

## **RELEVANCY AND ADMISSIBILITY OF DOCTRINE OF RES GESTAE IN JUDICIAL PROCEEDINGS**

### **ABSTRACT**

*Res Gestae is a Latin phrase which means “things done”. This is a rule of law of evidence and is an exception to the Hearsay Rule that hearsay evidence is not admissible. The law relating to relevancy and admissibility defines as what type of evidence can be considered as admissible under the law of evidence. The Doctrine of Res Gestae plays an indispensable role in criminal law as well as criminal jurisprudence. It has been characterised under Common Law, Federal law and relevant provisions of the Indian Evidence Act with reference to tracing its development as an exception to the exclusionary hearsay rule. What is the need of Doctrine of Res Gestae as it exists in the present scenario? How the Doctrine of Res Gestae is working under the judicial proceedings? What is the role of Judiciary in the development of Doctrine of Res Gestae in criminal proceedings? This Article precisely aims at examining the meaning, relevancy and admissibility of the Doctrine of Res Gestae in judicial proceedings and developing an understanding of views of the Courts in relation to the admission of Doctrine as an evidence under judicial proceedings, its importance and its loopholes with definitive conclusion and suggestions.*

**Keywords:** Evidence, Hearsay Rule, Res Gestae.

### **INTRODUCTION**

The Latin word Res Gestae, which in simple terms means the events that have happened, can be legally defined as the set of events which happened in an affair which is now under the consideration of the Court.

In a layman's term, it can be defined as the hidden facts, chain of relevant circumstances or events, transactions, etc. which is connected with other facts and circumstances. The Doctrine of Res Gestae means all circumstances surrounding the happening of the incident or the missing facts, etc. Thus, the Res Gestae of a crime includes the immediate area and all occurrences and statements immediately before the crime. It includes the acts, statements and declarations which may be verbal or non-verbal. It depends upon the facts of the each case. It can also be explained as things happened, things done or things said. The application of this

Doctrine enables reasonable inference or presumption of certain other facts from the proof of one fact or set of circumstances.

The rules of relevancy and admissibility are the main consideration which relates to the Doctrine of Res Gestae. It means that when evidence is presented in the Court of Law, it must be relevant and admissible. It explains the criteria which is an exception to hearsay evidence. Hearsay evidence is no evidence at all and is not admissible under the law. The admission of the Doctrine of Res Gestae is not as a hearsay rule. An event or incident which includes the transaction of all the relevant facts can be considered as the Doctrine of the Res Gestae.

A transaction may be defined as any physical act or series of acts together with the words accompanying such acts. The group of facts which constitute the transaction, in one word, may be called a crime, contract or wrong. A transaction may be extended over a long period of time. When a transaction ends and begins depend on the facts and circumstances of each case. It may constitute a single incident or numerous facts, acts, statements, declarations, etc. All these factors frame the incident and if any single element is missing from chain of the events, then in that case the hidden facts are considered as the forming part of the transaction.

Hence, the Doctrine of Res Gestae is understood in the context of a forming part of the same transaction. The statements, verbal or non-verbal, acts or declarations can be considered as Doctrine of Res Gestae. The relevant ingredients of the Doctrine are contemporaneous and spontaneous. It means that the relevancy and admissibility of the Doctrine deals with some essential elements as things in the same time and same place or different time and different place, or said in a natural way and not as a pre-arranged plan.

It has always been kept in mind by the Court that the Doctrine should never be expanded to an unlimited extent. This is the reason why Indian Courts have always considered the test of continuity of the transaction. Any statement made after a long gap and not as an action to the event is not admissible. But, the Courts have permitted certain statements which were spoken after a long gap from the occurrence of the transaction because there existed sufficient evidence.

