

Res Gastae: An Analysis of Principles through the Bharatiya Sakshya Adhiniyam, 2023

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ABSTRACT

Res Gastae is an important principle of law of evidence. The English criminal jurisprudence it has a profusion of interpretations of this doctrine to include various forms of seemingly hearsay facts. The Indian law of evidence has not used this Latin term. However, some of the sections of Indian Evidence Act, 1872 are worded in the light of principles of res gastae and are interpreted in the light of original English principles in the phraseology of sections. The newly introduced Bharatiya Sakshya Adhiniyam, 2023, has not changed transposed the same language, verbatim, and hence retained the same principles in essence though at different sections. Applying doctrinal analysis of principles and sections, the author, works on the interpretations of the legislation through the light of different notions to unknot the meaning of Res Gastae, hence, contributes towards the finding of relevant facts in a case. The author concludes with the observation that, Res Gastae under the Indian jurisprudence of evidence, earlier under the Indian Evidence Act, 1872 and now under the BSA, 2023, are akin to the American and English jurisprudence developed for the incorporation of facts under this doctrine, and thereby making relevancy for the reception of facts by the courts of law.

Keywords: Transaction, Hearsay, Res Gastae, Relevancy.

INTRODUCTION

Law of Evidence is an important piece of legislation. It is used both for the civil as well as criminal side of laws. It helps both this primary branches of law. In civil realisation of right and criminal enforcement of punishments, the law of evidence helps. Not only the substantive legislations but also procedural laws like Code of Criminal procedure or Code of Civil procedure are assisted by the law of evidence. For a criminal trial or a civil proceeding, the law of evidence is sine qua non. The objective of the law of evidence is to assist the court in shifting the unnecessary chaffs of facts from the necessary grains of facts to save the time of court. For the prosecution or plaintiff to prove his case against the defendant or the state to prove a crime against the accused, the court considers what is necessary for the case. And what are necessary facts and what is necessary facts are determined by the court with the law of evidence. "All the cases that come before the court of law have some facts that have been made of certain acts and omissions. These acts and omissions connect with the nature of the transaction and its happenings, also tells the court about the quality of the happenings in the transaction. The evidence

is admitted accordingly”.¹ One of the confusing concepts of the law of evidence is principles of Res Gestae, vexing students, practising advocates and academicians equally, more particularly when applied in the facts of a case.

NOTION OF RES GESTAE

“Res Gestae the Latin expression means *things done*”.² “It is a term found in substantive and procedural American jurisprudence and English law. In American substantive law, it refers to the start-to-end period of an offence or felony. In American procedural law, it refers to a former exception to the hearsay rule for statements made spontaneously or as part of an act. The English and Canadian version of res gestae is similar, but is still recognized as a traditional exception to the hearsay rule. In certain felony murder statutes, *res gestae* is a term defining the overall start-to-end sequence of the underlying felony. Generally, a felony's res gestae is considered terminated when the suspect has achieved a position of relative safety from law enforcement”.³

The Indian principles, houses all these aspects in essence. Some sections, gives scope for the start-to-end aspect of the crime, as a form of causation i.e. cause and effect of an action or act or actus reus and some other section borrow the essence of spontaneity and, in order to under the nuances of the principles, along with other sections of the Act, the underlying concept of hearsay, if missed, it perplexes the scholar.

MEANING OF TRANSACTION

“Res gestae, includes facts which form part of same transaction. So, it is pertinent to examine what is a transaction, when does it start and when does it ends. If any fact fails to link itself with the main transaction, it fails to be a res gestae and hence inadmissible. 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”.⁴ The excited utterance by its nature is proximity in time to the event or phenomenon, and hence there is a natural flow from the event, therefore considered as a part of the things done. Section 6 of the Indian Evidence Act, 1872 which is now u/s 4 of the Bharatiya Sakshya Adhiniyam, 2023 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 or at different times and places”. It is popularly believed that, the principles of law embodied in S.6 is the doctrine of res gestae. Facts which may be proved, as part of res gestae, must be facts other than those in issue but must be connected with it. Though hearsay evidence is not admissible, but when it is res gestae it can be admissible in a court of law and may be reliable evidence. The rationale behind this is the spontaneity and immediacy of such statement that there is hardly any time for concoction.

“A transaction, as the term used in this section is defined by a single name, as a crime, a contract, a wrong or any other subject of enquiry which may be in issue. It includes both immediate cause and effect of an act or event, and also its collection of relevant circumstances, the other necessary antecedents of its occurrence, connected with it, at a reasonable distance of the time, place and cause and effect. A good working test of

deciding what transaction is; is proximity of time, unity or proximity of place, continuity of actions, and community of purpose. But the main test must be continuity of action and community of purpose. The condition for admissibility of a statement made by a person who was at the scene of occurrence is the proximity of time, the proximity of the police station and the continuity of action. The expression suggests not necessarily proximity of time so much as continuity of action and purpose"⁵.

