

Doctrine of Res Gestae: a Critical Analysis

Sarvesh Kumar Shahi ¹

Aditi Mohapatra ²

Abstract

The Doctrine of Res Gestae is embodied in Section 6 of the Indian Evidence Act, 1872 and, the doctrine is an exception to the hearsay clause, however, in a court of law, hearsay testimony is not admissible. It is critical to analyze what constitutes a transaction, where it starts and ends, and it is not a res gestae if the given facts are unable to connect themselves to the prime transaction resulting in inadmissibility. If a comment is made under the burden of excitement, then it is considered admissible in the eyes of the court because it's all part of the same transaction. The ambiguity of Section 6 of the Indian Evidence Act, 1872 gives it the power. Section 6 is admissible only if the testimony is established to be part of the same transaction, however, the Court must determine if it is valid or not.

Keywords: *Res Gestae, Section 6 of Indian Evidence Act, Transaction, Hearsay, Admissibility*

Introduction

Res Gestae is the legal theory of evidence, which is the most complex field of criminal jurisprudence in terms of how to justify and what form of evidence to bring in court. The Res Gestae doctrine is endowed on the principle that, as with the criminal justice system, any significant part of the course of incidents is held before the ultimate disposition by the judiciary, meaning that no evidence should be tossed out on the grounds of minor technicalities, even though those technicalities differ from case to case. The explanation for this is that the criminal code has adopted the doctrine of res gestae, which requires proof of any valid evidence. It is impossible to prove the whole event without the assistance of any incomplete evidence. Whereas another piece of evidence, known as the Res Gestae doctrine, can be used to prove this. The Latin term "Res Gestae" means "part of the same transaction," implying that the related component of the operation is linked to the key transaction of the event directly or indirectly. The philosophy of Res Gestae has an ambiguous and indefinite definition. In the following sections 7, 8, 9, and 14, the laws are formulated under Section 6 of the Indian Evidence Act are explained and illustrated.³ The fact that can be proven must be unrelated to the dilemma but pertinent to it, according to the doctrine Res Gestae. Although the hearsay testimony is not admissible in a court of law, while it is res gestae, it may be seen as credible evidence. Circumstantial evidence, such as verbal and nonverbal acts, are included in the doctrine of res gestae.⁴ Despite the hearsay clause, startling utterances are admissible because they are linked to the moment of the case and considered to be part of the action. In addition to sense perceptions, excited utterances, state of mind, and utterances made to doctors, the hearsay exceptions are considered in Res gestae.⁵ As the doctrine res

¹ Assistant Professor, School of Law, KIIT, Bhubaneswar, Odisha

² 4th Year BBA.LL.B. student, School of Law, KIIT, Bhubaneswar, Odisha

³ Sharda Girijesh Sharma, *Res Gestae in Indian Evidence Act*, SSRN (November 13, 2008) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1299111 (last visited Jan. 10, 2022)

⁴ *Id.*

⁵ Eleanor Swift, *The Hearsay Rule at Work: Has it Been Abolished De Facto by Judicial Decision?* 76 Minn. L. Rev. 473, (1992)

gestae is a part of the transaction, this paper attempts to interpret the issue. As a consequence, it is essential to investigate what a transaction is, where it begins, and when it may be assumed to have concluded.

History of Res Gestae

In the year 1693, the case of *Thompson v. Trevanion*⁶ established the doctrine of res gestae, which stated that declarations made after an action was subject to confirmation. Declarations were again considered to be admissible in the case of *Ambrose v. Clendon*⁷ in 1736 if they were made in conjunction with evidence. In the Home Tooke high treason tribunal, the application of the Res Gestae doctrine was briefly debated over a question of proof.⁸

