

EXPANSION OF DOCTRINE OF RES GESTAE IN JUDICIAL PROCEEDINGS

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ABSTRACT

The doctrine of res gestae is a principle of law of evidence. It is an exception to hearsay rule. Generally, hearsay is no evidence at all. The doctrine of res gestae is Latin phrase which has no exact English translation. This is a rule of evidence which can be defined as things done, things said or things happened. It means that relevancy of facts forming part of the same transaction. A transaction which included so many facts which is connected with each.

In this work, we will examine the doctrine of res gestae with concerned to all issues as how the doctrine of res gestae is working under criminal law. The next is that what is role played by the judiciary as significant growth under law. How the doctrine of res gestae is useful under criminal law.

In precise what role played by judiciary by stating the circumstances under which an act be covered under the doctrine of res gestae in judicial proceedings, its importance at the end with definitive conclusion and suggestions.

INTRODUCTION

The law of evidence which is basically deals with the law of procedure. It is stated as tool for the proving something. But these rules are not simply understood with refer to what type of evidence is presented and proving in court of law. So, it means that some technical rules are working under law of evidence. It is most complicated area under the criminal jurisprudence. The various provisions define the different portions of the law of procedure. Here one of them is principle of law of evidence is named as doctrine of res gestae defined under the various laws. The main elements are relevancy and admissibility of the doctrine of res gestae in judicial proceedings. The relevancy is criteria for the admission of the evidence of doctrine of res gestae under the law. Admission is another important factor for the proper consideration of the weightage of all evidence. So, the doctrine of res gestae based on the assumption that every relevant part of the chain of event is consider before the final disposal by the judiciary as under criminal justice system. It is also indispensable for the proper evidence can be consider for proving the facts where the facts demanded some attention for the fulfill of the complete justice. No evidence can be discarded on the ground of irrelevant considerations even if some technicality is also present from case to case. The reason behind is for the adoption of the doctrine of res gestate under the criminal law as the necessity of proving some relevant facts. It is not possible for the proving of whole incident without the helping of some missing facts. It may be proved by some other piece of evidence examined and titled as doctrine of res gestae. So, this type of the evidence is not rejected on the ground of technicality or as for the complicated rules is framed under the statute by legislation. The purpose of the adoption of these types of provisions under the various laws as accepted in the necessity of proof of generally with certain limitations are also provided by law. These restrictions are imposed by law for the proper application of the doctrine of res gestae.

The doctrine of res gestae has its own importance. It is Latin phrase which means that forming part of the same transaction. An event or incident which cannot be complete without the relevant constitutive facts of the incident. These facts can be treated as a missing fact of the chain of event. All the facts and surroundings circumstances connected with same time and place or different times and places. It means that relevant portion of the event which is

connected with directly or indirectly with the main transaction of the event. In the other words, it is stated as things done, said or things happened. It is considered with refer to relevant issues which explains the incident as whole fact story. So firstly, we will try to examine the term as what are the exact meaning if it possible and what role played by the judiciary for the expansion or its limitation in judiciary proceedings will be discussed later. The meaning of doctrine of res gestae is unclear and it is not definitive. It is so confused term as we cannot say that what is exactly consider as the doctrine of res gestae. It is not stated as that clearly because it is discretion to left the courts can consider the relevant evidence and the whole fact story of the cases. Furthermore, it is needed for corroborated under the law of evidence. The facts show that what type of occurrence is occurred as the relevant facts combined as to other relevant facts which is missing but connected with the main transaction of the events. The reliability of the statements, acts, declarations or verbal or nonverbal acts is necessary for proper consideration of the doctrine of res gestae. The relevance or significance of the doctrine of res gestae is utmost important. So it does not discarded as useless principle under the criminal law. But it is also noted that it is not extended the unlimited boundaries of law. It expanded only if the facts and circumstances of the case clearly indicates the whole event is treated as complete within that meaning otherwise it is not relevant for such extension.