## **HISTORICAL PERSPECTIVE**

The historical evolution of the hearsay exclusionary rule and of the resulting exceptions to the rule has had an influence on the manner in which hearsay exceptions are applied today.<sup>1</sup>

Res Gestae translates from Latin as “things done”, and from that translation springs its conceptualization, both as an independent hearsay exception and as a shorthand reference to intrinsic evidence of a singular transaction or event.<sup>2</sup> The term has been traced to 1637, but did not become commonly used until the 1800s.<sup>3</sup> 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.<sup>4</sup>

With the advancement of time, the concept of Doctrine of Res Gestae has changed, the reason being that the law is not static and it changes from time to time. So in the modern era, the Doctrine holds more importance than it did earlier. The new interpretation which is given by the Courts is also expanded in relation to its meaning, relevance and importance of the Doctrine. Jurists, academicians and legal articles by scholars played a vital role for the growth of the Doctrine. We have already encountered the Res Gestae principle in its broader sense which talks about the events that should be seen in the context of surrounding circumstances and antecedents. This indicates that evidence of other facts and events may be adduced to explain and amplify a fact even if to some degree, it is prejudicial to the party against whom it is adduced.

## **PROBLEM PROFILE**

The common law principle of Res Gestae has attracted much judicial and academic criticism. The precise doctrinal significance has remained unclear. The term Res Gestae is not definitive and it creates more confusion than assistance. It defines only rules within rules and nothing else.

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<sup>1</sup>William Gorman Passannante, *Res Gestae The Present Sense Impression Exception and Extrinsic Corroboration Under Federal Rules of Evidence 803(1) and Its State Counterpart*, 17 *Fordham L. J.* 91 (1989).

<sup>2</sup>Kastro, P. (2017). The Common Law Doctrine of Res Gestae, *Black's Law Dictionary*. In: 9th ed. [online] p.1423. Available at: [http://www.kostro.com //NJF FamilyIssues/2011/06/13/common-law-Doctrine-of-res-gestae/see](http://www.kostro.com//NJF%20FamilyIssues/2011/06/13/common-law-Doctrine-of-res-gestae/see) [Accessed 11 Jun. 2017].

<sup>3</sup>John H. Wigmore, *Wigmore on Evidence*, at 254 & n.1, 255, Chadbourn rev § 1767 (1976).

<sup>4</sup>35 JOHN H. WIGMORE, *A STUDENT'S TEXTBOOK OF THE LAW OF EVIDENCE* 279, (The Foundation Press, Chicago, 1935).

Dean Wigmore comments, “The phrase Res Gestae is, in the present state of the law, not only entirely useless, but even positively harmful. It ought therefore wholly to be repudiated, as a vicious element in our legal phraseology. It should never be mentioned.”<sup>5</sup>

Sir Frederick Pollock<sup>6</sup> once said that the phrase Res Gestae meant in English law neither more nor less than part of the story. The writers, Wigmore and Julius Stone, despairing of finding any firm basis for any such principle, favour a fresh start upon a different foundation or foundations.<sup>7</sup>

The common law Doctrine of Res Gestae has fallen into disrepute primarily because of its use as a substitute for exact analysis by Courts and practitioners. It has been used to describe statements as spontaneous so as to be considered part of a transaction rather than merely a witness’ account of it. Scholars have attempted to dissipate the confusion and ease analysis by categorizing the separate classes of possible Res Gestae exceptions to the hearsay rule.<sup>8</sup>

Relevancy of the facts forming part of the same transaction is titled under Section 6 of the Indian Evidence Act, 1872 (hereinafter referred to as ‘the Act, 1872’). Transaction is an uncertain term with ambiguous meaning and is not described under any statute. So, what amounts to transaction is a question of fact. When does it start and what is its end point is not clear. The criticism of the Doctrine of Res Gestae is so high that it cannot be explained in simple words. Jurists, judges of the Courts and academicians condemned the Doctrine of Res Gestae as useless and misleading and it is considered as not more than myth.

The actual application of the principles remains problematic notwithstanding its long common law history. The rigid construction of the Doctrine is also difficult to understand. The Doctrine has often been described as having uncertain boundaries and has been criticised for its formless nature. Its relevance is not clear in the modern era. There is perhaps no principle in law upon which the Courts have more uniformly agreed as to what amounts to Doctrine of Res Gestae. Yet the application of the principle is so varied and the decisions so conflicting that an attempt to reconcile them seems impossible. The decisions of the Courts are also conflicting in this regard.

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<sup>5</sup>John S. Warren, *Montana’s Rule on Res Gestae*, 34Issue 02, Montana's Law Review. (1973).