Nonetheless, it was not until after the case of *Aveson v. Lord Kinnaird*⁹, decided in the year 1805, that the term in question began to be freely used in conjunction with it, and it has only been safe to conclude that this Exception was deeply founded since the middle of the 1800s. The doctrine and exception to the hearsay clause are debated in Cockburn C.J.'s controversial opinion in the case *R v. Bedingfield*,¹⁰ where he ruled that the testimony was inadmissible as she started after it had already ended. He further claimed that it had nothing to do with the transaction, rather something that happened which was interpreted as throat-slitting. Despite the fact that this ruling has been largely overruled, which reflects the preceding theory which justifies the Res gestae doctrine's exemption that usually culminated into unfair results. The verdict was just too stringent in the above-mentioned case of *Bedingfield*. Yet, the Res Gestae principle was overridden and developed more inclusively and expansively under common law as stated in *Ratten v.R.*¹¹ Further, in the leading case, *Ratten v Queen, 1971*¹², it was stated that the testimony could have been deemed admissible under Res Gestae because not only there was a close similarity of time & place between the shooting and the comment, as well as how the declaration was delivered. It was also observed that the tone of voice used in the call for authorities indicated that the assertion was pressured from the wife by an intense strain of events.

Doctrin of Res Gestae

The phrase Res gestae has no definite English translation; but, if it is translated, it would mean that something has been intentionally undertaken or accomplished.¹³ Things performed, or, to put it another way, a transaction explaining an act which explains the justification for acting; that is incidental to the foremost truth; even actions and terms too closely connected with the main fact, and without which that may not be fully grasped, if they are arguing about themselves through the undersigned events of a distinct litigated act, not the language and behaviors of participants when narrating the occurrences, the situations, evidence, and a statement that arises from the core fact, and serve to show its character or those circumstances that are inherent to a specific litigated act that is admissible where they are used to illustrate such an act, as established by the Res gestae doctrine.¹⁴ To put it another

⁶ Thompson v. Trevanion, 1693 Skin 402

⁷ Ambrose v. Clendon, Rep. Temp. Hardw. 267

⁸ Vol.25., Thomas Jones Howells, Howells State trials, 444 (1794)

⁹ Aveson v. Lord Kinnaird., (1805) 6 East 188

¹⁰ R v. Bedingfield., [1879]14 Cox C.C. 341

¹¹ Ratten v.R., [1972] AC 378

¹² Ratten v Queen., (1887) 18 QBD 537

¹³ Translation provided by Dr. Philip Pattenden, Dir. Of Studies in Classic, Peterhouse, Cambridge.

¹⁴ Vinod kumar Baderbhai Patel v. State of Gujarat, 1998 INDLAW GUJ 22

way, *res gestae* was a Latin term that meant "same incident or transaction " and that all had to do with the fact that it was convenient.

The assertion of law in section 6 of the Indian Evidence Act is commonly recognized as *Res Gestae*, according to the case of *Babulal Choukhani v. Western India Theaters Ltd.*¹⁵ The word 'res' means anything that has the potential to decide an object of rights, including the content of the case, position, or object in its literal sense.¹⁶ *Res Gestae* is the only evidential issue that is veiled in ambiguity and mystery.¹⁷ The *Res Gestae* doctrine, which governs the admissibility of testimony, has been held incapable of definite specification, and it has been extended to several distinct and by the presence of trivial events, the composing of a *Res Gestae* overview is more challenging, which would suit all incidents seems unconquerable. If a single *Res Gestae* doctrine could be implemented in any situation, that would be nothing short of exceptional.

Only declarations that derive from the primary or principal fact or transaction and assist to demonstrate its character, as well as those that are contemporaneous with it and receive any credit from it, are admissible.¹⁸ Depending on the form of the transaction, the principal transaction will last a long time or a short time. Under the heading of S. 6 of the Evidence Act, 1872, the doctrine of *Res Gestae* is interpreted. And this particular section recognizes evidence that is relevant to the fact in question that is part of the same transaction, regardless of where or when it has occurred. Since the fact's significance is part of the same transaction, this exhibits an early analysis of the *Res Gestae* exemption, as one would assume.

