THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 394] Voluntarily causing hurt in committing robbery.

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [177].[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section imposes severe punishment when hurt is caused in committing robbery. Section 397 similarly provides for the minimum sentence of imprisonment which must be inflicted when grievous hurt is caused.

Commenting on the section, the Supreme Court observed: section 394 prescribes punishment for voluntarily causing hurt in committing or attempting to commit robbery. The offence under section 394 is a more serious than one under section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct classes of persons. Firstly, those who actually cause hurt and secondly, those who do not actually cause hurt but are "jointly concerned" in the commission of the offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability.[178.]

In a prosecution for robbery and murder, injuries were caused to the deceased in the process of removing earrings. The Court said that the fact that the booty was distributed among three accused and they had secreted the robbed articles. These things revealed the common intention to commit robbery. One of them picked up a stone piece and caused death of the victim. There was nothing to show that the accused even knew of any such possibility. Others could not be convicted of murder and robbery with the help of presumption under section 114 Evidence Act, 1872. They were liable to be convicted only under sections 394/34.[179.]

[s 394.1] Forceful removal of vehicle by finance company.—

Forcible removal of vehicle from possession of purchaser by finance company on default of payment without recourse to proper remedy through civil Court or to arbitration clause, contained in hypothecation agreement, would be covered under section 394 of IPC, 1860.[180.] The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to

procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force.[181.]

[s 394.2] Charge framed under sections 394 and 397.—

There is nothing wrong in convicting the accused under section 394 read with section 397.[182.] All ingredients of offence punishable under section 392 are covered in offence under section 394.[183.] Section 397 of the IPC, 1860 prescribes enhanced punishment for using a deadly weapon at the time of committing robbery. As an obvious corollary, section 397 had no application to the case where robbery was not actually completed. Even so, measure of punishment had to be regulated by section 398 of the IPC, 1860 that provides for minimum punishment of seven years imprisonment in a case of attempt to commit robbery when armed with deadly weapon. In this view of the matter, the conviction of the appellants for the offence under section 394 read with section 397 of the IPC, 1860 deserves to be converted into one under section 394 read with section 398 of the IPC, 1860.[184.]

[s 394.3] Compounding.—

An offence punishable under section 394 IPC, 1860 is not compoundable with or without the permission of the Court concerned. But High Court can use its power under section 482 Cr PC, 1973 for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at.[185.]

[s 394.4] Presumption under section 114(a) of Evidence Act, 1872.—

As per Section 114(a) of the Evidence Act, 1872, when the stolen property is recovered from a person, soon after the commission of theft or dacoity, a presumption can be raised that either he has himself committed the offence of theft or he has received the stolen property.[186.]

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177. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

178. *Aslam v State of Rajasthan*, (2008) 9 SCC 227 [LNINDORD 2008 SC 127] : (2008) 3 SCC (Cr) 764 : AIR 2009 SC 363 [LNIND 2008 SC 1918] .

179. *Limbaji v State of Maharashtra*, AIR 2002 SC 491 [LNIND 2001 SC 2859] ; *Om Prakash v State of Rajasthan*, AIR 1998 SC 1220 [LNIND 1998 SC 87] , five accused persons robbed the complainant of his wrist watch and currency notes and ran away. Eye-witnesses chased them

and then went to police station. Investigation was also successful. Two accused were let off, others acquitted. *Rama Kant v State of UP*, 2001 Cr LJ 2072 (All), complaint against police personnel alleging robbery and extracting of money, the court lamented that those who were supposed to protect people themselves resorted to crime, the complaint was not to be quashed. *State of UP v Tekchand*, 2000 Cr LJ 3821 (All), snatching of a gun in a hotel cabin, conviction under section 394, but it could not be known to one of the accused that the other was going to kill. *Sudesh v State of MP*, 1999 Cr LJ 2602 (MP), evidence showed that murder and removal of ornaments from the body of the victim were simultaneous acts, conviction under sections 302/394; *Rajjo v State of UP*, 1999 Cr LJ 2996 (All), death caused in robbery by a single knife blow, conviction under section 304 II, the matter being 20 years old. *Abu Barks v State of Rajasthan*, 1998 Cr LJ 154 (Raj), robbery and murder, the accused was seen going towards the place with knife, not enough to connect him with the incident, acquittal. *Shravan Dashrath Datarange v State of Maharashtra*, 1998 Cr LJ 1196 (Bom), not only the accused who caused hurt, but also an associate would be equally liable for the mischief contemplated by the section. See also *Public Prosecutor v Yenta Arjuna*, 1998 Cr LJ 179 (AP); *Shravan Dashrath Datrange v State of Maharashtra*, 1998 Cr LJ 1196 (Bom); *Ratanlal v State of Rajasthan*, 1998 Cr LJ 1788 (Raj); *Ashok Kumar v State of MP*, 1998 Cr LJ 4103 (MP); *State of MP v Mukund*, 1997 Cr LJ 534 (MP), a housewife and her two minor children found throttled to death in their house, things recovered from robbers very soon thereafter on guidance provided by the husband. Both the intruders and murderers convicted.

180. *V A George v Abraham Augustine*, 2012 Cr LJ 3355 (Ker).

