

Understanding the Principles of Res Gestae under the Bharatiya Sakshya Adhiniyam, 2023: A Journey through Judicial Precedents

Author¹

¹Dr. Sidhartha Sekhar Dash, Associate Professor, School of Law, KIIT Deemed to be University, Patia, Bhubaneswar, Odisha, 751024. sidharthadash.1981@gmail.com

ABSTRACT

It is difficult to capture the spirit of the res gestae in statute, especially from one jurisdiction to another. None of the statutory provisions (in English, American, Indian) have been able to document it fully so as to enable seamless application by trial courts. The doctrine created and developed dynamically, as it is required to meet the infinite spectrum of factual situations, thus it depends on the judicial interpretation and realist jurisprudence for its clarity. If it's a soft concept that's codified by the legislature, then there's always ambiguity. The doctrine is based on the realist legal theory and the interpretation of the judges in case-by-cases basis rather than in rigid legislative formula. Hence, taking a doctrinal approach, the article examines the judicial precedents to formulate the norm of res gestae and discuss its application in the light of the Bharatiya Sakshya Adhiniyam, 2023.

The keywords are: Transaction, Hearsay, Res Gestae, Relevancy.

INTRODUCTION

The doctrine of res gestae is one of the most complex and controversially applied in law of evidence law and considered to be one of the most challenging concepts in the law of evidence for scholars, advocates and students. The rule, which is codified in Section 6 of the Indian Evidence Act, 1872 (now re-stated in Section 4 of the Bharatiya Sakshya Adhiniyam, 2023), makes relevant any facts so closely related to a fact in issue as to form part of the same transaction, irrespective of the temporal and/or spatial differences. The res gestae principle requires the contemporaneous nature of the statement in order to protect against premeditation, but courts often find statements made after a lapse of time acceptable if the declarant still had the *overwhelming excitement of the event*. This judicial flexibility gives rise to discussions about the strict limits of the doctrine. Using a doctrinal approach, this paper examines the normative role of res gestae as it is found in case law to gain a better understanding of the scope of its operation within the BSA 2023.

The research problem is that there is confusion about the normative zone and application of res gestae under procedural law.

Research Question: What is the status of res gestae in Section 4 of Bharatiya Sakshya Adhiniyam, 2023?

Methodology: The author here adopts the doctrinal methodology to solve the problem of this research through an analysis of the statutes, case laws and scholarly commentaries.

NOTION OF RES GESTAE

The doctrine of res gestae has been long and deeply embedded in the English/American doctrine of evidence and remains a critical but controversial topic. Although it does not appear in Indian statutes, the fundamental rule of Indian Evidence Act, 1872 (now the Bharatiya Sakshya Adhiniyam, 2023) is one of its first rules, which appears in Section 6 of the Act. Based on the English and American cases, Indian courts have extended the principle to other statutory contexts, applying the logic of it. The key to admissibility is the strict spontaneity of the statement and that the statement be "uttered in the absence of time for reflection or fabrication. Res gestae is a poorly-timed and inept expression, according to critics in the academic world, but evidence scholars keep adding new categories to the res gestae—the excited utterances, contemporaneous statements of physical or mental condition, verbal components of acts, etc.

JUDICIAL INTERPRETATION

Thompson v. Trevanion¹ : This is one of the oldest case laws laying the foundation of the principles of Res Gestae. This is a case of battery and assault on a woman, Tre. The civil action was brought by the husband and wife for the tortious liability. Immediately after sustaining the injury, under the influence of the shock of the injury, the wife informed an observer of how she suffered the injury. During the trial the defendant disputed the reception of the statement as evidence on the ground that, the statement of the victim through the mouth of the third party is hear-say in nature and hence not admissible. Third party is relaying the content of what he heard from the victim. But the Court found that this is also an admissible statement because the statement was made immediately after being hurt and it was a spontaneous statement, so there is no scope of fabrication and concoction, and it's not possible for the victim to pretend this would be something in her favour with that short time span. Thus, it is admissible when otherwise prima facie it is hearsay.