The courts now generally agree in their application of the doctrine that res gestae denotes the "transaction" constituting the fact in issue or deemed relevant thereto, the act to be prove, those surrounding circumstances which relate to and illustrate the principle fact and its necessary or usual incidents and sometimes other phrases or terms are used in defining it. Prof. Chase says, *"Declarations (or acts) forming part of such transaction are deemed competent evidence, because they serve to illustrate its character, show the motive which occasioned it exhibit its nature, object or purpose, explain its origin or significance, show the relations of the parties concerned therein etc"*.¹

Res gestae has been defined as things done, or liberally speaking, the facts of the transaction explanatory of an act or showing a motive for acting a matters incidental to a main fact and explanatory of it, including acts and words which are so closely connected with a main fact as

¹Albert Sullard Barne, The Doctrine of Res Gestae, Cornell Law Library Scholarship@Cornell Law: A Digital Repository, Paper 230. 1891.

will constitute a part of it, and without a knowledge of which the main fact might not be properly understood, even speaking for themselves though the instinctive words and acts of participants are not the words and acts of participants when narrating the events, the circumstances, facts and declaration which grow out of the main fact, and contemporaneous with it.²

The primary question which the judge must ask oneself is can the possibility of concoction or distortion be disregarded?³ To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy him that the event was as unusual or startling or fantastic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection.⁴

In order for the statement to be sufficiently 'spontaneous' it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarer was still dominated by the event. Thus the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was still operative.⁵ Quite apart from the time factor, there may be special features in cases, which relate to the possibility of concoction or distortion.⁶

As to the possibility of report on the facts narrated in the statement if only the ordinary fallibility of human recollection is relied on, this goes to weight to be attached to and not the admissibility of the statement and is therefore a matter for jury.⁷

Conceptualization of doctrine of Res Gestae: Res gestae translate from Latin as "things said or things done," and from that translation spring its conceptualization both as an independent

²*Vinod Kumar Baderbhai Patel v. State of Gujarat*, 1998 Ind Law Guj. 22, Available at: <http://www.lawctopus.com/academike/doctrine-of-res-gestae>

³*R v. Andrews* 1987 A.C 281, H.L

⁴Jibin Mathew George, Doctrine of Res Gestae (Amity Law School, Delhi, December 16, 2014).

⁵*Ibid*

⁶*Ibid*

⁷*Ibid*

hearsay exception and as a shorthand reference to intrinsic evidence of a singular transaction or event.⁸

According to Wigmore, the doctrine began to find use in the early 1800's as a "convenient escape" from the hearsay rule and that it found "abundant support in the decided federal cases."⁹ As the hearsay doctrine was refined over the years, the concept of *res gestae* evolved into the hearsay exceptions that we now recognize as present sense impressions,¹⁰ excited utterances,¹¹ and statements of then existing mental, emotional, or physical condition.¹² The term has also been used to explain the admissibility of words that we now would refer to as verbal acts or verbal parts of acts.¹³

The writers and, less frequently, the courts have criticized the use of the phrase, *res gestae*. However, in the last century the preponderant need has been for the expansion of the scope of admissibility. Predominantly the use of the phrase *res gestae* has been as a reason for admitting, not for excluding evidence. Manifestly, too, the very vagueness of the term has been beneficial, as making it easier to widen the application of the doctrine into new fields. Perhaps the time has now come when this policy of widening admissibility will be even better served by striving for a clearer analysis If so, we could well jettison the ancient phrase, with due acknowledgement that it has well served its era in the evolution of evidence law.¹⁴

⁸University of Chicago (ed), Black's Law Dictionary P. 1423 D Anglo Law Library Chicago, 9th edn ,2009

⁹John H. Wigmore, A Student's Textbook of the Law of Evidence, p. 279, (The Foundation Press, Chicago, 1935)

¹⁰Chris Blair, "Let's Say Good-Bye to Res Gestae Volume 33 (Tulsa Law Review Issue 1 Dedicated to the U.S. Supreme Court Article 15 1997, See Id. See also Fed. R. Evid. 803(1) and Okla. Stat. tit.12, § 2803(1) (1991), which provide that "a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

¹¹See also Fed. R. Evid. 803(2) and Okla. Stat. tit 12, §2803(2) which provide that a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

¹² *Id.*, § 2803(3) (1991) which provides: A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation or identification or terms of declarant's will.