"A transaction may constitute a single incident occupying a few moments or it may be spread over a variety of acts, declaration etc. All these constitute incidents, which though not strictly constituting a fact in issue, accompany and tend to explain or qualify the fact in issue. All these facts are relevant only when they are connected by proximity of time, unity or proximity of place, continuity of action and community of purpose or design"⁶.

"Evidence which is connected with the principal subject matters of the charges as parts of one and the same transaction is relevant. Two distinct offences may be so inseparable connected that the proof of one necessarily involves proving the other, and in such a case on a prosecution for one, evidence proving it cannot be excluded because it also proves the other. Evidence as to other offences by the accused would be relevant and admissible if there is a nexus between the offence charged and the other offences or the two acts form part of the same transaction so as to fall within S.6. An entirely separate and disconnected offence is not admissible merely because it occurred at or about the same time as the *res gestae* of the offence on Trial"⁷.

The body of the section incorporates the notion of causation i.e. cause and effect relationship between action and its effect, and series of acts that constitutes it, through the employment of the word *transaction*. A broader aspect of the causation principle is incorporated in Section 7 of the old Act of 1872 which is now u/s 5 of the Adhiniyam of 2023. This aspect of the section, is akin to the American substantive law, which refers to the start-to-end period of an offence or felony. While section 5 of the Old Act, now u/s 3 of the Adhiniyam of 2023, states to incorporate fact which are in issue, and hence, *actus reus* part of the offence or acts of the wrong or breach of duty, Section 6 or Section 4, incorporate those additional facts which are integral part of the same fact in issue and hence considered as a part of the same transaction. These additional facts which are integral part of the fact in issue or crime or wrong or breach of duty or *actus reus* in such a way that it is very difficult to separate these additional facts from the main fact or fact in issue. e.g. the utterance of the words by the accused along with the commission of the offence cannot easily be separated from the commission of the offence for offence really is understood through the canvas of the words uttered. These additional facts as integral part of the same transaction, can also be read akin the American substantive law, which refers to the start-to-end period of an offence or felony.

TEST OF SPONTANEITY

Going with the previous example of. the utterance of the words by the accused along with the commission of the offence where the words cannot easily be separated from the commission of the offence for offence and hence really is understood through the canvas of the words uttered; in order to determine the integration of words as a part of the same transaction, the touch stone of spontaneity is taken into account. Though

scientifically it is open to debate, the underlying notion test of spontaneity, found on the popular believe that, when a person says or utters something while under the impression of spontaneity or seized under the spell of spontaneity the possibility of concoction or distortion of the words uttered by the person is eliminated, and thereby it is truthful. "Res Gestae statements must be made spontaneously, without any premeditation or the opportunity for the person to reflect and concoct a false account. The spontaneity of the statement is crucial for its reliability"⁸. "It is necessary that such fact or statement must be a part of the same transaction. In other words, such a 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 for fabrication then the statement is not part of res gestae"⁹. "The person making the statement should not have had a reasonable opportunity to deliberate or fabricate the statement. If there was time for the person to think about what to say, the statement may not qualify as Res Gestae"¹⁰. "Res Gestae statements can be used to understand emotional distress or psychological impact in civil cases, particularly in cases involving emotional harm, harassment, or discrimination"¹¹. Therefore, whenever the judge is to discern the spontaneity, he has to satisfy himself that the dominant impression in the mind of the victim and that his or her utterance was default or instinctive response to the event, thereby the event speaks through the body and mind of the person. Here, in essence, it is not the victim who says or utters it, rather the event itself is bespoken through the body and mind of the victim using his or language and body as a canvass for the expression.

In order to capture the essence of spontaneity and vice-versa, the section 6 of the old Act, 1872 or section 4 of the new Adhiniyam, 2023, in its illustration, guides the judge, to take into account, the time and space or the place. The illustration states, "A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or *so shortly before or after it* as to form part of the transaction, is a relevant fact". This illustration if is read conjointly with later part of the body of the section i.e. "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.*", it guides that facts which are shortly before and after the principal facts, can be considered as spontaneous, and hence integral part of the fact in issue in the same transaction. It is to note that, facts which are *shortly before or after*, not simply facts that occurred *at the time* of fact in issue. Facts those occurred at the time is known as contemporaneous facts and quite obviously become the part of the Res Gastae, however, facts shortly before or after, can be considered as spontaneous, if the court thinks it is with same continuity of the cause or purpose which can be read from the circumstances and hence has given greater liberty to the court to read and incorporate the facts, as relevant facts with the essence of Res Gastae. "It has been said that each case involving the question of res gestae must be determined in the light of its own facts, because varying conditions alter the application of the rule so materially. When there are connecting circumstances, declarations even though made some time after the transaction, may form a part of the whole res gestae"¹². So, "any statement which was made after a long-time gap and which was not a reaction to the event is not admissible under sec.6 of the Evidence act. But courts have permitted certain statement which was spoken after a long-time gap from the occurrence of the transaction, because there was sufficient proof that the victim was still under the stress of excitement and so whatever was said was as a reaction to the

event. So, such statement must be contemporaneous with the acts which constitute the offence or at least immediately thereafter".¹³

