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With this thought, we hereby present to you

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# *Understanding the* *Principle of Res-* *Gestae and Its* *Global* *Implementation*

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# **Understanding the Principle of Res Gestae and Its Global Implementation**

By: Mahee Vohra

## **ABSTRACT**

*The law of evidence has application in criminal as well as civil proceedings and hence not only impacts the judicial process but also plays a vital role in determining the fate of the parties involved in the case. The various principles and doctrines under the law of evidence are in place to ensure that both parties have the opportunity to present their best case while not exploiting the laws to get a favourable outcome.*

*The Principle of Res Gestae is one such grey area in the law of evidence which acts as an exception to the rules of admissibility of evidence. It allows the admission of even non-verbal acts which may indicate the guilt or innocence of the accused and hence can often be the determining factor for giving a verdict.*

*However, despite the major role this principle plays in the proceedings in a case, it is not widely discussed and is therefore left unstudied and under-utilized. This paper aims to help the readers understand this principle and all that falls in its ambit. There is a very thin line between the inadmissible hearsay evidence and res gestae and hence it is imperative that the principle is thoroughly understood.*

*This paper shall deal with the basic principle of res gestae which shall help in understanding the difference between hearsay and res gestae along with its history and evolution in the United States of America and the United Kingdom. This paper shall also describe the scope of res gestae, the existent tests to determine what constitutes as res gestae, its expansion and subsequent application, its limitation and at the end, its criticism.*

*Key words: res gestae, law of evidence, exceptions to hearsay.*

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## **RESEARCH QUESTION**

The following research paper deals with the following questions:

1. What is the Doctrine of Res Gestae?
2. How was the Doctrine of Rest Gestae evolved?
3. How is the Doctrine of Res Gestae applied?
4. What are the judge-made laws with respect to this Doctrine?

## **RESEARCH METHODOLOGY**

This research paper is based on secondary data. It has processed information based on case laws, commentaries, textbooks and other internet sources. All secondary sources have only been used as a base for writing this paper and any direct statements that have been taken from previously published work have been given credit in the footnotes and bibliography. All case laws have been cited in the footnotes.

## **LITERATURE REVIEW**

### 1) Res Gestae- A Judicial Analysis

This is a short and concise paper that briefs us on what the principle means and it touches upon the key elements of the principle. It gives us a brief idea on the history of the principle of res gestae and further explains the judicial interpretation of the principle. It is a wonderful paper for those who are new to the principle of res gestae and want to understand the basics.

### 2) Scope and ambit of Section 6 of Indian Evidence Act,1872

This is an article on Section 6 of the Indian Evidence Act. It describes the various tests that can be applied to see if the transaction is a part of res gestae or not. This is again a pretty short and well-defined article that is easy to navigate and quick to understand.

### 3) Batuk Lal- The Law of Evidence

This is a text book of the Indian Evidence Act. It gives a detailed description of Section 6 of the Evidence Act and explains key elements like ‘same transaction’ and ‘relevant fact’. This is a very informative book and helps having a detailed understanding of the principle of Res Gestae.

4) The Expanding Use of Res Gestae Doctrine, Article by H. Patrick Furman

It is a highly informative and deeply illustrated article that gives the history, application, expansion, limitation and application in US laws of the Doctrine of Res Gestae.

### **GENERAL PRINCIPLE**

***S.6 of the Indian Evidence Act states:***

Relevancy of facts forming part of the 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.

S.6 of the Indian Evidence Act lays down a principle of law which is known as Res Gestae. Res Gestae is derived from Latin and translates to ‘things done’. According to this Section, facts that are proved as a part of Res Gestae need to be facts that are not in issue but however are deeply interlinked with the issue.

Against the general principle of law, hearsay evidence can be held admissible in a court of law when it is under Res Gestae and such evidence is mostly considered as reliable evidence. The justification behind this principle is because such statements are made spontaneously and there is barely any chance for a confusion or a chance to create a false story, therefore such statements must be concurrent with the acts that were a part of the offence or at least immediately thereafter.