<sup>6</sup>*Homes v. Newman* (1931) 2. CH. 112. 120.

<sup>7</sup>R. N. Gooderson, *Research Article Res Gestae in Criminal Cases*, 14Issue 02, The Cambridge L.J. New York (November 1956).

<sup>8</sup>Richard Glover, *Murphy on evidence, A Practical Approach to Evidence*, 252-256, University Wolverhampton, (1d ed., 1980). *Supra* note at 1.

The writers and, less frequently, the Courts have criticized the use of the phrase 'Res Gestae'. The judiciary has played an important role for the expansion of the Doctrine of 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.

In other words, the Doctrine of Res Gestae therefore comprises of all the relevant facts or events, acts, declarations, etc. which are either in issue or which though not themselves in issue, are connected with other facts. Overall, the principle of Res Gestae should be applied with caution.

### **DOCTRINE OF THE RES GESTAE UNDER STATUTORY PROVISIONS OF UNITED KINGDOM, UNITED STATES OF AMERICA AND THE ACT, 1872**

The hearsay rule and the extent of its authority must be reconsidered in light of specific provisions of the English Criminal Justice Act, 2003. It expressly states that certain categories of hearsay evidence may be admissible; including the Res Gestae exception and the admission of hearsay statements in the interests of justice.<sup>9</sup> The term Res Gestae occasionally appears in the cases. The Eighth Circuit considered its application while many Courts have generally rejected Res Gestae as a useful concept and achieved many goals the Doctrine served in the process of applying Federal Rules of Evidence 803, it appears old ghosts die hard.<sup>10</sup>

From the Federal Rules of Evidence, it is clear that term Res Gestae is admitted under the Rule 803 of the Act. Under the Federal Rules of evidence, Res Gestate, may formerly have been but, is no longer an exception to the rule against hearsay evidence based on the belief that certain statements are made naturally, spontaneously and without deliberation during the course of an event.

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<sup>9</sup>BaraclayLittleWood, Law Teacher,*The Doctrine of Res Gestae*, Available at: <http://www.lawteacHer.net/free/the-Doctrine-of-Res-Gestae-essays.php>. (Accessed 11 June, 2017).

<sup>10</sup>Federal Evidence Review, Highlighting Recent FedrealEvidenc Cases and Developments,*Admitting Res Gestae Statement Federal Evidence Rules2015*. Available at: <http://www.federalevidece.com/blog/2009/may/admitting-%E2%80%9Cres-gestae%E2%80%9D-statement>. (Accessed 11 June, 2017).

The common law Doctrine of Res Gestae is adopted under the Indian Evidence Act not as it is, but with certain modifications compared as to the settled principles of the common law. Under Indian Evidence Act, 1872, the word 'Res Gestae' is missing from the statutory provisions of the Act. However, the latent intent can be interpreted under Section 6 of the Evidence Act as under:

*6. 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.*

Section 6 of the Act, 1872 is an exception to the general rule whereas the hearsay evidence becomes inadmissible. The term Res Gestae is not defined under this Section. But bringing such hearsay evidence within the provision of Section 6 of the Act, 1872, what is required to be established is that it must be almost contemporaneous with the acts and there should be interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of Res Gestae.

## **ESSENTIAL INGREDIENTS OF THE DOCTRINE OF RES GESTAE AND ROLE OF JUDICIARY**

The relevancy and admissibility of the Doctrine of Res Gestae in judicial proceedings explains the two important elements, contemporaneous and spontaneous.

Contemporaneous means existing or happening during the same time period, and spontaneous means the things said or done in a natural and often sudden way without the pre-arranged planning. These elements are considered from the facts of the case. But it is not necessary that both the conditions are essential under Federal or Indian law. These elements are evolved by the common law.

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 chain of events must be proved as in what cases the facts are relevant. The Doctrine has been expanded to judicial proceedings in numerous cases. Where a missing fact or facts complete the chain of events, it can be perceived that the Doctrine of Res Gestae is applicable.

The English Courts, Federal Courts and Supreme Court of India have explained the Doctrine of Res Gestae with expanded as well as restricted meaning, wherever it is expedient. The Doctrine enable in interpreting whether the facts are directly or indirectly connected with each other or whether the situation demands the attention of this interpretation for completion of justice. The expansion of the Doctrine is by judicial attitude, though developed as an exception to hearsay rule. It is also to be noted that the interpretation may be limited by the Courts where no connection is established between the relevant facts and the circumstances of the case.

