REDVET - Revista electrónica de Veterinaria - ISSN 1695-7504
Vol 25, No. 1S (2024)
http://www.veterinaria.org
Article Received- Revised- Accepted-

Principle of Spontaneity and Res Gestae- The Nexus

Dr. Ramakrishna Das PR[1*]

[1]*Assistant Professor, University of Delhi, New Delhi, India, Email: ramakrishndas@gmail.com

Abstract
The rule of "res gestae" in common law has perplexed academics, students, and practitioners alike. The equivalent clause in the Bharatiya Sakshya Adhiniyam, 2023, has also caused some misunderstanding. Judges in India have often used the word "res gestae" to interpret section 4. The rationale of this research is to determine whether the rule of "res gestae" in common law is *parimateria* to the clause in the Bharatiya Sakshya Adhiniyam, 2023. The study has been essentially split into two sections. The first part examines the rule of "res gestae" and its evolution in common law, focusing on three key instances. The second portion of the study dives into the extent of Section 6 of the IEA or Section 4 of the BSA, analyzing the provision in light of numerous relevant decisions.

Key Words: spontaneity- proximity-course of transactions- immediately before and after

Introduction
"Res gestae" is a common law notion that applies 'as an exemption to the rule of hearsay evidence'. The phrase gesture has no suitable English equivalent. However, *Dr Philip*[1] interpreted it as "something deliberately undertaken or done". Many writers have given the term multiple meanings, including 'a transaction' and 'part of the subject'[2]. 'The concept holds that facts or situations that are so closely related to an event that they may be considered part of the same occurrence are admissible as evidence'. These facts or situations must be related to the time, location, and conditions of the major event[3]. Because the concept is an exception to the norm of hearsay, it has emerged in various circumstances where hearsay utterances were recorded after the primary transaction. To understand the scope of res gestae, the nature of the hearsay statements must be examined, i.e., whether the statement was so spontaneous that there was no possibility of distortion, whether the statement was made while performing an act, and whether the statement was made by a person experiencing any kind of physical or mental sensation.

Principle of spontaneity and contemporaries
The issue over the breadth of this theory may begin with CJ Cockburn's restricted view in *R v Bedingfield*[4] . He limited the scope of admissible statements, ruling that only statements made during the commission of an offence were admissible and that anything said after the commission could not be considered res gestae. Later, in *Ratten v R*[5], the Privy Council differed from Bedingfield in that Lord Wilberforce expanded the scope to the extent of spontaneity, which means that the principle not only covers statements made between the commission of the offence but also statements made in the close chain of transactions that were so spontaneous that there was no scope for concoction. In reference to Bedingfield's observation, he observed that, *"though in a historical sense the emergence of the victim could be described as a different 'res' from the cutting of the throat, the're could hardly be a case where the words uttered carried more clearly the mark of spontaneity and intense involvement"*[6].
In the case of *Kailash Chandrakar and another v. State of Madhya Pradesh*[7], the rationale behind the rule of resgestae is to establish a specific declaration as part of the same transaction or incident, or contemporaneous to the incident, to ensure that the speaker remains under the stress of excitement regarding the transaction, which are facts to be considered. The perpetrator had murdered his wife and daughter.
In another case, *Gentela Vijayavardhan Rao and Ors vs. State of Andhra Pradesh*[8], the father of the accused testified that he called the accused and said throughout the conversation that his son had murdered the deceased. The issue presented

[1] Dr. Philip Pattenden, Director of Studies in Classic, Peterhouse, Cambridge, Also a well-known jurist .
[2] Morgan EM "Res Gestae" [1937] 12 Wash. L. Rev. & St. B. J. 91 Available on <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/washlr12&section=21>
[3] "Bosworth B, *Augustus, the "res gestae" and Hellenistic Theories of Apotheosis* (The Journal of Roman Studies 89 1999) <https://www.cambridge.org/core/journals/journal-of-roman-studies/article/augustus-the-res-gestae-and-hellenistic-theories-of-apotheosis/363FDF9513CDB40EB5E96B96968A8710"
[4] (1879) 14 Cox CC 341.
[5] [1972] AC 378 PC.
[6]Barnes AS, "The Doctrine of Res Gestae"
Available on "https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1215&context=historical_theses"
[7] 2014 (135) AIC 553
[8] MANU/SC/0719/1996