Ambrose v. Clendon²: This case involved an act of bankruptcy, and the plaintiff wanted to present out-of-court statements made by a party at the same time the act of bankruptcy was committed. The factual issue concerned whether the debtor's accompanying statements were admissible to establish the debtor's intent and timing of the act of bankruptcy. The legal issue which this case tries to address is, whether out-of-court declarations made contemporaneously with an act are admissible under the hearsay exception as part of the same transaction (res gestae). The Court of King's Bench found that the declarations were acceptable since they numbered with and explained the principal transaction. Lord Hardwicke C.J., reasoned that statements made at the same time as an act are a verbal part of the act, and assist in clarifying the real

¹ 1693 Skin L.R. 402.

² 1736) 93 ER 1022; Ca. t. Hard. 267

nature of the act. This has happened at the same time as the act, and the possibility of motivated lying was limited, so the statements of the claims could be excluded from the hearsay rule. Ambrosius significance in Res Gestae Principle: It is one of common law's two major precedents that lays down the Res Gestae principle. It implicitly stated that the rule in evidence that the declaration has to be strictly contemporaneous or concomitant with the act it explains, a rule which is later codified in Section 6 of the Indian Evidence Act, 1872 and now in Section 4 of the Bharatiya Sakshya Adhiniyam, 2023.

Rosenzweig v. Wells³: This case considered whether the conductor's alleged statement be admitted as a spontaneous declaration (an exception to the hearsay rule)? Plaintiff alleged that she was thrown out of a car after being jerked sideways when the doors were thrown open too soon by the conductor in this action against the street railway company's receiver. Mrs. McGowan, who was a witness, said she went straight to the scene and heard the conductor say he opened the door too soon. On the other hand, the defense offered evidence that Mrs. McGowan was not on the scene until after plaintiff had been extricated to the sidewalk, and that the conductor never made the remark at all. Timing was the issue of admissibility. Mrs. McGowan testified that the statement had taken place soon after the event and was therefore made spontaneously, which was the hearsay exception she puts forward. The defense's theory had gone so far that there was enough time to overcome spontaneity. The Supreme Court found this evidence question when it held that the balance of evidentiary proof could be weighed against the proponent's evidence (Mrs. McGowan) and not the defense evidence (which were conflicting). Thus, whether the declaration was made, and if so, what weight was given to it were questions for the jury.

Aveson v. Lord Kinnaird⁴: Plaintiff brings an action for recovery of a life insurance policy issued on the life of his wife. The insurance company denied payment, citing the warranty of good health that was included in the policy that the wife was in good health at the time of the insurance, which was not the case and caused the insurance to be void. The defense presented evidence from the wife at the time she was bedridden shortly after being issued her health certificate, stating that she was ill. At the time of the medical exam, she had admitted that she was feeling poorly, and had feared she would not survive. Plaintiff objected to this evidence as hearsay. In this case, the question that is raised under the law is whether the out of court statements made by the person concerning his condition, his physical feelings are admissible between him and the court under the doctrine of res gestae. The Court of King's Bench decided that the declarations were admissible. As to a person's physical and mental conditions at a given time, Lord Ellenborough C.J. said that all contemporaneous statements of the feelings and state of health are original evidence of all such particular conditions. It is a fundamental principle in the res gestae that if the human speaker of a word, whether in a statement, an expression or a feeling, naturally expresses his or her condition of being ill, or in pain, or a certain sensation, then the statement, the expression, or feeling itself, is generally the best evidence of his or her actual condition; these are the natural expressions of the human speaker, and are thus kept in the res gestae. A landmark case in common law, this case broadened the scope of the res gestae exception to statements

³ Mo. 1925) 273 S. W. 1071

⁴ (1805) 6 East 188, 102 ER 1258

of physical sensation, mental states and bodily conditions made at the time of the event. It determined that statements of a person's condition of health at or around a time relevant to a transaction are made as part of the same transaction. This judicial elaboration has also led to the formulation of Section 14, Indian Evidence Act (IEEA), 1872 and the principles of *res gestae* have been adopted in Section 4 of Bharatiya Sakshya Adhiniyam (BSA), 2023.