The principle of res gestae includes facts that form a part of the same transaction. Hence, it is necessary to examine what the transaction is, when did the transaction commence and when did it conclude. If a fact so related to the issue cannot be proved to be associated with the issue it will not be considered as a part of res gestae and hence cannot be held admissible.

Res gestae include elements that fall outside the modern hearsay definition altogether, such as circumstantial evidence of state of mind, so-called “verbal acts,” verbal parts of acts, and certain non-verbal conduct. Because excited utterances are connected closely in time to the event and the excitement flows from the event, excited utterances were deemed part of the action (the “things done”) and hence, admissible despite the hearsay rule. Res gestae also hired the hearsay exceptions for present-sense impressions, excited utterances, direct evidence of state of mind, and statements made to physicians.

## **HISTORY OF RES GESTAE**

### **England:**

The principle of Res Gestae was first applied in case of *Thompson v. Trevanion*<sup>1</sup> in the year 1693. In this case the court held that when a declaration accompanies an act it is receivable in explanation thereof. The principle here wasn’t yet clearly defined but what can be understood from the court’s contention is that when there is any sort of statement or comment with relation to the act, it is admissible and relevant.

In the case of *Aveson v. Lord*<sup>2</sup> the doctrine of Res Gestae had a clearer approach and was somewhat established as an exception to the general rule. The Principle Res Gestae was firmly established as an exception to the hearsay rule by Cockburn C.J in the decision of *R v. Bedingfield*<sup>3</sup>. In this case Cockburn C.J held that the statement was not admissible as it was made by the witness after the transaction was over. He said the statement was not part of the transaction and it was made after the transaction was over. Despite the decision in *R v. Bedingfield* being overruled it precisely describes and defines the principle of Res Gestae. It gives the clear guideline that a statement is only admissible as res gestae if it is made while the transaction is occurring.

The decision of the Bedingfield case was held too strictly. The decision of the Bedingfield case was overruled in the case of *Ratten v. R*<sup>4</sup> where under common law the doctrine of Res Gestae

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<sup>1</sup> Thomson vs. Trevanion 1693 Skin 402

<sup>2</sup> Aveson v. Lord Rep. Temp. Hardw. 267

<sup>3</sup> R v. Bedingfield [1879]14 Cox C.C. 341

<sup>4</sup> Ratten v. R [1972] AC 378

was given a wider definition with a larger scope for interpretation. In the case of *Ratten v Queen*, the victim (wife) had called the police but before the telephone operator could connect her call to the police the call disconnected. Later her dead body was found by the police in her house from where the call was made and the time of death was approximately the same time as that of the phone call. The call made to the police came under the purview of section 6 and was admissible evidence in the case. Based on this evidence the accused husband's defense that he accidentally fired his wife was held not true. Lord Wilber Force said: "Evidence would have been admissible as part of the Res Gestae because not only 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"<sup>5</sup>.

#### **United States of America:**

This doctrine was first mentioned in the US Supreme Court in the year 1817 when the court held that an agent's statement against his principle can be made admissible if the statements are recorded under the doctrine of res gestae.<sup>6</sup>

It was in 1837 that a definition of the term was given in the form of a synonym- 'surrounding circumstances.' Keeping this definition in mind the court had admitted a Legislative Committee Report that dealt with both parties and the subject matter of the case.<sup>7</sup> This term was then used as an exception to hearsay evidence including statements of the prevalent state of mind<sup>8</sup>, excited utterances<sup>9</sup>, and statements made by a party opponent<sup>10</sup> for the next century.

