HEARSAY RULE AND DOCTRINE OF RES GESTAE – AN ANALYTICAL STUDY WITH REFERENCE TO INDIAN EVIDENCE ACT, 1872

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ABSTRACT
Res gestae literally means ‘things done.’ It is the exception to Hearsay Rule. It is well settled by now that a statement in order to be a part of res gestae must have been made substantially contemporaneously with the act or immediately after it so that there is no opportunity for reflection or fabrication. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae. Section 6 of the Indian Evidence Act and some of the succeeding sections embody the rule of admission of evidence relating to res gestae. As a matter of fact the rule of res gestae formulated in section 6 is expounded and illustrated in sections 7, 8, 9 and 14 of the Act and they should be read together. In this article meaning, history along with the provision of Indian law relating to res gestae and discussion with some judicial observations of such principle is mentioned here. Finally, this article concluded with some suggestions.

Key words: Same transaction, hearsay evidence, statements, contemporaneous, fabrication.
INTRODUCTION

Res gestae and the Hearsay Rule are the two intimately connected concepts under the Indian Evidence Act, 1872 – the former being the exception and latter being the rule. Hearsay evidence means the statement of a person who has not seen the happening of the transaction, but has heard of it from others. The general rule is that hearsay evidence is not admissible in proof of a fact which has been stated by a third person. This rule has been long established as a fundamental principle in rule of evidence. But the principle of res gestae constitutes an exception to the rule of hearsay. The rationale behind this is the spontaneity and immediacy of such statement must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae.

HISTORY OF RES GESTAE

The rule of res gestae first appeared in the year 1693 in Thompson v. Trevanion,1 where it was held that declarations accompanying an act are receivable in explanation thereof. In the year 1736, in Ambrose v. Clendon2 declarations were again held to be admissible if concomitant with facts. Then the use of the doctrine of res gestae was in a brief discussion over a point of evidence in Home Tooke's trial3 for high treason. The phrase was not used again till 1801 in Hoare v. Allen,4 where in an action for seduction of a man’s wife her statement of her reason for leaving him was admitted by Lord Kenyon. Nevertheless, the development of this doctrine did not begin until after Aveson v. Lord Kinnaird,5 in 1805, when the phrase in question had begun to be freely used in connection with it; and only since the middle of the 1800s has it been possible to say that this

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1 1693 Skin 402
3 25 Howells State trials, 444 (1794)
4 H.T. 1801 N.P. 3 Esp. 276
5 (1805) 6 East 188
Exception was firmly established. In the infamous decision of Cockburn C.J. in *R v. Bedingfield*[^6], the principle of res gestae and exception to the hearsay rule was discussed. In the instant case a girl was living with her boyfriend until the relationship turned sour. The boyfriend allegedly cut her throat. Even with a cut throat she managed to run out of the room where she had been injured and shortly before she died said, “Oh dear Aunt, see what Harry (Bedingfield) has done to me”. Lord Justice Cockburn held that the statement was not admissible, since it was something stated by her after it was all over. He said that it was not part of the transaction, that it was said after the transaction was all over, the transaction being the cutting of the throat. Although this decision has been effectively overruled, it accurately illustrates the erstwhile principle used to define the res gestae exception, which often resulted in unjust consequences. Actually the decision of *Bedingfield* case was too strict. However, this decision was overruled in the case of *Ratten v. R*[^7] where under common law, the doctrine of res gestae was defined in liberal and wider terms. Another case *Ratten v Queen*[^8], dealt with the admissibility of the statement of a telephone operator who received a call from the deceased minutes before she was allegedly murdered by her husband. Her call and the words she spoke were held to be relevant as a part of the transaction which brought about her death. Her call in distress showed that the shooting in question was intentional and not accidental. For no victim of an accident could have thought of getting the police before the happening. Later in *R v. Bliss*[^9] it was held that to be admissible as declaration accompanying a relevant act the declaration must explain that act.