In R v Bedingfield⁵, the trial of Henry Bedingfield for the killing of his ex-partner Eliza Rudd, following a domestic feud, is set for today. Bedingfield went to Rudd's room on the morning of the incident. Rudd could be heard yelling 'Oh, aunt, look at what Bedingfield did to me!', minutes later, when she came out of the room, bleeding from a slit throat, to find the man dead. The prosecution had wanted to present her statement at trial to substantiate that Bedingfield was the attacker. The question on the law in this case was whether a statement which the victim made immediately after escaping from an attack but shortly before death could be admitted under the doctrine of "*res gestae*" as part of the same transaction. Cockburn, C.J., who presided over the trial stated that the statement is inadmissible as evidence, for the reasons he gave the statement is inadmissible.

If only the 'contemporaneity' requirement is considered, then Cockburn C.J. concluded that such a statement must be made at the time of the act of the event rather than afterwards. As the Court found, the words were a description of a past event, and the throat-slashing act occurred prior to Rudd's departure from the room, so that was when the crime was complete and not when he made the statement, creating an opportunity for him to fabricate the statement. The court also did not accept the statement as a dying declaration, given that there was no evidence Rudd knew that she would die while making the statement. This case was famed as the main precedent for the excessively stringent interpretation of the *res gestae* doctrine. The move drew broad academic ire for its emphasis on the strict historicity over true spontaneity. It was officially overturned by the Privy Council in *Ratten v R* (1972) AC 378 which substituted the modern test of spontaneity and lack of opportunity for concoction or fabrication, for the strict contemporaneity rule.

Ratten v R⁶: Appellant, Leith McDonald Ratten, was charged with the murder of his wife who died from a gunshot wound. The appellant stated that he had accident while cleaning the gun for which he was granted the discharge. Important prosecution evidence was obtained from a telephonist who called in at 1:15 p.m., some minutes before it was estimated that the woman had died, a woman of hysterical nature who said to the telephonist, Get me the police please! then gave her address before hanging up. The defense objected to the wife's statement on the phone being hearsay. The question in this case was, whether the call was a hearsay statement or a statement that was admissible under the exception to the hearsay rule known as the doctrine of *res gestae*, and whether the statement was made in a manner sufficiently close to the event of which it is an exception to the hearsay rule. The appeal was dismissed by the Judicial Committee of the Privy Council and the conviction was upheld, finding that evidence was admissible. The man who is in charge, Lord Wilberforce, is saying that words

⁵ [1879] 14 Cox CC 341

⁶ 1972] AC 378

spoken are facts. The evidence of the telephonist showing how the caller used the phone and their emotional state was evidence to prove fear and distress and not words asserted.

The Privy Council in this case reversed the rule of the overly mechanical rule in *R v Bedingfield* (1879), which decided that the timing was one crucial element. The standard for "admissibility" under *res gestae* is that the statement was made in response to a "compelling pressure from the occasion that causes the fabrication or concoction of such a statement to be safely discounted. This is the real "spontaneity principle. Ratten's approach is to break the hyper-technical approach called out in *R v Bedingfield*, moving away from precise temporal alignment towards spontaneity and the lack of opportunity to concoct. It gave rise to the modern hearsay exception idea of common law jurisdictions, emphasizing on context and the mental state of the declarant over clock-time. In Indian law, this case has been referred to constantly in Indian evidence matters in its interpretation of the concept of same transaction. It provides for flexible admission of excited utterances pursuant to the provisions of Section 6 of the Indian Evidence Act, 1872 and Section 4 of the Bharatiya Sakshya Adhiniyam, 2023.

In **Sawyer Das v. State of Bihar**⁷, the accused, his father and accused's step-mother were charged with the murder committed in the accused's house. On the last day of her life, children who stood outside the house heard her yelling for help, yelling "Save me, my father-in-law and mother-in-law are killing me!" before the victim's body was burned to death. The court considered the question of law, whether a spontaneous and simultaneous call for help heard by third parties when an attack occurs is admissible, as part of the *res gestae*. The Supreme Court ruled in favour of admissibility of the cry of help under Section 6 of the Indian Evidence Act, 1872. The Court noted that the victim's scream was simultaneous with the act of violence which was still ongoing, that is, at the time of the crime. The statement was not written as a history of the events but simply a spontaneous expression of the act of transacting on-going. Thus, if there is any intervening moment in which there is time for deliberate reflection or for tutoring, any such pause will break the continuity of the transaction, and cause the statement to be introduced as inadmissible hearsay.