¹³See Wigmore, *supra* note 4, § 1767; see also McCormick, *supra* note 5, § 249. Such words, e.g. the words of offer and acceptance to prove the formation of a contract, are not hearsay because they are not being offered in evidence to prove the truth of the matter asserted, but rather to prove only that the words were spoken or written.

11. Edwards J. Imwinkelried

¹⁴Dean McCormick, "Res Gestae" 423*supra* note 3, § 274, at 587 (Minnesota Law Review, Hein Online Vol. 65, Minn. L. Rev. 457, 1ST edition 1980-1981)

Problem Profile:

The doctrine of res gestae is uncertain which has no clear about the definition as in what sense it can be given relevant and admissible in judicial proceedings. This is more complicated aspects related to as understanding what amounts to doctrine of res gestae but it depends upon case to case or facts of circumstances of the case. No strait jacket formula can be laid down explains the exact meaning of the doctrine of res gestae. The questions relating to doctrine of res gestae is as under: Firstly how much of weightage of the statements can be given relating as to admissible into relevant fact?

The next is that what is the criteria for the exclusion of hearsay evidence as an exception to hearsay rule as admissible under criminal law. Reliability of the statements, acts or declaration is how can be proved is more complicated question and what is the rules relating to relevancy and admissibility of the doctrine of res gestae is further issue?

In the present scenario doctrine has so importance because with the growth of the new rules of evidence can be applicable besides for as its compare as to last century.

The big loophole relating to doctrine of res gestae is that no exact meaning of the term as what amounts to doctrine of res gestae. No clear-cut rules are defines the doctrine of res gestae. It creates more confusion than assistance as for the application of the doctrine of the res gestae compare as to other rules relating to the law of evidence. It is judicial interpretation which gave different interpretation of the doctrine of res gestae or as narrow or wide meaning in the criminal law. From time to time the judiciary has played an important role for enhance the significance of the doctrine of res gestae or restricted interpretation of the doctrine of res gestae *The possibility of concoction or fabrication where it exists is on the other hand an entirely valid reason for exclusion and is probably the real test which judges in fact apply. Statements narrating the contemporaneous physical or mental state of the speaker, including his intentions, emotions and feelings are admitted as part of the res gestae, because of the inherent likelihood of spontaneity and involvement.*¹⁵

¹⁵ Richard Glover *Murphy on Evidence* A Practical Approach to Evidence (University of Wolverhampton, 1st edn. 1980) <http://www.oupcanada.com/catalog/9780199561124.html>

The difficulty which arises about the understanding the exact meaning of the term transaction which is not properly defined under the law of evidence.

Expansion of Doctrine of Res Gestae in Judicial Proceedings

The doctrine of res gestae is expanded in criminal law whereas it is expedient for the proper application of the rules of law of evidence. Besides this meaning of the doctrine of res gestae is restricted in some other cases. No clear-cut parameters are lay down by the law. But in this context law simply says that facts, acts, declaration verbal or nonverbal acts can be considered only when the link of occurrence is established with some missing facts only that cases it applicable but not otherwise in all cases. So the settled law clearly stated that the Latin phrase defines as it depends upon on the certain criteria relating to direct or indirect nexus is established which means all the relevant facts, acts, declarations or verbal or nonverbal acts are connected with each other. There is no separation is possible for the understanding of the events. It is connected with the facts in issue and as for as understanding of the chain of events with refer to whole incident. It means that no single act constitutes the whole events. It includes a lot of the facts which is related to each other in the ways of referred directly or indirectly. All the events can be considered as transaction which explained in the sense of any physical act or series of acts. Each part of the same transaction cannot be considered as relevant under criminal law.