to the court was whether the statement made by the accused's father may be considered under the law of res gestae. The timing of the phone conversation, during which the same information was sent, and whether it occurred concurrently with the commission of the crime or shortly thereafter could not be established; hence, this evidence was deemed inadmissible under the aforementioned criterion.
In *Ratten case*, the Privy Council also addressed the relevant issue of the individuals making the assertions. The court held that a spontaneous remark made by a victim or spectator during an incident or transaction was admissible under the theory of 'res gestae'. While this judgment solely addressed the victim's or bystander's testimony, the *R v Glove*[9] case went a step further, holding that a statement made by the accused was likewise protected by "res gestae" and admissible in evidence[10].
In terms of spontaneity, *R v Carnall*[11] is the most recent of the examined examples in which the victim, who had been stabbed and was bleeding profusely, delivered a statement hours after the occurrence. The Court determined that the victim's cognition was so influenced by the occurrence that he could not mislead the statement and so declared the statement acceptable.
The principle can be understood using the *Howe v Malkin*[12] case, in which the court stated that a declaration could not be given in evidence unless it was made while performing an act and the two events were so closely related that it formed part of a transaction, i.e., res gestae[13]. Furthermore, it was recognized that the maker's act must support the statement, and the court ruled that the evidence was not admissible since one person delivered the statement and the conduct was performed by another. The idea received widespread acceptance in the instance of *R v McCay,*[14], in which a witness stated during an identification parade that the accused was standing on a certain number. During the trial, the witness forgot the particular number mentioned in the statement. The court noticed that the witness's testimony was followed by his act of identifying the suspect, which was coupled so that it may be covered by res gestae. As a result, the court authorized the police officer to say the number that the witness had stated[15].

Later, in *R v Callender,*[10], the court determined that no hearsay remark could be deemed acceptable on this approach. According to the court, the guiding concept of "res gestae" is that the statement should be given in conditions that exclude the potential of concoction and distortion. The court held that the spontaneous aspect alone is insufficient; it must be shown that at the moment of declaration, the individual was impacted by the conduct and could not manufacture or alter the statement.

A person's testimony about his physical or mental health are admissible only to the amount necessary to prove his biological condition. In general, these remarks are referred to as "contemporaneous physical sensation statements," in which a person expresses his feelings on the sensations he has experienced. These remarks are protected by "res gestae" since a sick person's statement is led by his senses and should be used to demonstrate his condition of health. In the early case of '*Aveson v Lord Kinnaird'*,[12] 12, the insurers submitted the dead's remarks regarding his bad health to establish that the deceased was unwell at the time he purchased the insurance policy. The court ruled that comments used to prove the physical condition of the dead are protected by the "res gestae" concept. The scope of "res gestae" in such expressions does not include the source of the current physiological experience. As a result, a woman's statement identifying the individual responsible for her injuries was not found to be acceptable under the "res gestae" concept. A similar rationale was employed in *R v Thomson*, in which a person was accused of using an instrument on a lady to induce a miscarriage. The defence provided statements demonstrating the victim's desire to operate herself. The court correctly dismissed the allegation since the statements are admissible only to prove the medical condition and nothing more.
After analysing the aforementioned aspects of the doctrine of res gestae, the writer agrees with the courts that the test of admissibility requires a statement to be made in an event or transaction where the scope of concoction or distortion is not present, and the test is clearly not limited to the spontaneity of the statement. To this end, the theory is appropriately distinguished from hearsay evidence[16].

[9] [1991] Crim LR 48.
[10] The court endorsed the Rattens ratio. This is the transition time of concept of "res gestae" in England.
[11] [1995] Crim LR 944, CA.
[12] (1878) 40 LT 196.
[13] Blair C, "Let's Say Good-Bye to Res Gestae" [1997] 33 Tulsa L.J. 349 available on " <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tlj33&section=26"
[14] [1990] 1 WLR 645, CA. [10] [1998]
Crim LR 337.
[15] Maria Patricia DV. Santos & Enrico C. Caldona, 'Beyond the Record: The Admissibility of Dying Declarations and the First Kind of "res gestae" Made through Electronic Means' (2023) 96 Phil LJ 475

[16] Bohlen FH, "The Admissibility of Declarations as Part of the Res Gesta," vols 51–51 (The University of Pennsylvania Law Review 1903) journal-article <https://www.jstor.org/stable/3306301>

REDVET - Revista electrónica de Veterinaria - ISSN 1695-7504
Vol 25, No. 1S (2024)
http://www.veterinaria.org
Article Received- Revised- Accepted-

"Res gestae" Under English Law

The case of *Thompson v. Trevanion*[17] is reported as such "Holt C.J. ruled upon evidence, that a mayhem may be given in evidence in an action of trespass of assault, battery and wounding, as an evidence of wounding. And in this case, he also allowed that what the wife said immediately upon the hurt received, and before she has time to devise or contrive anything for her own advantage, might be given in evidence."