### **WHEN CAN A FACT BE CONSIDERED UNDER RES GESTAE?**

Following are the conditions for a fact to be considered under res gestae:

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<sup>5</sup> *Ratten v Queen* (1887) 18 QBD 537

<sup>6</sup> *Leeds v. Marine Ins. Co.* 15 US, 380 (1817)

<sup>7</sup> *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420 (1837)

<sup>8</sup> *Propellor Niagra v. Cordes*, 62 U.S. 7, 14 (1858)

<sup>9</sup> *Norwith Transport Co. v. Flint*, 80 U.S. 3,6 (1871)

<sup>10</sup> *Rea v. State of Missouri*, 84 U.S. 532, 539 (1873)

1. The statement must give a detailed explanation of the incident.
2. The statement must be unprompted and spontaneous, and should not be just a mere description of the event.
3. The statement must be a statement of fact and not a statement of opinion. This means the statement made should describe what happened and not what the person thinks or judges to have happened.
4. The statement should be made either by a participant in the transaction i.e. victim or accused or by a person who has witnessed the transaction.
5. The statement made by a bystander or witness will be relevant only if it is proved that he was present at the time of the event.

## **TESTS FOR WHETHER THE TRANSACTION IS A PART OF RES**

### **GESTAE**

The principle of res gestae highly emphasizes the word transaction. For evidence to be considered admissible it needs to form a part of the transaction or linked to the transaction. To see if Res Gestae can be applicable and evidence can be considered there are 3 tests. Each of these tests has their own flaws and hence it is up to the judiciary so as to consider a fact as relevant or not.

1. The first test states that if there is a relation of cause and effect or there is a relation between the fact in issue and the fact which is given as evidence, then that fact can be considered to form part of the same transaction as the fact in issue. However, this test is flawed as an event can be a collaborative effect of multiple events. And if all such evidence that can prove a cause and effect relation is taken as evidence in court, it may be a waste of time for the court as much of this evidence may be very remotely related to the case and many times may hold no value.
2. The second test propounds that a fact which is connected by proximity of time and place should be considered under the principle of Res Gestae. Undoubtedly facts that happen around the same time at the same place can be considered closely connected and therefore be held as a relevant fact. However, this test does not entirely highlight this principle as section 6 itself discusses the possibility of a fact happening at different times in different places, being connected with the fact in issue and forming a part of the same transaction.

3. The third test puts forth the idea of there being a continuity of purpose and action running through the fact in issue and the fact of which evidence. This test it is considered equally incompetent as it barely replaces one vague phrase for another.

The court hence while applying the principle of Res Gestae looks into the following aspects-

1. The declaration should be related to the act which is in issue. The declaration cannot be admissible solely because they accompany the act. The declarations should not be independent facts that took place previous or subsequent to the event i.e. declaration is not admissible unless the facts are a part of the transaction which is continuous.
2. The declaration must be concurrent with the fact and not just an explanation of the event.
3. The declaration and the act can be made by the same person or different people, if made by different people that declarations of everyone need to corroborate with one another and also corroborate with the act.
4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.

### **EXPANSION AND SUBSEQUENT APPLICATION OF THE DOCTRINE**

This Doctrine has been applied in various circumstances; following are a few examples of it:

In the case of *People v. Young*<sup>11</sup> the accused was charged with murder. This criminal allegation had close connection with another criminal act. According to the facts of the case, the accused and the victim had procured marijuana and were going to another location for its sale. The marijuana in question was the reason for fallout between the two which led for the accused to murder the victim. The doctrine of res gestae was applied to link the two criminal acts so that the jury gets a clear picture and the context in which the crime was committed.

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<sup>11</sup> *People v. Young*, 987 P.2d 889 (Colo.App. 1999).

In the case of *People v. Lehnert*<sup>12</sup> the court did not permit certain events as evidence under the doctrine of res gestae. The accused was charged with the murder of a police officer and the prosecution wanted to bring to light an event that had occurred a couple of years back. The accused had thrown a party to celebrate a police officer's death but the court did not permit to admit this fact as an evidence under res gestae because it was not related to the criminal act the accused was charged for.

In the case of *People v. Lovato*<sup>13</sup> The court applied the doctrine of res gestae and admitted a subsequent transaction, i.e., another robbery that occurred right after the first robbery after which the accused was apprehending due to getting caught in the traffic.

### **LIMITATIONS OF RES GESTAE**

The Doctrine of res gestae is highly ambiguous and the Indian Courts have been very careful in its application so as to make sure that it is not applied to an unlimited extent.