Transaction may have defined as the sequence of the events or all part of the incident which is systematically examined a whole and for the proper understanding not separated from as a single act. In other words, we can say that the all the relevant parts of the events which is connected with happening or the different parts of the whole incident as without examined all parts no events are complete in itself. This is general meaning of the term transaction. A transaction is unit of collected facts which cannot be completely separate from one to another. The transaction it starts from initial to end point of the event. The question is arising here that what amounts to transactions or exactly what we can say that as the relevant and admissible as transaction? Another question is that what is the time period when the transaction as beginning or the end point of the transaction. The transaction which includes single or more than single acts constitute the whole incident. So it is defines as according to the facts and circumstances of the case.

Roughly a transaction may be described as any physical act or series of connected physical act, together with the words accompanying such act or acts.

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 use. Every fact which is part of the same transaction is deemed to be relevant to the facts in issue and although if it may not be actually in issue, and although if it were not part of the same transaction it might be excluded as hearsay.

There are so many things as consideration under the law when it is decided by courts. The role played by the courts are not limited because the law which is interpreted by the judiciary is relevant in the present scenario. If we examine the cases we will find out that various cases which is not in same in facts decided by the courts according to the recorded evidence of rule of doctrine of res gestae. It is complicated as for understanding in simple language but the courts from time to time gave the meaning as in the restricted or wider sense. But there is no clear-cut rules in which it can be exactly defined by the judiciary. It depends upon facts and circumstances of each case. There is no uniformity as application of the doctrine of res gestae in the field of the criminal law. The law of relevancy and admissibility of the doctrine of the res gestae is not same under different systems of the laws of the land. The reason behind is that the law is not same from country to country. The Indian Evidence Act defines the doctrine of res gestae under section 6 of the Act as under:

Section 6 of the Indian Evidence Act reads, "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."

Firstly, relevant provisions of the particular statute deals with the doctrine of res gestae. Secondly relevant case law related to doctrine of res gestae shows that what is criteria of the doctrine of res gestate is applicable under judicial proceedings. It is a rule of evidence. But furthermore, the doctrine of res gestate is so complicated it cannot be defined exactly without the help of the various decisions of the courts. It can create rules within rules compare as to the

evidence is more complicated as for as understanding of doctrine of res gestae. The doctrine of res gestae in general means chain of events which can be interpreted according to the facts and circumstances of each case. In other words, we can say that it is not clear about as what facts can be consider under the doctrine of res gestae. It is the discretion of the court. It is also not essential that all the relevant facts are admissible under the doctrine of res gestae. But if the certain criteria can be fulfilled it is treated as admissible under the doctrine of res gestae. The doctrine of res gestae is not admissible under judicial proceedings if the statements or acts are concoction or facts disclosed the irrelevant consideration for the admission of the doctrine of res gestae. What statements can be considered as relevant and admissible under doctrine of res gestae. It is question relating to statutory provisions which deals with the particular statute. Like under Indian Evidence Act the term res gestae is not used under section 6. It merely stated as relevancy of the facts forming part of the transaction. So it is clear from the language of the particular section is a transaction which has divided into parts. Some missing facts complete the chain of events. We can say that all the relevant parts constitute the transaction is clear from facts of each case. The doctrine of res gestae is consider under Indian Evidence Act is relevancy of facts as forming part of the same transaction. But here we also remember that under the different statute, it is not same as under the other statute.

The test of admissibility on one hand relies on the exact contemporarily approach laid down in *Bedingfield's* case¹⁶ in contrast to the flexible and accommodating approach laid down in *Foster's* case.¹⁷ It was precisely with a view to settle this ambiguity that the *Privy Council* in *Ratten's case*¹⁸ entirely dispensed with the test of contemporaneity and adopted the test of “spontaneity and involvement”. Lord Wilberforce in *Ratten's* case contended that the test should not be the uncertain one whether the making of the statement was in some sense part of the transaction. This may often be difficult to establish and therefore he emphasized on spontaneity as the basis of the test. He asserted that “hearsay evidence may be admitted if the statement providing it is made in such conditions of involvement or pressure as to exclude the possibility of concoction or distortion to the advantage of the maker or the disadvantage of the accused.” Courts began focusing on how long the excited condition lasted rather than focusing