Scholars have observed that the idea of "res gestae" originated with this case. The rule of "res gestae" is very concisely captured in the case report. In the few lines, the report gives us, it is evident that the wife's statement was included as evidence because she was pressed for time and could not have made up anything that would have been detrimental to her personally.

Even though this judgment establishes the foundation for the "res gestae" rule, subsequent developments in common law have been turbulent.

In another case, *R v. Bedingfield*[18], the victim immediately after the injury said something to her assistant. The question was whether this statement to her assistant was admissible or not. Cockburn C.J. refused to admit the evidence, either as part of the *"res gestae"* or as a dying declaration. To that Cockburn C.J. answered in the negative as "*it was not part of anything done, or something said while something was being done, but something said after something done*. *It was not as if, while being in the room and while the act was being done, she had said something which was heard.*" In this case, the statement made by the victim was made after the act was done and was thus found to be inadmissible.

This case was frequently criticized for the fact that Cockburn C.J. did not acknowledge the declaration as part of the res gestae. The Times published Mr. J Pitt Taylor's[19] review of the ruling in an editorial article immediately following the trial. Taylor acknowledged that the declaration was impermissible as a dying declaration; however, he adamantly maintained that it should be admissible as part of the res gestae[20]. He employed Trevanion and *R v. Foster*[21] to substantiate this perspective. Thayer[22], in his essential statement on the *Bedingfield case*[23], takes into consideration the discussion that has arisen as a result of the case between Taylor and the Lord Chief Justice. The author of the piece, Thayer, takes Taylor's perspective. In his work, Thayer comes to the conclusion that Bedingfield is incorrect in his application of the concept of res gestae and that Taylor's critique is supported by reasonable evidence. In an ideal scenario, the statement in the Bedingfield case might be deemed a part of the "res gestae" if the prosecution is able to demonstrate that the victim was not in a state of mind that would allow her to falsify whatever declaration she made. It is also possible to explore the possibility that the victim, after slashing her neck, was the one who staged the whole occurrence and, as a result, constructed the incident[24]. On the other hand, it is a very improbable conception. The need that evidence be beyond reasonable doubt was the most significant obstacle that stood in the way of the statement becoming acceptable as part of the "res gestae" system doubt[25]. Bedingfield's judgment continued to be a source of contention for many years. In the academic community, it provoked a controversy concerning the rule of res gestae. On the other hand, later decisions made under common law led to the conclusion that the Bedingfield ruling was *per incuriam*.

What constitutes a portion of "res gestae" was a topic of much study and dispute after the Bedingfield case. Bedingfield received a lot of criticism for dismissing the argument as res gestae. Phipson points out that the *Ratten V. Queen*[26] explains the common law principle of res gestae.[27] In Rattens case, the deceased just before her death telephoned the police and said " get me the police". Whether this constitute "res gestae" was the issue. The evidence was deemed acceptable by the

---

[17] 90 Eng. Rep. 1057 [hereinafter *Trevanion*].

[18] (1879) 14 Cox CC 341

[19] Scholar and author of "*A Treatise on the Law of Evidence as administered in England and Ireland"*.

[20] "*See* James B. Thayer, *Bedingfield's Case - Declarations as a Part of the Res Gesta - Part I*, 14 Am. L. Rev. 817, 838 (1880)".

[21] (1834) 6 C. & P. 325.

[22] 'James Bradley Thayer was a noted American legal writer. *See* James Bradley Thayer, 26 BRITANNICA ENCYLCOPEDIA (1911)
Available at "https://en.wikisource.org/wiki/1911_Encyclop%C3%A6dia_Britannica/Thayer,_James_Bradley [last accessed 19th October, 2016]".

[23] 'James B. Thayer, *Bedingfield's Case - Declarations as a Part of the Res Gesta - Part I*, 14 Am. L. Rev. 817 (1880)'.

[24] This was alleged by the defendants.

[25] "David Wilde, *Hearsay in Criminal Cases: "res gestae" and Dying Declarations: R v. Bedingfield Revisited*, 4 Int'l J. Evidence & Proof 107, 118 (2000)". It was argued by Cockburn C.J later that there was reasonable doubt in favour of Bedingfield in this case. Two witnesses were willing to testify that Rudd was not in a position to speak following the cut to her throat. Further, the fact that Rudd allegedly ran outside after cutting her own throat (as alleged by the defendant) contradicts the fact that she would've been too weak due to the nature of the injury (as to the way it was inflicted, i.e., only partially).

