THE DOCTRINE OF RES GESTAE: CRITICAL ANALYSIS

Shashank Rai*

Sai Snigdha Kantamneni*

ABSTRACT

The Doctrine of Res Gestae is a rule concerned with the Law of Evidence. The Doctrine of Res Gestae roughly translates to 'thing done'. It is an exception to the Hearsay rule, which states that Hearsay evidence is no evidence and is not admissible in the Court of Law. It is referred to as, "Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction".

In this paper, we will conduct a critical analysis of the said Doctrine, discuss its relevance under the Indian Judicial system, its development through the years, its essentials, its benefits, its criticisms, its ambit, its applicability, and non-applicability.

Keywords: Res Gestae, Doctrine, Hearsay, Transaction, Law of Evidence.

*BBA LLB, THIRD YEAR, KIIT UNIVERSITY, BHUBANESWAR.
*BBA LLB, THIRD YEAR, KIIT UNIVERSITY, BHUBANESWAR.

INTRODUCTION

Res Gestae doesn't possess any literal English translation. It means "something deliberately undertaken or done".

Res Gestae can be defined as, "*Things did, or liberally speaking, the facts of the transaction explanatory of an act or showing a motive for acting; matters incidental to the main fact and explanatory of it; including acts and words which are so closely connected with the main fact as 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, 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 and serve to illustrate its character or this circumstance which are the atomic and undersigned incidents of a particular litigated act and are admissible when illustrative of such act*."

Res Gestae is a Latin phrase that means "things done." This is rule of law is regarded as an exception to the hearsay rule of evidence that the hearsay evidence is not admissible before a judicial court. It is basically a spontaneous and an instant declaratory statement made by a person immediately or just after an event or a transaction and before the mind has the senses to conjure a false story which is in contravention to the real facts.

The principle of Res Gestae has been explained by Lord Normand in Teper v. Reginam[1]:

"Nevertheless the rule (Hearsay) admits of certain carefully safeguarded and limited exceptions, one of which is that the words may be proved when they form part of the res Gestae... It appears to rest ultimately on two propositions -- that 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 be understood without the correlative words and the dissociation of the words from the action would impede the discovery of truth."

Further, in light of the fact that an assertion made under the Doctrine of Res Gestae is made normally and unexpectedly, there is a bad situation for false impressions or misinterpretations by any person who hears it. Thusly, if an observer were to affirm and rehash such an

[1] Teper vs Reginam, 1952, 2 All ER 447, 449: 1952 AC 480

articulation to the Court, that assertion could then be used as proof. Courts subsequently, acknowledge and trust such explanations to be fit for being treated as proof.

Doctrine of *Res Gestae* statements can be classified into 3 categories:

1. Words or statements that either in totality or in part explain a physical act.
2. Exclamations are so spontaneous that they stop or restrict a person from issuing a contrary statement to the actual facts.
3. Statements capable of proving the state of mind of an individual.

Section **6 of the Indian Evidence Act, 1872 states;**
"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 of at different times and places".
The principal of law encapsulated and present in Section 6 is generally viewed as the tenet of Res Gestae. Realities that can or might be demonstrated, as a component of Res Gestae, should not be those realities that are an issue at the same time, rather they should be associated with it. Despite the fact that noise-proof isn't acceptable in the courtroom, however with regards to Res Gestae it very well may be permissible in an official courtroom and might be solid proof. Subsequently, it is an exemption from the prattle rule. The reasoning behind this is the suddenness and immediacy of such clarification that there is barely whenever for creation. Along these lines, such enunciation ought to be existant simultaneously of the demonstrations which involve the offence or atleast quickly from thereon. "Res Gestae comprises facts that form part of the same transaction. So, it is relevant to examine, what is a transaction? ; When does it start? and when does it come to an end?. If any fact isn't able to form a link of itself with the main transaction, it doesn't pass the test of being a Res Gestae and hence, becomes inadmissible. Res Gestae constitutes elements that are beyond the scope of modern hearsay definition altogether, like the circumstantial evidence of the state of mind, the verbal acts, the verbal parts of acts, and certain non-verbal conduct. Because the excited utterances are in close connection to the time of the event and the excitement's source is the event, excited utterances are deemed to be part of the action (the things done) and hence, admissible in spite of the hearsay rule."