The doctrine of *Res Gestae* has two meanings, that is, it applies to the expressions that exist as a consequence of the right or liability in question, and it refers to the phrases that occur as a result of the right or liability in question. The doctrine imports the concept of conduct from those creating the consequences on which the responsibility is sought to be imposed in action in a limited manner. *Res Gestae* is a legal concept that applies to the admissibility of appropriate contemporaneous statements that complement and explain the issues at hand. It is most widely used in criminal law to refer to the contemporaneity of remarks made concerning incidents, but it is also often used in civil law to refer to the admissibility of acceptable contemporaneous comments that accompany and excuse the issues at hand.

What is Transaction Under this Doctrine?

An offense, a contract, a misunderstanding, or any other subject of inquiry can be represented in this section by a single term, that is, transaction. It encompasses both effect of an act or incident and the immediate cause, as well as a set of associated events, as well as the other crucial antecedents of its occurrence, all of which are linked to it at a suitable cause & consequence, distance from speed and time.¹⁹ The proximity of time, continuity or vicinity of location, consistency of behavior, and culture of sense or nature are all relevant indicators of what kind of transaction it is.²⁰ The key criterion, however, must be action consistency and a sense of shared interest.²¹ The time of the incident, the location of the police station, and the

¹⁵ *Babulal Choukhani v. Western India Theaters Ltd.*, 1956 INDLAW CAL 105

¹⁶ *Escorts Farms Ltd., v. The Commissioner, Kumaon Division*. 2004 INDLAW SC 1157

¹⁷ Julius Stone, *Res Gesta Raegitata*, 55 The Law Quarterly Review, p. 66

¹⁸ *Lund v. Inhabitants & C* 9 Cush (Mass) 36

¹⁹ *R. v. Ring.*, A 1929 B 296

²⁰ *Supra* note 1

²¹ *Supra* note 1

consistency of operation are all necessities for a complaint made by someone present at the time of the incident to be admissible.²² For proper perception, the transaction should be interpreted as a series of events or all facets of an occurrence that routinely investigated as a whole and not isolated as a single act. To put it another way, one should conclude that all pertinent aspects of the events in question, or the various parts of the entire event, are interpreted and that no case is complete until all parts have been examined. The word transaction refers to the process of moving from the beginning to the end of a case in its most fundamental sense.

The query emerges as to what constitutes transactions, or more specifically, what is admissible and important as a transaction? Relevant facts are those that are the source, occasion, or consequence of related events or the facts under consideration, or that establish the condition of things in which they existed, or that enabled their life or transaction. The transaction represents the entire situation and the facts and circumstances of the case determine the outcome. Either a single action or a sequence of related physical actions, as well as the terminology that accompanies those acts or acts, are referred to as transactions.

Test for Admissibility Under Res-Gestae

Should the risk of concoction or fabrication be ignored? This is the key question that the judge must pose himself.²³ To elucidate the issue, the judge must first examine the facts behind the specific statement, making sure that the incident was unexpected, fanatical, or startling enough to consume the victim's thoughts, leaving no space for rational thinking. Provided that the claim was made in situations of approximate but not precise contemporaneity, the judge may infer that the presence or strain of the event precludes the possibility of distortion or exaggeration. To be adequately spontaneous, the statement must be so closely identified with the incident that the declaring mind was already dominated by the case. As a result, the judge needs to be certain that the incident that served as the statement's cause mechanism was still active.²⁴ Besides the time dimension, the case may have a particular aspect linked to the probability of fabrication or falsification. A few tests are carried out to determine the admissibility of evidence under the doctrine.

