State of Karnataka* AIR2010SC 2914Supreme Court observed, "On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum".

Example- A was seen running away with blood stained knife from B"s room where B was found dead immediately after B"s cries were heard would be circumstantial evidence as against A.

Importance of circumstantial evidence - In the case of *C.Parshwanath* v. *State of Karnataka* Supreme Court observed, "Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that ***"men may tell lies, but circumstances do not".***

Question - Can a person be convicted on circumstantial evidence alone?

Answer- In the case of *Bodh Raj* v. *State of Jammu and Kashmir* (2002) 8 SCC 45 Supreme Court observed that a person be convicted on circumstantial evidence alone. But circumstantial evidence must be proved. What should be proved for conviction on the basis of circumstantial evidence has been discussed in following case –

Sahoo* v. *State of U.P. AIR **1966 SC 40 (February 16, 1965)**

Fact –Sahoo killed his daughter in law (Wife of son). Sahoo was residing with younger son (8 yrs.) and daughter in law whose husband was doing service in Lucknow. He had developed illicit

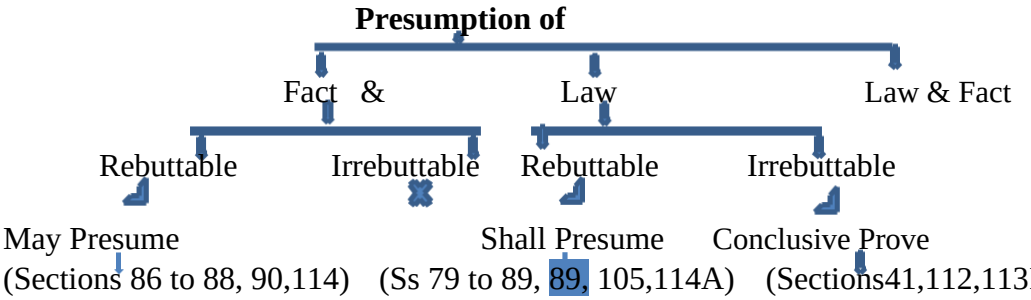
relationship. But there was continue quarrel between both. One day in the early morning he killed her. P. Ws. 9, 11, 13 and 15 saw the accused going out of the house at about 6 a.m. on that day soliloquying that he had finished Sunderpatti and thereby finished the daily quarrels.

Issue – Is circumstantial evidence sufficient for conviction?
Answer- Yes.
Supreme Court observed, "This Court in a series of decisions has reaffirmed well-settled rule of „circumstantial evidence". The circumstances from which the conclusion of guilt is to be drawn should be in the first instance fully established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused and the circumstances should be of a conclusive nature and tendency that they should be such as to exclude other hypotheses but the one proposed to be proved."
Accused was convicted.

***Gambhir* v. *State of Maharashtra* (1982)**

In the case of *Gambhir* v. *State of Maharashtra* (1982) Supreme Court said that the circumstantial evidence should not only be *consistent* with the guilt of the accused but also should be *inconsistent* with his innocence.
Conclusive and Exclusive- Circumstantial evidence must be conclusive and exclusive.
Conclusive -It must conclusively establish his guilt.
Exclusive- It must exclude hypothesis of innocence of the accused.