Perusing the US judgments, following are a few which showcase the limitations of this Doctrine:

*People v. Lucas*<sup>14</sup> In this case the defendant's criminal transaction that had occurred three days earlier was admitted into evidence under this Doctrine. The defendants had left their homes for a trip on foot and hitchhiking without any means to finance themselves. They initially sold a computer they stole and three days later following the same path murdered the victim. Here, an event which happened three days before the alleged crime is taken into evidence as a connection can be drawn and it is considered as material evidence for the purpose of the trial. *"They began to commit crimes in order to support themselves. It was in this context that the defendant's group encountered, robbed and killed the victim."*

*People v. St. James*<sup>15</sup> In this case the decision of sexual exploitation by the defendant of the victim was upheld against the claim of prejudicial evidence being admitted. Here, the fact that the defendant had a huge amount of money and the victim selling drugs on his behalf showed

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<sup>12</sup> *People v. Lehnert*, 131 P.3d 1104 (Colo.App. 2005)

<sup>13</sup> *People v. Lovato*, 179 P.3d 208 (Colo.App. 2007).

<sup>14</sup> *People v. Lucas*, 992 P.2d 619 (Colo.App. 1999)

<sup>15</sup> *People v. St. James*, 75 P.3d 1122 (Colo.App. 2002)

the power that the defendant exercised over the victim and the victim's desire to please the defendant was admitted into evidence under the doctrine of res gestae.

In India, this Doctrine was admitted to avoid rendering any injustice due to lack of evidence and each criminal case is judged on its merit. This Doctrine is only applied when it is proved that the transaction requested to be admitted is related to the criminal transaction, however it is truly based at the discretion of the judge which makes this doctrine vague and more complex.

### **CRITICISM OF THE PRINCIPLE OF RES GESTAE**

Since this principle is an exception to the general rule it has been widely criticized to help the accused break the law. When a lawyer is unable to bring out any other evidence or declarations, he turns to Section 6 of the Evidence Act. This is because Section 6 of the Evidence Act gives courts a discretionary power while admitting declarations and has a very wide and indefinite scope of interpretation. This wide scope and discretionary power can be seen by a lack of a definite test for testing the admissibility of a declaration under the principle of Res Gestae. The principle of Res Gestae would receive less criticism if it had a more definite test for relevant fact and a narrow description of transaction as then there would be a fixed boundary and the discretionary power of the court to unfairly interpret the principle would be curbed down.



## **BIBLIOGRAPHY**

### **Books:**

1. Batuk Lal- The Law of Evidence

### **Articles:**

1. Scope and ambit of Section 6 of Indian Evidence Act, 1872.
2. The Expanding Use of Res Gestae Doctrine, Article by H. Patrick Furman

### **Papers:**

1. 'Res Gestae- A Judicial Analysis' by Nidhi Garg, University Institute of Legal Studies, Chandigarh.

### **Case Laws:**

1. Thomson vs. Trevanion 1693 Skin 402
2. Aveson v. Lord Rep. Temp. Hardw. 267
3. R v. Bedingfield [1879]14 Cox C.C. 341
4. Ratten v.R [1972] AC 378
5. Ratten v Queen (1887) 18 QBD 537
6. Leeds v. Marine Ins. Co. 15 US, 380 (1817)
7. Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420 (1837)
8. Propellor Niagra v. Cordes, 62 U.S. 7, 14 (1858)
9. Norwith Transport Co. v. Flint, 80 U.S. 3,6 (1871)
10. Rea v. State of Missouri, 84 U.S. 532, 539 (1873)
11. People v. Young, 987 P.2d 889 (Colo.App. 1999)
12. People v. Lehnert, 131 P.3d 1104 (Colo.App. 2005)
13. People v. Lovato, 179 P.3d 208 (Colo.App. 2007).
14. People v. Lucas, 992 P.2d 619 (Colo.App. 1999)
15. People v. St.James, 75 P.3d 1122 (Colo.App. 2002).

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