If the fact under consideration and the facts expected to be used as evidence have a causal kinship, the fact is assumed to be part of the same transaction as the fact in question, according to the first test.²⁵ However, the following test is inefficient since any event is the product of an infinite number of factors interacting with one another. Since any of these causes and consequences are to be regarded as relevant and all of these facts can be proven, the entire object of limiting testimony in the eyes of law to specific events is defeated. The court's valuable time would be squandered by listening to the evidence concerning distant consequences and remote triggers. Information associated with the proximity of time & location, according to the second examination, will be subject to this doctrine.²⁶

There is no question that facts occurring at about the same moment and location can be deemed as nearly related and hence the proviso is valid. However, this is

²² Bandela Nagaraju And Ors. v. State Of Andhra Pradesh., 1983 INDLAW AP 75

²³ R v. Andrews (Donald Joseph)., [1987] AC 281

²⁴ *Supra* note 1

²⁵ Sharren, *Res gestae- A Judicial Analysis*, Legal Service India <http://www.legalserviceindia.com/legal/article-500-res-gestae-a-judicial-analysis.html> (last visited March 15, 2022).

²⁶ *Id.*

inadequate, though, since the proviso recognizes the probability of evidence occurring at various times and locations, all of which are related to the fact in question and form part of the same transaction. Last but not the least, the third test assumes that the intent and conduct should be consistent with the fact under consideration and the fact on which evidence is sought. It is often considered unworthy since it literally substitutes one ambiguous term with another, according to others.²⁷

Expansion of the Doctrine

This doctrine has been used extensively by the courts in murder trials with a surprising root incident.²⁸ However, the Indian legal system has extended the doctrine's implementation by extending it to cases such as child witnesses, domestic violation, and rape, etc. Excited utterances are a frequent phenomenon in incidents of domestic abuse or assault following a shocking incident. Since they are under the influence of such heinous acts, women in India can not react rapidly to being subjected to rape or sexual abuse. They have a few days to respond, but the *res gestae* doctrine allows any comments made after that traumatic period. Such an argument will be admitted if it can be confirmed that the survivor was already recovering from the shock. Rape is commonly committed in discrete cases with no eyewitnesses. These plaintiffs' testimony should be considered because they are the very people that would identify the suspected perpetrator.

The transaction is said to have ceased because there is a time delay, and any argument that is not part of the transaction is considered inadmissible. This law is relaxed in situations involving children. The main argument behind broadening the exemption for children is dependent on how children deal with trauma, and their comments are often made when accidents arise at the first safe chance to talk.²⁹ The transaction is said to have ceased because there is a time delay, and any argument that is not part of the transaction is considered inadmissible. This law is relaxed in situations involving children. The main argument behind broadening the exemption for children is dependent on how children deal with trauma, and their comments are often made when accidents arise at the first safe chance to talk. The child witness, during the attack in the case of *Uttam Singh vs. State of Madhya Pradesh*³⁰ was sleeping with his late father during the attack when the sound of the axe striking the deceased's throat startled him. When the child saw it, he yelled for assistance to his mother, identifying the accused as the intruder. When the mother and sisters of the boy, as well as other observers, heard the noises, they gathered at the scene. Since the shout was unavoidable and probable in terms of the facts of the event, this testimony was found admissible as part of the same transaction. Section 6 of the Indian Evidence Act states that if a child witness did not respond immediately but speaks later, it will be considered admissible.

Res Gestae: an Exception to Hearsay

The doctrine of *Res Gestae* under Sec. 6 of the Evidence Act is an exemption to the universal rule that hearsay testimony is inadmissible. When a hearsay statement is made while the witness is either reeling from the trauma of a speck of exceptional facts or circumstance, as well as the tension of the incident or condition, it is admissible as an exception to the hearsay clause. The rationalizing behind such a statement is that, while the witness provides excellent hearsay, due to the nature of the event, the witness lacks reflective capacity and can only speak the truth. The issue, if

²⁷ *Supra* note 25

²⁸ *Commonwealth v. Arce*, 690 N.E.2d 806, 807 (Mass. 1998)

²⁹ *Commonwealth v. Di Monte*, 692 N.E.2d 45, 50 (Mass. 1998)

³⁰ *Uttam Singh v. State Of M.P.*, 2003 CriLJ 560

the witness should testify to whatever the accused informed him was posed in the case of *Sukhar v State of Uttar Pradesh*³¹, and it was ruled that Section 6 was considered as an exclusion to the universal rule of hearsay which cannot be used as testimony. However, it must be established that the assertion was made at the same time as the fact in question, and there should be no interims for fabrication in order to it is considered part of the same transaction.