Section 4

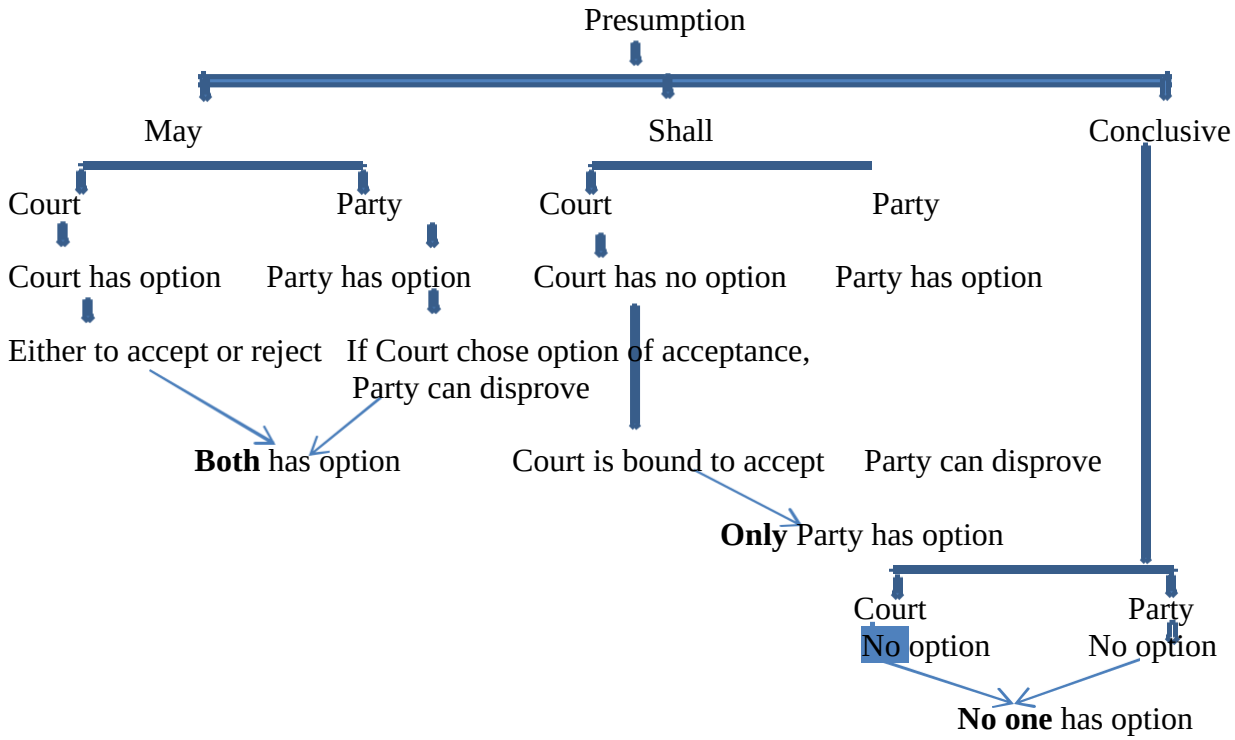


May presume–Whenever it is **provided** by this Act that the ***Court*** may presume a *fact*, it may either *regard* such fact as **proved,** unless and until it is disproved, or may call for proof of it.

Shall presume–Whenever it is **directed** by this Act that the ***Court*** shall presume a *fact*, it shall *regard* such fact as **proved**, unless and until it is disproved

Conclusive proof-When one fact is **declared** by this Act to be conclusive proof of another, the ***Court*** shall, on proof of the one *fact*, *regard* the other as **proved,** and shall not allow evidence to be given for the purpose of disproving it.
Common in all-
(1)..Court
(2) Regard such fact
(3) prove

May	**..provided..**
Shall	**..directed..**
Conclusive	**..declared..**



1. „May presume" (rebuttable),
2. „Shall presume" (rebuttable) and
3. „Conclusive presumptions" (irrebuttable)".

„May Presume" denotes the presumption of fact and „Shall Presume" and „Conclusive Proof" denotes the presumption of law.
There are two types of presumption namely;

Difference between „May Presume" and „Shall Presume"

In the case of *M/S Kumar Exports* v. *M/S Sharma Carpets* Supreme Court discussed difference between may presume and shall presume.
In this case Hon"ble Supreme Court said,
May Presume- In this case the Court has an option to raise the presumption or not,

Shall Presume- In this case the Court must necessarily raise the presumption.
If in a case the Court has an option to raise the presumption and raises the presumption, the distinction between the two categories of presumptions ceases and the fact is presumed, unless and until it is disproved.