Gentela Vijayavardhan Rao & Anr. v. State of A⁸. In this case, the appellants set fire to an Andhra Pradesh State Road Transport Corporation (APSRTC) bus to loot the passengers and 23 passengers lost their lives while a few of the passengers sustained serious burn injuries. A Judicial Magistrate took statements from the injured victims several hours after the occurrence from the hospital in the investigation. The prosecution contended that the same transaction contemplated by Section 6 of the Indian Evidence Act, 1872, was that behind the above-mentioned statements. The court attempts to resolve this question whether the evidence recorded by Magistrate after a lapse of a considerable matter of time after the incident could be admissible as '*res gestae*' under Section 6 of the Indian Evidence Act, 1872. On the other hand, the Supreme Court of India ruled that the recorded statements were not admissible in evidence under the doctrine of *res gestae* but were admissible under other provisions, for instance, a dying declaration. Reaffirming the factors of contemporaneity and

⁷ AIR 1974 SC 778

⁸ AIR 1996 SC 2791

spontaneity, Justice K.T. Thomas clearly laid down the principle that the principle of *res gestae* is based on the element of spontaneity. The statement has to be made at the time of the act, or shortly after, in the immediate wake of the occurrence. The Court also noted that there had been an appreciable amount of time between the time a bus was burned and statements were recorded at the hospital. This break was granted to provide time for reflection, deliberation or outside influences to take effect to eliminate the spontaneity necessary to avoid the hearsay rule. *Gentela Vijayavardhan Rao* case is a leading in India on the strict boundaries of *res gestae*. It creates the rule that statements made at a time when the parties were not engaged in any formal proceedings cannot be in the same transaction doctrine. The Supreme Court made the distinction between narrative and spontaneous exclamation: a narration of past events, however accurate, is fundamentally different from a spontaneous reaction, directly provoked by the event itself. The judgment in this case continues to stand as a precedent for discrediting any post-incident statements that did not occur during the event. The conclusions set out in this case continue to be the benchmark to invalidate any post-incident statements, not given during the incident, under Section 4 of the *Bharatiya Sakshya Adhiniyam*, 2023.

In **Sukhar v. State of U.P.**⁹ the facts of the case are as follows: The accused shot at the victim named "Nakkhed" and severely injured him. A witness (PW-2) heard the gunshot and immediately rushed to the place where he spotted Nakkhed lying down, blood trickling from his blood vessels on the ground. Nakkhed replied to the witness almost instantly that Sukhar, who was an accused, had shot him. The defense argued that the victim's statement to the witness was inadmissible hearsay. The legal issue was, is a statement by the victim to a bystander who arrived at the scene right after hearing a gunshot admissible under *res gestae*? The Supreme Court admitted the statement under Section 6, Indian Evidence Act, 1872. The Court highlighted the need for the statement to be made at a time so close to the occurrence that there was no opportunity for fabrication or concoction. The witness came to the place at once after hearing the gun shot, and the witness did not say a word before and after the victim spoke, so the declaration was the part of the main transaction.

A.P. vs. Panna Satyanarayana¹⁰. In this case, the accused Panna Satyanarayana was accused of murdering his wife and young child by setting them ablaze. After the incident, the victim's father and mother each gave evidence that shortly after the incident they had been told by other witnesses in the area that the accused had committed the act and they saw him running away from the tragedy. These statements were considered hearsay by the trial court and the High Court since the neighbors themselves were not consistently examined or the statements were regarded as second hand information. The question of law in this case was whether the statements of co-residents or neighbors to a third party immediately after the crime could be admitted as evidence of "same transaction" under the doctrine of *res gestae*. The Supreme Court of India ruled that section 6 of the Indian Evidence Act, 1872 is applicable in this regard. The Court stressed that the statement must be contemporaneous or immediately after the act, and that the statement must be a "spontaneous" response to the act, without hesitation; the Court acknowledged the importance of proximity of time and place.

⁹ (1999) 9 SCC 507

¹⁰ AIR 2000 SC 2138

Furthermore, the Supreme Court noted that the neighbours' speech to the parents was spontaneous reactions to seeing it happen and witnessing the accused's actions. These statements were made very soon after the events and had no room for fabrication, tutoring or concoction. Panna Satyanarayana case is one of the significant Supreme Court case laws which established that not only the victim or perpetrator but also spontaneous declarations by other parties including bystanders or neighbors immediately after the offense is considered as *res gestae*. The Supreme Court's holding in this case on spontaneous bystander declaration directly influences the applicability of Section 6 of the Indian Evidence Act, 1872 and Section 4 of Bharatiya Sakshya Adhiniyam, 2023.