¹⁶1879 14 Cox CC 341

¹⁷1834 6 C. & P. 325

¹⁸*Ratten v Reginam*, 1971 Ind Law. PC 6

on when the statement was made and thus liberalized the strict timing requirement. Apparently reluctant to explicitly follow Wigmore, judges first expanded the exception by categorizing statements as “contemporaneous enough.”¹⁹

As in India present day rulings in England and America tend to indicate that the utterance must be spontaneous or natural, and though not precisely contemporaneous must be substantially so.²⁰ There can be no fixed limit of time each case must depend upon its own circumstances. How slight a separation of time and place is sufficient to render evidence of a statement inadmissible?²¹

The decisions of the courts are also relevant under the common law. Reason behind from the primitive period courts have played an important role for the development of the present law.

The doctrine of res gestae was explained in *R v. Bond*. Evidence is necessarily admissible as to acts which are so closely and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances, and so could not be excluded in the presentment of the case before the jury without the evidence being thereby rendered unintelligible.²²

The res gestae exception was first circumscribed definitively in the infamous decision of Cockburn C.J. in *R v. Bedingfield*. This case shows the principal test to determine the admissibility of hearsay, that is, the spontaneity principle which tended to ignore the need for reliability, the overarching consideration. In this case, the victim made a statement implicating the accused just moments before her death. Unexpectedly, the court declared the narration of the statement inadmissible on the grounds that the transaction of the event was complete when

¹⁹Commonwealth v. Burke, 159 N.E. 2 d , 856, 864, Mass. 1959 ,inding victim’s statement to a witness a short time before victim was found unconscious admissible as a spontaneous exclamation, overruled on other grounds by Commonwealth v. Beldotti 567 N.E. 2d 1219 Mass. 1991 ; Reardon v. Marston 38 N. E. 2 d 644, 647 Mass. 1941 holding that statement made at an accident scene “was so nearly contemporaneous with the actual impact itself that it could have been found to have been intimately connected with the happening of the accident.” emphasis added

²⁰V. R Manohar (ed), *Sudipto Sarkar’s Law of Evidence* p. 209 (Delhi Universal Law Publishing Co. 16th edn. 2007)

²¹Tepper v. Reginam 1952 Ind Law PC 1

²²1906, 2 KB 389, at 400.

it was made. Although this decision has been effectively overruled, it accurately illustrates the erstwhile principle used to define the res gestae exception (attributed to legal formalism), which often resulted in unjust consequences.

Cockburn C.J. seems to have failed to appreciate the underlying purpose behind the establishment of this exception in the first place, that is, the more pertinent question of how reliable the statement is. Thus, the test of contemporaneity that constituted the basis for admitting certain statements (though hearsay) was gradually challenged during the nineteenth century as a result of the irrational extents of conviction in its accuracy.

The relevant test set down by Lord Wilberforce should be approached with caution. In his judgement, Lord Wilberforce states: *“The test should be not the uncertain one whether the making of the statement was in some sense part of the event or transaction. This may often be difficult to establish.... But if the drama, leading up to the climax, has commenced and assumed such intensity and pressure that the utterance can safely be regarded as a true reflection of what was unrolling or actually happening, it ought to be received”(at 807)”*.

In ***Mills and others V. R*** Lordships accepted that the modern approach to Lord Wilberforce's statement on res gestae puts the emphasis on the probative value of evidence 'rather than on the question whether it falls within an artificial and rigid category such as being part of a transaction. Additionally, the court commented that : *A re-examination of the requirements governing res gestae, against the analogy of **Ratten V. R** and **R V. Andrews**, may permit those requirements to be re-stated in a more flexible form. How far such a relaxation should go would be a complex problem. 'Mills and others V. R*²³

In the case of ***R v. Foster***²⁴ accused was charged with manslaughter in killing a person by driving over him. A witness saw the vehicle driven fast but did not see the accident. Immediately after, on hearing the victim groan, he went up to him and asked him what

²³1995 3 All ER 865 at 87

²⁴ (1834) 6 C & C

happened. The deceased then made a statement as to the cause of the injury. The court held that what the deceased said at the instant, as to the cause of the accident is clearly admissible.