Definitions of „may presume" and „shall presume" as given in Section 4 of the Evidence Act, makes it at clear that presumptions to be raised under both the provisions are rebuttable.

Comparison between „May Presume" & „Shall Presume"

There are following comparisons –

Ground	**„May Presume‟**	**Shall Presume‟**
	Differences	
Provided/	It provided under this Act	It directed under this Act
Directed		
Discretion/	Court has option either to accept or reject	Court has no option.
Mandatory		
Fact/Law	It is presumption regarding fact.	It is presumption regarding law.
	Similarity	**Similarity**
Party	Party can disprove it part	Party can disprove it.
Rebuttable	It is rebuttable	It is rebuttable.
Example	Sections 86 to 88, 90,114	Sections 79 to 89, 89, 105

Comparison between „Shall Presume‟ & „Conclusive Proof

There are following comparisons –

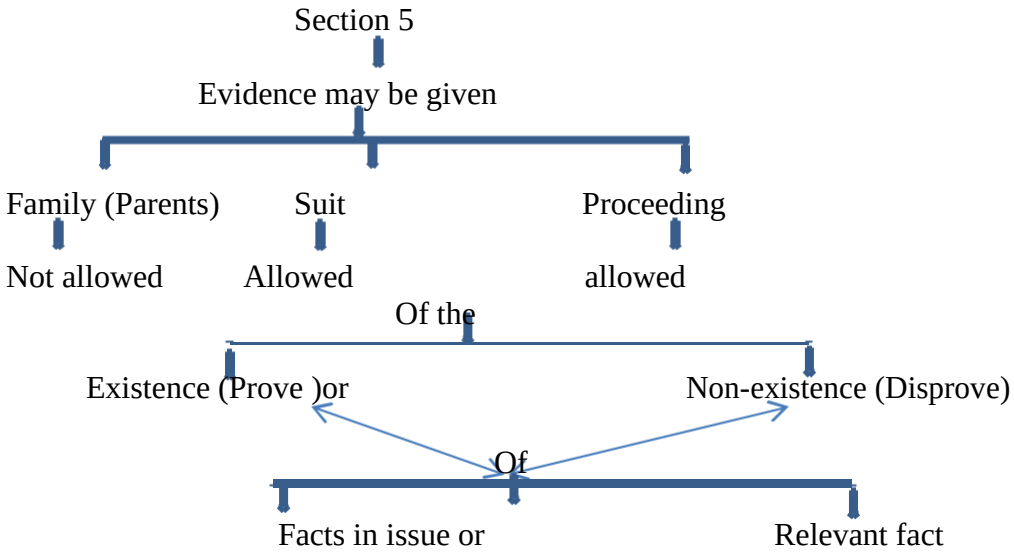
Ground	**Shall Presume** (*Rebuttable presumption of law)*	**Conclusive Proof** *(Irrebuttable presumption of law)*
	Differences	
Directed/ Declared	It directed under this Act	It declared under this Act
Party	Party can disprove it.	Party can disprove it.
Rebuttable	It is rebuttable presumption of law.	It is irrebuttable presumption of law.

Example	Sections 79 to 89, 89, 105	Sections41,112,113IEA,Sec.82 IPC
	Similarity	**Similarity**
Mandatory	Court has no option.	Court has no option.
Law	It is presumption regarding law.	It is presumption regarding law

Section 5 (What evidence are allowed)

Section 5- Evidence may be given of facts in issue and relevant facts. —Evidence may be given in any suit or proceeding of the existence of non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

***Explanation*.—**This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.



Explanation – Disentitled person shall be allowed to give evidence merely with the help of this section.