[26] [1972] A.C. 378.

[27] Phipson On Evidence 880 (¶31-05) (Hodge M. Malek, Et. Al ed., 2005)

court since it was not hearsay. Lord Wilberforce established the following criteria as a standard for accepting hearsay testimony as "res gestae":
"*...hearsay evidence may be admitted if the statement providing it is made in such conditions (always being those of approximate but not exact contemporaneity) 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*"[28]
Ratten case also clearly demonstrates that Bedingfield judgemnt was a erroneous one[29]. Even while Bedingfield may be defended on the facts, Ratten obviously makes victims statements admissible. Ratten was subsequently confirmed by the House of Lords in R. v, Andrews[30]. The court in Andrewsalso said that under current legal standards, the statement in Bedingfield would have been acceptable.

"Res gestae" under Indian Law
Section 4 of BSA[31] delas with the doctrine of 'res gestae'. According to it "any acts, declarations and incidents establishing and accompanying the fact in issue are admissible for or against either party". 'Even the relevant facts forming part of the same transaction are facts in issue if "res gestae" is applied'. To be included in Res gestae, a statement must be made relatively soon after the act is performed. Admission of the statement, if made under Section 4, should be contemporaneous with the act or shortly after it, and there should be no substantial time lapse that suggests or breeds fabrication and distortion of the statement or reduces the statement to a simple narration of past events. The statement made should be unpremeditated and spontaneous, related to the major fact in issue, and the conduct must constitute one transaction.
'The spontaneity and immediacy of the statement or fact in connection to the fact that is being contested is the source of the idea that some facts might be considered admissible under Section 4. To make a transaction permissible under doctrine, four factors must be considered: proximity of time, proximity of unity of location, continuity of action, and community of intention'. Recently, in apex court in '*Balu Sudam Khalde And Another Versus The State Of Maharashtra* '[32] held that "The rule embodied in Section 6 is usually known as the rule of res gestae. It means that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form a particular statement as part of the same transaction, utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence"[33].
The Supreme Court has given many interpretations to the 'doctrine res gestae'. In '*Sudhakar v. State of UP* '[34], The court decided whether a statement made by the dead to witnesses is admissible on the basis of res gestae. In order to determine whether or not evidence may be included, the Supreme Court determined whether the deceased's statement to witnesses was part of the same transaction. The Supreme Court correctly distinguishes between "res gestae" in the Indian Evidence Act and the English Evidence Act. According to the English Act, a statement may only be part of a transaction if it was made during the offence and not subsequently. However, 'Section 6 of the Indian Act' explicitly states that whatever was spoken during the offence or immediately before and after the offence is part of the same transaction. In this instance, the Supreme Court ruled that testimony from witnesses is acceptable since the deceased informed the witness immediately after being shot that it was the accused who shot him. Therefore, it is part of the same transaction and thus admissible. This view was again reiterated by the Supreme court in *Rattan Singh vs The State Of Himachal Pradesh*[35].
In Arvind Kumar v. State of Delhi[36], the Supreme Court distinguished between confession statement and res gestae; it was held that "Section 6 is applicable to facts that are not in issue. Such facts become relevant only when the same satisfies the tests laid down in Section 6. Hence, the statement of an accused to which Section 6 is applicable cannot be treated as a confession of guilt. The statement becomes relevant, which can be read in evidence as it shows the conduct of the appellant immediately after the incident" [37].
In another case, *Bachhu vs. State of U.P*[38], The victim informed her mother that the accused had assaulted her. However, during the trial, the accused said that evidence of the mother and other evidence cannot be considered as a piece of reliable evidence. However, the respondent maintained that the victim's remark to the mother may be regarded as "res gestae" under section 6. In this case, the Supreme Court ruled that Section 6 of the Indian Evidence Act plainly states that whatever was said during the offence or soon before and after the offence is part of the same transaction. As a result, the victim's

[28] Ratten.
[29] Supra at 17
[30] [1987] A.C. 281. 'The House of Lords decided that a man's statement to the police after an assault, in which he identified his assailants, was admissible as part of the res gestae'.
[31] 'Section 6 under the India Evidence Act'.
[32] 2023 LiveLaw (SC) 279
[33] Ibid, para 49.
[34] [1999] S.C.C. 507 (S.C.).
[35] [1997] A.I.R 768 (S.C).
[36] 2023 LiveLaw (SC) 539 : 2023 INSC 622.
[37] Ibid, Para 18
[38] 2012] ACR 2117(U.P.).

statement immediately after the attack might be regarded as res gestae, and hence, it is admissible under section 6 of the Indian Evidence Act in the instant case.