Uttam Singh v State of M P¹¹: Uttam Singh was sleeping, along with his minor son Ram Singh (PW-5) aged 11 years, on a verandah cot. The accused (the son-in-law of deceased Uttam Singh) attacked Chain Singh with an axe on his neck, killing him early in the morning. When he heard the blow he woke up and saw his father was bleeding, he tried to wake him and at once shouted at his mother and two sisters in the adjoining room, "Mother, run! Cutting father by Uttam Jija!". When the family members and nearby put up a shout, all of them and the witnesses ran out and noticed that the accused was running away with a bloody axe in his hands. The question of law in this case is whether the spontaneous, immediate cry of the child witness who personally observed the crime or heard the child make a spontaneous declaration of the crime is a part of the same transaction, and thus admissible pursuant to the doctrine of *res gestae*.

In the case, the High Court of Madhya Pradesh confirmed the conviction under Section 302 of IPC and confirmed the admissibility of the statement on the principle of *res gestae*. According to the Court, the child's reaction was an immediate reaction and a natural reaction as he saw the violent event taking place next to him, thus the spontaneity and contemporaneous rule would be applicable. There was also no opportunity to reflect, to be tutored, or to be fabricated, and the statement was made at the moment of the assault or immediately after in the most extreme of circumstances, the court determined. In addition, the shout was a part of the transaction, and was substantively connected to the immediate family of the victim's observations after the assault, which furthered a corroborative value. This case exemplifies the admission of spontaneous exclamations uttered by bystanders or witnesses immediately after observing a crime as part of the core transaction.

Bishna v. State of W¹². The elements of this case are that during a violent attack against a family members living in adjoining houses were notified of the violence due to the screams and shouting of the victims. The witnesses did not arrive at the scene until the attack was in progress or imminent, witnessed the attackers running off and heard the victim's immediate distressed screams to identify the attackers. The issue was, whether the spontaneous exclamations of victims and witnesses during or immediately following a violent assault constitute admissible evidence under Section 6. The Supreme Court determined that the evidence could be admitted pursuant to the doctrine of the *res gestae*. The Court pointed out that the victims' screams were spontaneous, and the responses of the neighbouring people constituted a continuous chain of events.

¹¹ 2002 Cri LJ 3788 (MP)

¹² AIR 2006 SC 302

Furthermore, the declarations were made at the time of the happening of the event without time to reflect, tutor or deliberate and were implicitly reliable and made as part of the same event.

CONCLUSION

A move from hyper technical temporal mechanics to the substance-based rule of spontaneous reliability appears to have been the result of evolution in *res gestae* in common law legal systems. The hearsay rule is now a settled rule of modern evidence to which the out of court declaration must be so integral as to be an inseparable part of the same transaction as to be admissible.

Historically, represented by the 'hyper-technical' approach of strict timing, which required that any declaration be made 'before the event', excluded by *Ratten v R* on the basis of the new test, whether the statement was made in the 'overwhelming pressure of the event', and thus could not have been fabricated or concocted. The doctrine goes beyond a mere description of physical actions as stated in *Ambrose v. Clendon* and developed in *Aveson v. Lord Kinnauld*. It includes concurrent mental or physical symptoms, concurrent verbal events and responses to violence. These principles are not only found expressions in Indian jurisprudence, the Indian courts but also firmly incorporates spontaneous third-party utterances into the doctrine which are evident in *Uttam Singh v. State of M.P.*, *State of A.P. v. Panna Satyanarayana*, and *Sawal Das v. State of Bihar*, where immediate cries or warnings by child witnesses, family members, or surrounding neighbors during or instantly following a crime constituted original evidence. Apart from this, and so long as there is a time interval between the incident and the giving of the statement, if the statement is made after reflection, while under formal inquiry or after a lapse of time, then even if it is true, it would not be a spontaneous statement and the Indian jurisprudence, by judicial precedents, would be logical and clear.