HAPTER II - OF THE RELEVANCY OF FACTS **(Sections 5 -55)**

Section 5. Evidence may be given of facts in issue and relevant facts - Evidence may be given in any suit or proceeding of the existence of non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Ram Bihari Yadav* v. *State of Bihar & Ors. AIR 1998 SC 1850 (21 April, 1998)
Hon‟ble Justice Syed Shah Quadri said, "More often the expressions „relevancy and admissibility‟ are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant are not admissible; so also facts which are admissible may not be relevant, for example, questions permitted to be put in cross-examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible".
Relevant/ Relevancy –Relevancy is decided according to sections 5 to 55. But all relevant facts are not admissible.
Example- For the example privileged communication. Some of them are communication between husband and wife, communication between advocate and his clients etc. might be relevant but these are protected under section 122 & 126 respectively. **Conclusion-** Generally all relevant facts are admissible. All relevant facts are not admissible.

Admission –Admissibility is decided by judge. Generally relevant fact is admissible. But there are certain situation when irrelevant fact (Here irrelevant fact means which is not declared relevant according to sections 5 to 55 of the Act.) may be admissible. **Example-** For example,

- questions permitted to be put in cross-examination to test the veracity – Section 146(1) or
- impeach the credit of witnesses, though not relevant are admissible – Section 155.

Conclusion - Generally all admissible facts are relevant. But all admissible facts are not relevant. **Question -**Who will decide relevancy and admissibility of fact?
Answer- Judge. According to section 136 judge will decide admissibility of fact.

Difference between Relevancy and Admissibility

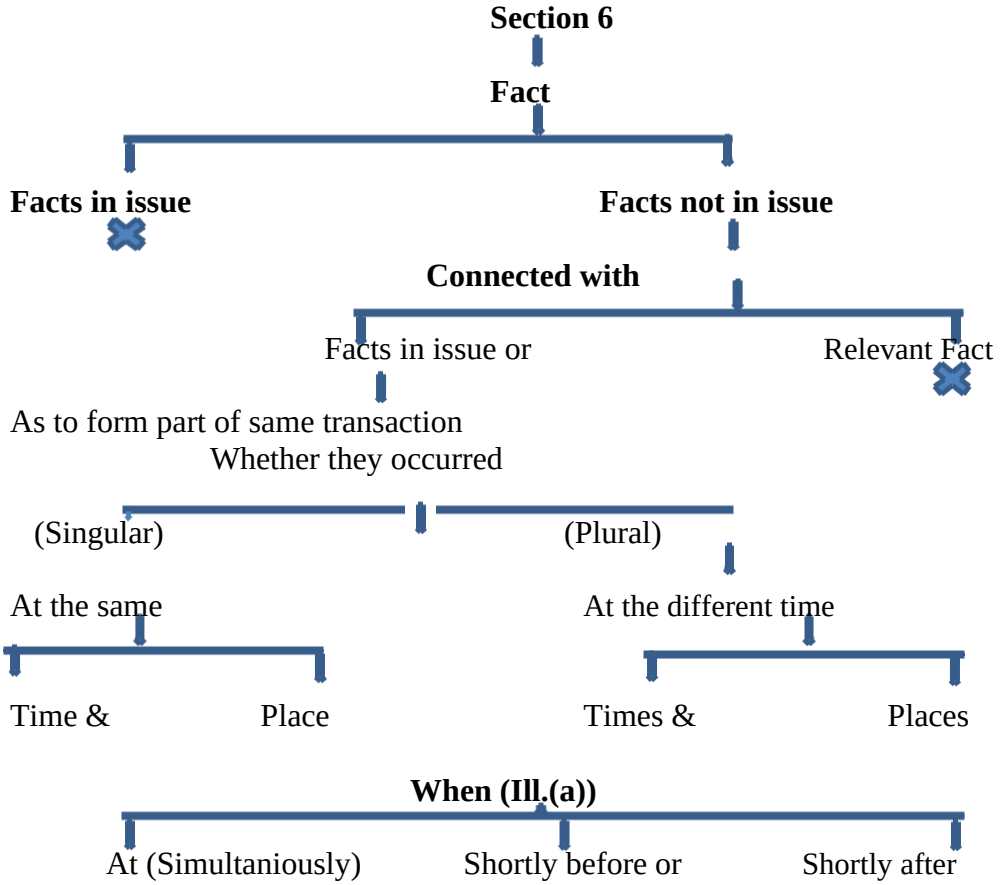
S.No.	**Relevancy**	**Admissibility**
	Ram Bihari Yadav* v. *State of Bihar & Ors	
1	Relevancy is decided according to Chapter II, Sections 5 to 55	***My opinion*** - Admissibility is decided by judge under section 136.
2	**Rule –** All relevant facts are admissible.	All admissible facts are relevant
	Exception –There are certain relevant facts are not relevant. For example –privileged communication.	All admissible facts are not relevant. For example –Sections 146 and 155.
	Batuk Lal, „*Law of Evidence"* 41 (Central Law Agency, Allahabad, 19th Edn. 2010).	
3	Relevancy is based on *logic and probability.*	Admissibility is not based on logic but on *strict rule of law*
4	Relevancy is described according to Chapter II, Sections 5 to 55	Rule of admissibility is described after section 55.
5	Rule of relevancy declares what is relevant.	Rule of admissibility declares whether certain type of relevant evidence are admissible or to be excluded.