PRINCIPLE OF HEARSAY

As stated earlier, the spontaneous statement is taken into account as the falsification of the same cannot be made since a person cannot contrive words to his own advantage with such short span of time, and hence the statement is considered truthful, this aspect is aligned with the grand objective of the principle of hearsay. Hearsay is a technical statement which means, a statement which is made by a person outside the court of law and hence he has not subjected himself to the oath before the court as well as his statement is not tested on the anvil of the cross-examination. Hearsay facts are not admissible in court of law. A statement can only be evidence when it is on oath and subject to cross-examination. And ideally, statements which are evidence are truthful in nature. And a statement which is not evidence is a hearsay statement. *Res Gestae* is an exception to this hearsay principle, and as noted above, the grand objective of the truthful account is achieved even if the statement is not on oath or subject to cross examination. This aspect of *Res Gestae vis-à-vis* hearsay cannot be gathered from the language of the legislation however, it can be understood from the scheme of the laws and principles of evidence itself.

"The hearsay rule should be limited in application to unsworn utterances containing narrative assertion, where it is sought to rely on the evidence testimonially. If an utterance of this kind is made then the evidence should generally be excluded unless it comes within an exception to the hearsay rule, since there is a more obvious possibility of error or concoction with reported assertion of this kind, particularly if they take place some-time after the event or events, in question or the declarant has some motive to give a distorted account"¹⁴. "Unsworn declaration, be they verbal utterances or assertive conduct, which arise naturally, routinely, or spontaneously and give the colour to, or explain, act event or transaction or related series of events or transactions should be treated as items of circumstantial evidence. These kinds of declarations, referred to by Wigmore as *verbal acts*' should not attract the hearsay"¹⁵.

In American jurisprudence, "in federal courts and in many state courts, specific rules on hearsay in evidentiary rules supplanted the common law hearsay rule making *res gestae* witness testimony inadmissible evidence. In many cases, the evidentiary rules substantially abrogated the common law rule and allowed *res gestae* witness testimony. For example, Federal Rule of Evidence Rule 803 specifically excludes certain *res gestae* witness testimony from hearsay, thereby making such evidence admissible. Rule 803(1) allows a) *statement describing or explaining an event or condition, made while or immediately after the declarant perceived it*, to be admissible; Rule 803(2) allows a) *statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused*, to be admissible; and Rule 803(3) allows a) *statement of the declarant's then-existing state of mind, such as motive, intent, or plan, or emotional, sensory, or physical condition, such as mental feeling, pain, or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will*¹⁶". Further, "under the Federal Rules of Evidence, *res gestae* may formerly have been, but is no longer, an exception to the rule against hearsay evidence based on the belief that, because certain

statements are made naturally, spontaneously, and without deliberation during the course of an event, they leave little room for misunderstanding/misinterpretation upon hearing by someone else (e.g. by the witness, who will later repeat the statement to the court) and thus the courts believe that such statements carry a high degree of credibility. Statements that could be admitted into evidence as *res gestae* fall into three headings, a) words or phrases that either form part of, or explain, a physical act, b) exclamations that are so spontaneous as to belie concoction, and c) statements that are evidence of someone's state of mind. The Present Sense Impression, Excited Utterance, and Then-Existing Mental, Emotional, or Physical Condition hearsay exceptions now cover many situations, under the federal rules of evidence that would formerly have been considered *res gestae*".¹⁷, much similar to the Indian jurisprudence. The principle is incorporated in various section of the Act or Adhiniyam and not just u/s 6 or u/s 4. "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"¹⁸. "In cases of rape or sexual offences, women are generally under trauma for having been victimized in a gruesome way, so they might take a day or two to get over the trauma and respond. These responses must be taken into the ambit of *res gestae* as well. If proven that the victim was in a state of shock, then such a statement can be admitted. It is difficult to find eyewitnesses for rape as these cases happen in isolation".¹⁹

CONCLUSION

After analysing the above various notions, such as hearsay, spontaneity, and transaction, underlying the principles of *Res Gestae*, under the Indian jurisprudence of evidence, earlier under the Indian Evidence Act, 1872 and now under the BSA, 2023, are akin to the American and English jurisprudence developed for the incorporation of facts under this doctrine, and thereby making relevancy for the reception of facts by the courts of law. However, the judiciary has much flexibility under these principal notions whether the facts are to be incorporated or not, though this discretion is not irrationally used as the principle is well defined.

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