In the case of *Ratten v. R*[^10] the accused was charged with the murder of his wife. The defense was that the shot was accidental. The prosecution called for the evidence of a telephone operator, who stated that shortly before the time of the shooting, she had received a call from the address where the deceased lived with her husband. The telephonies said in evidence that the caller, a woman, accepted to have been Ratten’s wife, had said, “Get me the police please.” In this regard, Lord Wilberforce said: “Evidence would have been admissible as part of the res gestae because not only

[^6]: [1879] 14 Cox C.C. 341
[^7]: [1972] AC 378
[^8]: (1887) 18 QBD 537
[^9]: (1937)7 A & E 550
[^10]: [1972] AC 378
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 is to be noted that in Bedingfield’s case, the action must be contemporaneous and spontaneous under common law and the act must have happened before the actual incident, whereas in Ratten’s case, the statement and conduct are not exactly contemporaneous, but are enough to be proximately contemporaneous and it also provides that the statement or act made before and after the actual incident is a relevant fact.

The principle in Ratten’s case was applied in the case of R v. Andrews11 where the appellant and another man knocked on the door of the victim’s flat and when the victim opened it, the appellant stabbed him in the chest and stomach with a knife and the two men then robbed the flat. The police were called and they arrived very soon after that. The victim, who was seriously wounded, told the police that he had been attacked by two men and gave the name of the appellant and the name and address of the other man before becoming unconscious. The court held that since the victim’s statement to the police was made by the seriously injured man in circumstances that were spontaneous and contemporaneous with the attack, there was thus no possibility of any concoction or fabrication of identification. A statement made to a witness by the victim of an attack describing how he had received his injuries was admissible in evidence as part of the res gestae.

MEANING AND PRINCIPLE OF RES GESTAE

It is well settled by now that a statement in order to be a part of res gestae must have been made substantially contemporaneously with the act or immediately after it so that there is no opportunity for reflection or fabrication. It is in this background that the interval between the act and the statement assumes significance. In no case, the statement should be in the nature of a mere declaration on narration of a past event.

The rule that in a criminal trial hearsay evidence is admissible if it forms part of the res gestae is based on the proposition that the human utterance is both a fact and a means of communication and that human action may be so interwoven with words that the significance of the action cannot

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11 [1987] 1 All ER 513
be understood without the correlative words and the dissociation of the words from the action would impede the discovery of the truth. It is essential that the words sought to be proved by hearsay should be, if not absolutely contemporaneous with the action or event at least so clearly associated with it that they are part of the thing being done and so an item or part of the real evidence and not merely a reported statement.\textsuperscript{12}

According to Black Law Dictionary, res gestae means “things done.” The events at issue or other events contemporaneous with them. In evidence law, words and statements about the res gestae are usually admissible under a hearsay exception (such as present sense impression or excited utterance).\textsuperscript{13} The res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence.\textsuperscript{14} Res gestae means things done or liberally speaking, the facts of the transaction, explanatory of an act or showing a motive for acting.\textsuperscript{15}

Res gestae may be 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, are contemporaneous with it and serve to illustrate its character.\textsuperscript{16} The term res gestae has been used in two senses – in the restricted sense it means words happening out of which the right or liability in question arises. In restricted meaning res gestae imports the conception of action by some person producing the effects for which the liability is sought to be enforced in action. Res gestae is an expression mainly of utility in the criminal law concerning the contemporaneity of statements to incidents but in so far as contemporaneous statements are relevant and accompany and explain matters in issue, they will be admissible.

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  \item \textsuperscript{12} Teper v. Reoinam, (1952) 2 All ER 447
  \item \textsuperscript{14} \textit{Ibid}.
  \item \textsuperscript{16} Monir. M (2001), \textit{Principles and Digest of the Law Evidence} (p. 47). Allahabad : The University Book Agency
\end{itemize}
RES GESTAE UNDER INDIAN EVIDENCE ACT, 1872

Every case that comes before a court of law has a fact story behind it. Every fact story is made of certain acts, omissions and statements. Every such act, omission or statement as throws some light upon the nature of the transaction or reveals its true quality or character should be held as a part of the transaction and the evidence of it should be received.\(^{17}\) To state a fact or event in isolation without reference to its antecedents in time, place or surrounding circumstances may render the fact, difficult or even impossible to comprehend. Other facts or circumstances may be so closely connected with the fact in issue as to be, in reality part and parcel of the same transaction.\(^ {18}\)