Kinds of Relevancy

Relevancy is based on logic. Some of them have been declared by law to be admissible in court. So there are two types of relevancy –

(1) Logical relevancy,

(2) Legal Relevancy.



Section6. 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*) Beating - 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.

(*b*) Waging War -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 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*) Defamation -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*) Delivery of Goods -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.

(1) Meaning

Res Gestae is Latin Phrase. Its literal meaning is "Things done". When it is translated into English means "Things said and done in the course of transaction".

Statutory provisions – Application of „Res Gestae" was very controversial. So this word was not used in Indian Evidence Act. Several authors says that sections 6,7,8 & 9 contents this principle. But now it is settled that only section 6 of the Indian Evidence Act deals res gestae.

Bhairon Singh* v. *State of Madhya Pradesh (May 29, 2009)

Supreme Court observed, "What it means is that a fact which, though not in issue, is so connected with the fact in issue "*as to form part of the same transaction"* becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence".

(2) Res gestae is exception of „Hearsay Evidence"

Rule is that hearsay evidence is not acceptable. Oral evidence must be direct. But Res gestae is exception of „Hearsay Evidence".

Sukhar* vs. *State of U.P. (1999) 9 SCC 507 (1999)

In the case of, *Sukhar* vs. *State of U.P.*, Supreme Court said that *Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible.*

Javed Alam v. State of Chhattisgarh and Anr. (8 May, 2009)

Section 6 of the Evidence Act is an exception to the rule of evidence that hearsay evidence is not admissible.

Bhairon Singh* v. *State of Madhya Pradesh (May 29, 2009)

Supreme Court observed, "The rule embodied in Section 6 is usually known as the rule of r*es gestae*.

(3) Condition for application of Section 6-

Sukhar* v. *State of U.P. (1999) 9 SCC 507 (1999) **-**For bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that

- **(a)** it must be almost *contemporaneous* with the acts and
- **(b)** there should not be an interval which would allow *fabrication*.

The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter".

Javed Alam* v. *State of Chhattisgarh and Anr. (8 May, 2009)
The test for applying the rule of res gastae is that the statement should be *spontaneous* and should form part of the same transaction ruling out any possibility of *concoction*.

S.No.	***Sukhar* v. *State of U.P.***	***Javed Alam* v. *State of Chhattisgarh and Anr.***
	Two conditions for application of section 6	*Two conditions for application of section 6*
1	*contemporaneous*	*spontaneous*
2	*fabrication*	*concoction*

(4) Whose statement is relevant under section 6(Res Gestae)

Facts related to

- Accused
- Victim
- Third person (e.g. by standers)

are relevant if they form part of same transaction.