HISTORY OF RES GESTAE

The tenet of res gestae might be traced all the way back to like some time in the past as the year 1693, when on account of Thompson v. Trevanion the court went onto concede a revelation corresponding a go about as a proof by giving the justiication that it is a proof concerning the commission of the demonstration. In spite of the fact that it was referenced in the supreme sense and was utilized in an assortment of cases, its advancement started exclusively in the year 1805 post the instance of Aveson v. Ruler Kinnaird.

The ambit and relevance of the idea procured the thought of researchers and legal scholars after the shocking instance of R. v. Bedingfield where the Cockburn Chief Justice decided that a Res Gestae explanation can't be made after the consummation of the exchange. In this particular case, the blamed had cut the throat for the perished individual who ran outside and requested that an observer view what the charge had done. The Court decided that since the assertion was made after the episode or the exchange, it can't be a Res Gestae proclamation. This decision was along these lines overruled or upset in Ratten v. R. where it was communicated that a Res Gestae proclamation may even be made following the exchange. The degree of the fundamental of Res Gestae in customary law was improved by this judgment.

RES GESTAE UNDER THE INDIAN EVIDENCE ACT, 1872

Section **6 of the Indian Evidence Act, 1872 states;** "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 of at different times and places".

Section 6 of the Indian Evidence Act, 1872 briefs us about the principle of Res Gestae. Hearsay evidence is not considered admissible in a judicial court. However, Res Gestae is an exception to the hearsay rule. The reasoning behind this is the suddenness and promptness of such explanation that there is hardly any time for fabrication. Thus, such articulation should be existent at the same time as the acts which comprise the offence or at least immediately thereafter.

Res Gestae includes realities that structure part of a similar exchange. All in all, it is pertinent to inspect, what is an exchange?, when does it start? furthermore, when does it conclude?. On the off chance that any reality can't frame a connection of itself with the principle exchange, it doesn't finish the assessment of being a Res Gestae and henceforth, gets unacceptable. "If

any statement is made due to the stress of excitement then such statement is rendered as a part of the same transaction and is admissible before the judicial court. The strength of Section 6 of the Indian Evidence Act, 1872 lies in its vagueness. Every criminal law case should be judged based on its merit. Once it is proved that the evidence put forth is a part of the same transaction it is then admissible under Section 6 of the Indian Evidence Act, 1872." However, whether the evidence is reliable or not is solely dependent on the judge's discretion.

CONDITIONS FOR A STATEMENT TO BE ADMISSIBLE UNDER SECTION 6

A Statement to be considered admissible within the ambit of Section 6 of the Indian Evidence Act, 1872, 1873, must satisfy the following conditions:

1) The statement should be a statement of fact and not an opinionated statement.

2) The statement should be made by a participant to the transaction or a witness of the said transaction.

3) A bystander's statement is admissible only if he or she was present at the place of the commitment of the offence.

4) The statement should depict, describe, elaborate, or explain the incident or the transaction in a similar way or manner.

JUDICIAL OBSERVATIONS IN RES GESTAE DOCTRINE

"Indian Judiciary's interpretation of the doctrine of Res Gestae is of only those particular statements made contemporaneously with the incident or immediately after it, but not after such time that the possibility of fabrication steps in."

Few landmark cases with regards to the doctrine of Res Gestae are:

1. Gentela Vijayavardhan Rao And Another v. State of Andhra Pradesh

In this case, it was held and stated that "Here, there was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the Judicial Magistrate recording statements of the victims. That interval, therefore, blocks the statements from acquiring legitimacy under Section 6 of the Evidence Act. The High Court was, therefore, in error in treating Exts. P-71 and P-75 as forming part of res Gestae evidence."