According to section 5 of the Indian Evidence Act, 1872 evidence may be given of either fact in issue or relevant facts and of no others. It has also been stated in section 3 of the said Act that one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in sections 6 to 55 of the Act. The term res gestae has not been used in the Evidence Act. But section 6 is analyzed under the head of res gestae. The principle of law embodied in section 6 of this Act is usually known as the rule of res gestae. Indian Evidence Act, 1872 was enacted before the decision in \textit{R v. Bedingfield}\(^ {19}\), and in the formalist context in which the hearsay rule was once applied. In determining the relevance of facts, Section 6 deals with facts connected with the fact in issue so as to form ‘part of the same transaction’, regardless of whether they occurred at the same time and place. The relevance of the fact flows from the determination of whether it is part of the same transaction; this reflects, not surprisingly, the early interpretation of the res gestae exception. It must also be noted that the Act clarifies that the term ‘fact’ shall include statements.

Section 6 and the succeeding sections of the Act embody the rule of admission of evidence relating to what is commonly known as res gestae. As a matter of fact the rule of res gestae formulated in section 6 is expounded and illustrated in sections 7, 8, 9 and 14 of the Act and they should be read together. Relevancy has been described in section 6 to 11 and Sir James Stephen says that sections 6 to 11 “are by far the most important and original part of the Act as they affirm positively what


\(^ {18}\) \textit{Ibid}.

\(^ {19}\) [1879]14 Cox C.C. 341
facts may be proved, whereas the English law assumes this to be known, and merely declares negatively that certain facts shall not be proved.”

The wording of section 6 does not seem to insist on the contemporaneity or close association with regard to the time and place. Illustration (b) to the section clearly illustrates that section 6 indeed seeks to adopt a liberal approach. In this illustration, the accused was not even present at the time and place when the events occurred. All that the section requires is that the events were so connected as to form part of the same transaction, and this need not be based on proximity of time, proximity of place or even continuity of action. The word ‘bystanders’ in illustration (a) refers to persons who were actually present at the time of the occurrence of an event. In *Nasir Din v. Emperor*, it was held that the word bystanders mean the persons who are present at the time of the beating and not the persons who gather on the spot after the beating.

The obvious ground of admission of such evidence as is referred to in section 6 is the spontaneity and immediacy of the act or declaration in question. The facts deposed to must form part of the transaction. A transaction may constitute a single incident occupying a few moments or it may be spread over a variety of acts, declaration, acts, occupying a much longer time and occurring on different occasions. They may also occur at the same place or at different places. All these constituent incidents, which though not strictly constituting a fact in issue, accompany and tend to explain or qualify the fact in issue. They form a chain as it were encircling the fact in issue. All these facts are relevant to the fact in issue and therefore admissible in evidence. A transaction, as the term used in this section, is defined by Sir James Stephen “as a group of facts so connected together as to be referred to by a single name, as a crime, a contract, a wrong or any other subject of enquiry which may be in issue.”

There are many incidents, however, which, though not strictly constituting a fact in issue, may yet be regarded as forming a part of it, in the sense that they closely accompany and explain that fact. In testifying to the matters in issue, therefore, witnesses must state them not in their barest possible

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21 AIR 1945 Lah 46 : 46 Cri. L.J 431

22 Ibid, page 202

23 Ibid, page 208
form, but with a reasonable fitness of detail and circumstance. These constituents or accompanying incidents are said to be admissible as forming part of the res gestae.\textsuperscript{24} The requirement is that the statement sought to be admitted must have been made contemporaneously with the act or immediately after it and not at such an interval of time from it as to allow of fabrication or to reduce the statement to a mere narrative or past events.

**SOME JUDICIAL OBSERVATIONS ON RES GESTAE IN INDIA**

Indian Judiciary has interpreted res gestae as only those statements made contemporaneously with the event or immediately after it, but not ‘at such interval of time’ as to allow fabrication.