The witness's testimony is admissible in this case. When the witnesses arrived at the crime scene, they found the remains of a deceased victim as well as an injured victim who was unconscious and while the word Res Gestae was still in its youth, there were indications that it was not universally admired. Its popularity grew as a result of its comfortable anonymity. The use of the term Res Gestae has often been criticized by a well-known legal theorist named John H. Wigmore. Since the law of evidence on which it has ever been extended is part of another doctrine and can be clarified in terms of that concept, for which the word is regarded as ambiguous. Because of the vagueness, the expression allows the mixing of one law with another, creating doubt over all rules' limits. As a result, Wigmore came to the realization that the "Res Gestae" could never be listed.

Judicial Observations

Res Gestae has been interpreted by the Indian judiciary to mean only statements made at the time of the incident or immediately afterward, but not at such a distance as to justify deception. The accused in the case of *Vasa Chandrasekhar Rao vs Ponna Satyanarayana & Anr.*³² assassinated his own daughter & wife. The father of the dead wife said that over a phone call, the accused's father informed him that his son assassinated his wife & daughter. There has been no decision as to whether the accused father's understanding that the accused had murdered the deceased was given to the deceased father at the time of the crime or immediately afterward as part of the same transaction, in which case the deceased father's assertion cannot be found important under this clause.

The two witnesses in the case of *Bishna Bhiswadeb Mahato & Ors. V. State Of West Bengal*³³ arrived at the scene of the incident soon after it occurred. They discovered the deceased's remains, as well as the bodies of other hospitalized patients who were unconscious, also the deceased's mother crying, and an injured witness present. The injured witness and other witnesses informed them about the entire incident, including the positions of both the accused and others filled. These two witnesses' testimony backs up the defense witnesses' testimony as well as the charges made in the F.I.R. under S. 6 of Evidence Act, their testimony is admissible.

Based on the aforementioned cases, we conclude that the parents' testimony, including the fact that it is hearsay, should be used to shape the prosecution case since it is close to the moment of the incident and relates to the act in question, and it is considered contemporaneous to the acts in question.

Conclusion

Where the testimony cannot be taken into consideration under any proviso of the Evidence Act, 1872, it is usually brought under the Res Gestae's doctrine. The lawmakers expected to prevent discrimination by stopping proceedings from being

³¹ Sukhar v. State Of Uttar Pradesh., 2000 Cr.L.J. 29

³² Vasa Chandrasekhar Rao v. Ponna Satyanarayana & Anr., 2000 CriLJ 3175

³³ Bishna Bhiswadeb Mahato & Ors. v. State Of West Bengal., AIR 2006 SC 302

dismissed due to a lack of ammunition. If an argument inadmissible under S.6 of the Indian Evidence Act, 1872 then it can be accepted as corroborative testimony under section 157. This principle, according to the Supreme Court, can never be implemented indefinitely. As a consequence, the Indian judiciary system has always acknowledged the test of transactional consistency. Under section 6 of the Evidence Act, any statement addressed after a long period and not in response to the case is inadmissible. The ambiguity of S.6 incorporated under the Indian Evidence Act, 1872, which deals with the Res gestae's principle, is one of its strongest points. This section does not describe the word "transaction," whose interpretation varies based on the situation. Each case should be decided on its own merits in criminal law. If it is shown that the testimony is linked to the same transaction then it is admissible under Sec. 6, but the Judge must interpret whether it is valid.