2. Sukhar v. State Of Uttar Pradesh

In the said case it was held that "The statements sought to be admitted, therefore, as forming part of Res Gestae, must have been made contemporaneously with the acts or immediately thereafter."

Thus, the aforementioned rule as it is stated in Wigmore's Evidence Act reads, "Under the present exception to hearsay and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."

3. Krishan Kumar Malik v. the State Of Haryana

In this case, the court stated that "The statements said to be admitted as forming part of Res Gestae must have been made contemporaneously with the act or immediately Page 4 thereafter. Admittedly, the prosecutrix had met her mother Narayani and sister soon after the occurrence, thus, they could have been the best Res Gestae witnesses, still, the prosecution did not think it proper to get their statements recorded. This shows the negligent and casual manner in which the prosecution had conducted the investigation, then the trial. This lacuna has not been explained by the prosecution. The prosecution has not tried to complete this missing link so as to prove it, beyond any doubt, that it was the appellant who had committed the said offences."

4. Javed Alam v. State Of Chhattisgarh And Another[2]

In this case, it was held that the question of Res Gestae has no applicability as the name of the accused given was proved in the first instance itself, in the court. The court stated that "The question of Res Gestae has no application as the name given for the first time is proved in the court. Res Gestae was not in the police statement. So far as Article D-7 is concerned paint is similar to that of the jeep which is scratched. It is also reiterated that the evidence on record does not make out a case under Section 34 IPC."

[2] Javed Alam v. State Of Chhattisgarh And Another, 2009 AIR SC 3918

Principle of Admissibility of Declarations Accompanying Acts:

"The principal of admissibility of declarations accompanying acts can be summarized as:

1. The declaration (oral and written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declaration must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.
2. The declaration must be substantially contemporaneous with the fact and not merely the narrative of a past.
3. The declaration and the act maybe by the same person, or they may be by a different person, e.g. the declarations of the victim, assailant, and bystanders. In conspiracy, riot the declarations of all concerned in the common object is admissible.
4. Though admissible to explain or corroborate, or to understand the significance of the act, the declaration is not evidence of the truth of the matters stated."

CRITICISM

Even during the initial days of the doctrine's development, there were signs that it was not unanimously considered with favour and support. It gained popularity due to its nature of being difficult to understand or obscurity. "Wigmore has also been pretty critical of the usage of the phrase Res Gestae. He has gone onto write that, it is not only entirely useless but even positively harmful. The phrase is useless because every rule of Evidence to which it has ever been applied exists as a part of some other well-established principle and can be explained in the terms of that principle. The phrase is harmful because by its ambiguity it invites the confusion of one rule with another and thus creates uncertainty as to the limitations of both. Thus, Wigmore concluded that the Res Gestae should never be mentioned."

Wigmore wasn't or isn't the sole critic of the doctrine of Res Gestae, there are many like him. His strong statements show that the doctrine has its fair share of critics.

CONCLUSION

Generally, the evidence is brought under Res Gestae because it is not capable of being be brought under the ambit of any other section of the Indian Evidence Act, 1872. The motive of lawmakers behind the introduction of the doctrine of Res Gestae was to avoid any sort of injustice in those cases where the cases were dismissed and disposed of because of lack of

evidence. If any statement is made which is not admissible under section 6 of the Indian Evidence Act, 1872, it can be made admissible under Section 157 of the Indian Evidence Act, 1872 as corroborative evidence.

Court has consistently communicated and expressed that the said tenet or rule ought to never be extended to a boundless degree. This is the motivation behind why the Indian courts have consistently mulled over the trial of "progression of the exchange". Any explanation that was made after a critical delay and which was not an immediate response to the happened occasion isn't permissible under Section 6 of the Indian Evidence Act, 1872.

In any case, the courts have permitted certain explanations which were made after a huge delay from the place of the event of the exchange because there was adequate proof to back the case that the individual offering the expression was as yet under the pressure of energy and consequently, whatever was said was as a response to the concerned occasion.