The House of Lord held, however in that the Bedingfield no longer represented the law. It was not so much the passage of the time, in and of itself, that itself that narrated, but whether or not the statement was sufficiently spontaneous to eliminate any real risk of concoction. Lord Ackner said (1987 AC at 300): “My Lords, may I therefore summarize the position which confronts the trial judge when faced the in a criminal case with an application under the res gestae doctrine admit evidence of statements, with a view to establishing the truth of some fact thus narrated, such evidence being truly categorised as hearsay rule.”

The role played by the courts are not underestimate because the law which is interpreted by the judiciary is relevant in the present scenario. If we examine the cases we will find out that various cases which is not in same in facts decided by the courts according to the recorded evidence. It is complicated as for understanding in simple language but the courts from time to time gave the meaning as in the restricted or wider sense. But there is no clear-cut rules in which it can be exactly defined by the judiciary. It depends upon facts and circumstances of each case. There is no uniformity application of the doctrine of res gestae in the field of the criminal law. As within the meaning of relevancy and admission of the doctrine of the res gestae is not same under different systems of the laws of the land. The reason behind is that the law is not same from country to country. There are so many things are considerable under the law when it is decided by courts. The term deals with relevancy of the facts forming part of the same transaction.

CONCLUSION & SUGGESTIONS

The doctrine of res gestae is examined under this work with the help of relevant authorities which is cited. So what is the important role of judiciary played as is under is main considerable aspect of this work. We can find out that the relevancy and admissibility is the prime factor as so important is decided by the courts. Two elements contemporaneous and spontaneously are essential under the doctrine of res gestae. But it does not mean that this type of the requirements

is also essential under law. The various courts gave meaning as doctrine of res gestae according to facts and circumstances of each case but it is not necessary that it is also present in each and every case. The relevancy and admissibility of the doctrine of res gestae in judicial proceedings is considerable factor as examined under law. The doctrine of res gestae is not easy to understandable as in what sense it is applicable in criminal law prior with respect to historical evolution. Its meaning is expanded or restricted by the courts from time to time as according to facts and circumstances of each case but it does not mean that the doctrine of res gestae is expanded in unlimited or without restrictions of the provisions of the law. The settled law clearly imposed the certain criteria before the application of doctrine of the res gestae in the criminal law. Like relevancy of the facts and forming part of the same transaction defines the what is the general meaning of the doctrine of res gestae. This is the requirements of the doctrine of res gestae under the criminal law. But the adoption of the doctrine of res gestae is also based on the inclusion of certain principles for the proving the facts or relevant issue under the criminal law. The courts play an important role for the development of the doctrine of res gestate is under the criminal law as an independent exception to as an hearsay rule. So the term is interpreted as narrow or wide sense according to the basis of the relevant evidence from the case. Two cases are not similar so the doctrine of res gestae is not so equally applicable under law of evidence. The distinction of the facts can be different approach for the decision of the case.

Suggestions:

The doctrine of res gestate has no exact English translation because it is Latin phrase. So it means that things done, things said or things happened. But in some other words we can say that the facts, acts, declarations, verbal or nonverbal acts which is connected in any ways as directly or indirectly is not clear about the exactly the relevant meaning of the doctrine of res gestate. It is most complicated and confused term which creates rules within rules as not nothing more than else. This is also big loopholes of the doctrine of res gestae. It cannot clear the exact meaning of the doctrine of res gestae. So the firstly legislation should avoided the confusion of the term and clearly defines the term as what amounts to the doctrine of the res gestate. The provisions should be repealed or edited or alter added with new substitute the provisions as the meaning of the term of the res gestae. If the uncertainty is removed only after

that the considerable useful of the doctrine of res gestae is possible. The relevance significance with refer to present scenario is important if certain changes has been completed through law.