The Doctrine of Res Gestae was explained in *R v. Bond*<sup>11</sup> in which it was held that the evidence is necessarily admissible to acts which are closely and inextricably mixed up with the history of the guilty act itself as to form a 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. A telephone call is considered by the Court as Res Gestae. In that case, the call which arrived at police station wherein the deceased gave his statement can be treated as relevant to the Doctrine of Res Gestae.<sup>12</sup>

In a case, the girl was living with her boyfriend until the relationship turned sour. The boyfriend allegedly cut her throat. She managed to run out even with a cut throat and managed to say, “see what Harry (Bedingfield) has done to me”. The question arose as to whether this statement could be admitted as evidence. Lord Justice Cockburn was emphatic that it could not be admitted. He said that it was not part of the transaction and it was said after the transaction was all over, the transaction being the cutting of the throat. The Judge held that it was not admissible as part of Res Gestae since it was something stated by her after it was all over.<sup>13</sup>

Like India, the 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.<sup>14</sup> There can be no fixed limit of time and each case must depend upon its own circumstances. However a slight separation of time and place is sufficient to render evidence of a statement inadmissible.

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<sup>11</sup>*R v. Bond*, (1906) at 400.2. 389 KB.

<sup>12</sup>*R v. Rattan* (1971) at 9303. W.L.R.

<sup>13</sup>*R v. Bedingfield* (1879), 341, Vol. 14, Cox C.C.

<sup>14</sup>V. R Manohar, *Sudipto Sarkar's Law of Evidence*, Wadhwa and Company, Nagpur 209, (15th edn., Delhi Universal Law Publishing Co. 2007) (2000).

## **CONCLUSION**

The relevance, expansion and the admission of the Doctrine of Res Gestae is based on the present need of the rules relating to as an exception to the hearsay evidence. The scope of the Doctrine of Res Gestae is so important that the judiciary plays an important role under various laws and is the main source as far as the development of Doctrine of Res Gestae in criminal law is concerned. Below mentioned are the controversies relating to the meaning of the Doctrine of Res Gestae-

1. Firstly, the Doctrine of the Res Gestae is a Latin phrase. It means a fact, things said or done or things happened but in simple words there is no exact meaning. So what amounts to Doctrine of Res Gestae is not clear from the various definitions of the Doctrine that exists. This is the big loophole of the Doctrine of Res Gestae. Although Res Gestae should only be applied as an exception to the exclusionary hearsay rule, but it is not clear as to in what cases or in which circumstances it can be applied as an exclusionary rule.
2. Secondly, the application of the Doctrine is not possible because the rules of the relevancy and admission differ from country to country. The English Courts, the Federal Courts and the Supreme Court of India has interpreted the Doctrine of res gestate as an exclusionary rule of evidence under the criminal law. There is no uniformity in application of the Doctrine of Res Gestae and decisions of the cases in judicial proceedings.
3. Thirdly, the term transaction is meaningless. It cannot be defined in the legal sense. It should be noted that the Court has shown no reluctance to define the scope of the transaction broadly so as to include hearsay testimony which might otherwise be excluded under usual applications of the Res Gestae exception.

## **SUGGESTIONS**

In the end, it can be said that the Doctrine of Res Gestae has its own significance along with the loopholes that are present. It is important for the consideration of a piece of evidence and the admission of such evidence. The Doctrine of Res Gestae is as an exclusionary rule under the criminal law. The judiciary has played an important role for the expansion of the Doctrine of Res Gestae, so we cannot ignore this Doctrine as a whole. But, it should be applied with great caution in criminal law.

With reference to previous discussion, we can say that the Doctrine of Res Gestae is working in criminal law as an exclusion of hearsay evidence and it is presumed that the Courts explain the Doctrine of Res Gestae in the true spirit of law.

We can give a suggestion that the provisions of the Doctrine can be amended by legislation. The meaning should be clearer than compared to existing provisions. That the Doctrine is useful and the existing loopholes should be removed by way of amendment.