In *Babulal Choukhani v. Western India Theatres Ltd. And others*,\textsuperscript{25} it was observed that the statement of law in section 6 of the Evidence Act is usually known as Res Gestae. The literal meaning of the word “res” is “everything that may form an object of rights and includes an object, subject matter or status.”

In *Gentela Vijayardhan Rao and another v. State of Andhra Pradesh*,\textsuperscript{26} there was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the judicial magistrate recording statements of the victim. That interval, therefore, blocks the statement from acquiring legitimacy under section 6 of the Evidence Act. The Apex court held that such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae.

In *State of Andhra Pradesh v. Panna Satyanarayan*,\textsuperscript{27} the accused murdered his wife and daughter. The statement by the father of deceased wife that father of accused told him on telephone that his son has killed the deceased. Absence of a finding as to whether the information given by accused’s father to the deceased’s father that the accused had killed the deceased was either of the

\textsuperscript{24} Ibid, page 203

\textsuperscript{25} AIR 1957 Cal 709

\textsuperscript{26} AIR 1996 SC 2791

\textsuperscript{27} AIR 2000 SC 2138
time of commission of the crime or immediately thereafter so as to form the part of same
transaction. The statement cannot be considered as relevant under section 6.

In *Rattan Singh v. State of H.P.*\(^{28}\), the accused intruded into the courtyard of the victim’s house
at night and inflicted gun-shot injury on her. She was able to identify him. She stated before her
death that the accused was standing with a gun before her. She explained the time and space
proximity between her and the assailant. The statement was held to be a part of the transaction and
relevant as such under section 6.

Again, the Supreme Court in *Sukhar v. State of Uttar Pradesh*,\(^ {29}\) held that statement of witness
that on hearing sound of firing he went to the scene of occurrence and found the injured lying on
the ground and he told him as to who had fired the shot is admissible under section 6, being part
of same transaction i.e. act of shooting by accused.

In *Bishna alias Bhiswadeb Mahato & Others v. State of West Bengal*,\(^ {30}\) the two witnesses came
to place of occurrence immediate after incident had taken place. They found dead body of deceased
and other injured victim in unconscious state and also found mother of deceased weeping as also
injured witness present there. They heard about entire incident from injured witness and other
witness including role played by each of accused and others. The evidence of these two witnesses
corroborate the evidence of the prosecution witnesses as also the allegations made in the F.I.R.
Their evidence is admissible under section 6.

**SUGGESTIONS**
The scope of section 6 under res gestae lies in its vagueness. The word “transaction” used in this
section is to be interpreted from various angles. It changes from case to case. Each case in criminal
law should be judged according to its own merit. When it is proved that the evidence forms part
of the same transaction it is admissible under section 6 but whether it is reliable or not depends on
the discretion of the judge. The judge should consider that the statement was made at the spur of

\(^{28}\) AIR 1997 SC 768  
\(^{29}\) AIR 1999 SC 3883  
\(^{30}\) AIR 2006 SC 302
the moment without an opportunity to concoct and fabricate anything. When the judges are satisfied that the reaction was the most immediate result of the circumstances being relevant to the facts in issue, then only they have to allow such evidence as being admitted.

The applicability of the doctrine of res gestae is also to be looked into differently and the judge should broaden this principle while admitting the evidence mainly in matrimonial offences, domestic violence and in case of child witnesses. In these cases witnesses are required to identify the alleged offender. Even the witnesses are not in position to react just after the offence because generally they are under the influence of some gruesome event for which they do not respond immediately. In these cases statements of those witnesses, whenever they speak (generally a day or two) should be treated as res gestae and accordingly it is to be admitted in evidence, provided that the witnesses are prevented to give statement because of stress of shock etc.

CONCLUSION

Hearsay with exceptions like res gestae cannot be used as an untrammeled horse to bully an accused, by admitting all kinds of evidence. There is need to limit the use of hearsay in India through the wide test of a transaction. Law is not static; it is to be changed from time to time as per need of the society. It is also imperative that any new rule of res gestae must satisfy the constitutional guarantees of free trial and equality.