Section 6 Illustration (*a*) - A is accused of the murder of B by beating him. Whatever was **said** or **done** by

- **A (Accused)** or
- **B (Victim)** or the
- **by-standers (Third Party)** at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(5)Timing

Section 6 Illustration (*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 part of the transaction, is a relevant fact.

English Case

	English Case	
1695 ***(First Case)***	*Thompson* v. *Trevanion*	Justice Holt
1879	*Regina* v. *Bedingfield*	Chief Justice Cockburn
1971	*Rattan* v. *The Queen*	Lord Wilberforce

***Thompson* v. *Trevanion* (1695)**

In this case Chief Justice Holt said, "What the wife said immediately upon hurt being received and before that she had time to devise or contrive anything for her own advantage, might be given in evidence".

***Regina* v. *Bedingfield* (1879)**

A woman with her throat cut came suddenly out of a room, in which she had been injured and shortly before she died, said: "Oh dear Aunt, see what Bedingfield has done to me."

Chief Justice Cockburn said that this statement was not admissible. She stated this thing after completion of all acts.
This judgment was criticized.

***Rattan* v. *The Queen* (1971)**

***Fact* -** Few minutes before a woman was shot dead, she made a telephone call and hysterically asked the operator to get her the police. Before the operator could do anything, the sobbing woman gave her address and the call was dead. Within five minutes the police reached there and found the dead body of woman.

Lord Wilberforce said: "Evidence would have been admissible as part of the Res Gestae because not only was there a close association in place and time between the statement and the shooting, but also the way in which the statement came to be made, in a call for the police and the tone of voice used showed intrinsically that the statement was being forced from the wife by an overwhelming pressure of contemporary events".
It was held that the telephone call and the words spoken were parts of the same transaction.
Argument of husband that fire was accidental was rejected.

(7) Indian Law

R.M.Malkani* v. *State of Maharashtra (September 22, 1972)

Hon"ble Justice Ajit Nath Ray said, "A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 6 of the Evidence Act. It is res gestae".

Sawal Das* v. *State of Bihar (9 January, 1974)

Sawal Das (Husband), his stepmother and father killed deceased.
the appellant took or pushed Chanda Devi inside her room followed by the appellant"s father and his stepmother. Immediately after that, cries of at least ***"Bachao" "Bachao",*** were heard from inside the room. No body heard the voice of Smt. Chanda Devi after that. Immediately after these cries, the children of Chanda Devi were heard crying and uttering words indicating that their mother was either being killed or had been killed. Supreme Court accepted it as same transaction.

Shayam Nandan Singh and Ors.* v. *The State Of Bihar (9 May, 1991 S.C.)

(FIR as Res Gestae)

On 11-3-1986 Mungeshwari Devi along with her daughter Surji Devi (the deceased) had gone to her land in Bagicha Baghar for harvesting Masuri crop. At about 5.30 p.m. Surji Devi began to make bundles of the harvested Masuri crop. Three accused tried to rape and cut her throat. Mother tried to save her. On hearing alarm P.Ws. Suba Yadav, Ram Lakhan Yadav, Karu Yadav, Kameshwar Yadav and Birja Yadav ran towards the place of occurrence. On reaching to the place of occurrence P.Ws. found the dead body of Surji Devi the deceased, lying on the ground with injury, her neck in pool of blood. Mother narrated about the occurrence to these P.Ws. and thereafter mother went to the Police Station along with these P.Ws. and Chaukidar Brij Kishore Paswan (not examined) to lodge information. On the statement of mother FIR was recorded on the same night, i.e., on 12-3-1986 at 1.30 a.m.

Supreme Court –Mother narrated about the occurrence and disclosed the names of the accused persons and immediately thereafter she went to the police station with them situated at the distance of 12 Kms. from the place of occurrence and lodged F.I.R. Thus, whatever was said by her to the P.Ws. or in the F.I.R. after the occurrence forms part of the same transaction and thus is relevant fact under Section 6 of the Act.
FIR was treated relevant under section 6.