Suppose a statement was made by the victim to the doctor immediately after the incident constituting "res gestae" was the question raised in ***Gentile Vijayavardhan Rao and another vs. State of Andhra Pradesh***[39]**.** The Supreme Court held that under section 6, whatever was spoken during the offence or immediately before and shortly after the offence forms a part of the same transaction and, therefore, constitutes res gestae. However, in this case, the witnesses' statements were recorded in a hospital, so a significant amount of time has passed between the incident and the recording, and it was not recorded during the offence or just before and after the offence, so it does not form part of res gestae.

Exception to hearsay[40]: In the case of Sukhar v. State of Uttar Pradesh, the question of whether or not the witness was able to provide evidence on what the victim had related to him was questioned. According to the decision of the court, Section 6 may be seen as an exception to the general rule that hearsay is not permitted to be used as evidence. On the other hand, it is necessary to demonstrate that the remark was made roughly at the same time as the incident that is being questioned. To ensure that it is included into the same transaction, there should be no window of opportunity for fabrication. This circumstance allows for the testimony of the witness to be considered admissible. When the witnesses arrived at the location of the occurrence, they found the body of the dead person. Additionally, they found a victim who was unconscious and had been injured.

Conclusion

Section 6 of the Indian Evidence Act[41] and the common law norm of "res gestae" are not wholly equivalent, according to Bedingfield's view. However, the *Ratten* decision reflects the current state of the law. *Ratten* falls significantly closer to the scope of Section 6. However, the rule of spontaneity is not as clear as the scope of Section 6 as interpreted by Indian courts.

That is, Wigmore was more critical of using the term Res Gestae. He said that it is "not only entirely useless but even positively harmful". 'Since every rule of evidence to which it has ever been applied is a portion of another well-established principle and can be explained in terms of that principle, the statement is meaningless'. The expression causes damage because "by its ambiguity, it invites the confusion of one rule with another and thus creates uncertainty as to the limitations of both." Wigmore determined that the "Res Gestae" should never be discussed[42].

However, Indian case laws have been consistent in their view to section 6. However, in Indian instances, the phrase "res gestae" has been used to interpret section 6, which violates Stephen's[43] intention to exclude the term "res gestae" from the Act in order to prevent misunderstanding. With this, we may infer that Ratten has brought the Common Law Rule back on track and considerably closer to 'Section 6 of the Indian Evidence Act'. In addition, the Indian understanding of whatever said or done immediately before or after the occurrence should be included into the English Evidence Act to make the idea more comprehensive and significant.

Bibliography

1. Morgan EM "Res Gestae" [1937] 12 Wash. L. Rev. & St. B. J. 91
2. Bosworth B, *Augustus, the "res gestae" and Hellenistic Theories of Apotheosis* (The Journal of Roman Studies 89 1999)
3. Blair C, "Let's Say Good-Bye to Res Gestae" [1997] 33 Tulsa L.J. 349
4. Maria Patricia DV. Santos & Enrico C. Caldona, 'Beyond the Record: The Admissibility of Dying Declarations and the First Kind of "res gestae" Made through Electronic Means' (2023) 96 Phil LJ 475
5. Bohlen FH, "The Admissibility of Declarations as Part of the Res Gesta," vols 51–51
6. James B. Thayer, *Bedingfield's Case - Declarations as a Part of the Res Gesta - Part I*, 14 Am. L. Rev. 817, 838 (1880)".
7. "David Wilde, *Hearsay in Criminal Cases: "res gestae" and Dying Declarations: R v. Bedingfield Revisited*, 4 Int'l J. Evidence & Proof 107, 118 (2000)".

[39] 1996 AIR 2791(S.C.).

[40] Morgan EM "Res Gestae" [1937] 12 Wash. L. Rev. & St. B. J. 91 Available on https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/washlr12&section=21'

[41] Section 4 of BSA

[42] "Blair C, "Let's Say Good-Bye to Res Gestae" [1997] 33 Tulsa L.J. 349 Available on https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tlj33&section=26"

[43] The author of the Indian Evidence Act. Sir James Stephen