181. *ICICI Bank Ltd v Prakash Kaur*, 2007 (2) SCC 711 [LNIND 2007 SC 237] : JT 2007 (4) SC 39 [LNIND 2007 SC 237] : 2007 (1) KLJ 846 : AIR 2007 SC 1349 [LNIND 2007 SC 237] ; *The Managing Director, Orix Auto Finance Indian Ltd v Shri Jagmander Singh*, 2006 (1) Supreme 708 : 2006 (2) SCC 598 [LNIND 2006 SC 89] ; *Maruthi Finance Ltd v Vijayalaxmi* reported in (2012) 1 SCC 1 [LNIND 2011 SC 1153] : AIR 2012 SC 509 [LNIND 2011 SC 1153] -even in case of mortgaged goods subject to Hire Purchase Agreements, the recovery process has to be in accordance with law and the recovery process referred to in the Agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the appellant bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.

182. *Narottam Das v State*, 2013 Cr LJ 2676 (Chh).

183. *Rahamat Khan alias Badal Khan v State of W B*, 2008 Cr LJ 3285 (Cal).

184. *Ganesh Singh v State of MP*, **relied** on *Phool Kumar v Delhi Admn*, 1975 (1) SCC 797 [LNIND 1975 SC 112] .

185. *Shiji @ Pappu v Radhika*, 2012 Cr LJ 840 (SC) : (2011) 10 SCC 705 [LNIND 2011 SC 1158] : AIR 2012 SC 499 [LNIND 2011 SC 1158] .

186. *Satish Raju Waman Koli v State of Maharashtra*, 2010 Cr LJ 4247 (Bom).

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[s 395] Punishment for dacoity.

Whoever commits dacoity shall be punished with [187].[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

[188].—When a person is involved in an offence of theft of higher magnitude, then it becomes dacoity and when dacoity is committed with murder and also results in causing grievous hurt to others, it becomes robbery punishable under sections 395, section 396 and section 397 of IPC, 1860. In other words, when the offence of theft is committed conjointly by five or more persons, it becomes dacoity and such dacoity by those persons also results in commission of murder as well as causing of grievous hurt to the victims, it results in an offence of robbery. A reading of section 395, section 396 and section 397 of IPC, 1860 makes the position clear that by virtue of the conjoint effort of the accused while indulging in the said offence, makes every one of them deemed to have committed the offence of dacoity and robbery. In the result, when such offences of dacoity and robbery are committed, the same result in the death of a person or hurt or wrongful restrain or creating fear of instant death or instant hurt or instant wrongful restraint. In substance, in order to find a person guilty of offences committed under sections 395, 396 and 397 of IPC, 1860, his participation along with a group of five or more persons indulging in robbery and in that process commits murder and also attempts to cause death or grievous hurt with deadly weapons would be sufficient. Use of a knife in the course of commission of such a crime has always been held to be use of a deadly weapon. Keeping the above basic prescription of the offence described in the above provisions in mind, we examined the case on hand. In the first instance, what is to be examined is whether the basic ingredient of the offence falling under section 395, section 396 and section 397 of IPC, 1860, namely, participation of five or more persons was made out.[189].

[s 395.1] Cases.—

In *T Alias Sankaranarayanan v State Rep. By Inspector of Police*,[190]. allegation was that accused along with others entered the premises of complainant in false pretext of conducting income tax raid and looted jewels and cash. Accused acquitted since there was no TIP and accused was identified for first time in Court after seven years of occurrence.

[s 395.2] Sentence.—

Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted. In any case, sentence of five years rigorous imprisonment awarded by the trial Court and confirmed in appeal by the High Court for the offence under section 395 IPC, 1860 calls for no interference.[191.]

Considering that the value of the alleged loot including cash and mobile was only Rs. 16,550 and the young age of the accused, the trial Court sentenced him to rigorous imprisonment of only one year along with a fine of Rs. 100. The High Court allowed the appeal to the extent of enhancing the sentence to five years of rigorous imprisonment along with the fine imposed by the trial Court. Considering the same reasons as recorded by the trial Court the Supreme Court reduced the sentence of imprisonment to the extent already undergone, i.e., three years and two months.[192.]

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187. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

188. *Krishna Gopal Singh v State of UP*, AIR 2000 SC 3616 , finding that the accused person committed robbery is a *sine qua non* for sustaining a conviction under section 395. *Kapoorchand Chaudhary v State of Bihar*, 2002 Cr LJ 1424 (Pat), no leniency in terms of punishment was shown to dacoits who had robbed innocent bus passengers of their belongings irrespective of the fact that the accused persons had been facing the rigour of the trial for 14 years. *Praful Kumar Patel v State of Orissa*, 2000 Cr LJ 2724 (Ori) entry into house with court orders to seize articles attached, complaint quashed. *Gandikota Narasaiah v Superintendent*, 1999 Cr LJ 3947 (AP), conviction in three cases of dacoity, direction should not be given that the sentence in all the three cases should run concurrently. Such direction may operate as a licence to professional dacoity. *Subedar Yadav v State of UP*, 1999 Cr LJ 4663 (All), punishment for dacoity in five houses in the night of the incident, identified by 4 witnesses in lantern light. *Devendran v State of TN*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] , entered house, killed two old ladies and car driver, and looted jewelry, etc., offence against accused persons proved beyond doubt. Conviction under sections 302, 326. *Shahul Hameed v State of TN*, 1998 Cr LJ 885 (Mad), doubtful evidence, acquittal. *Badloo v State of UP*, 1998 Cr LJ 1072 (All), concocted evidence, no conviction, not even for a lesser offence. *Rajvee v State of UP*, 1998 Cr LJ 1588 (All), conviction on sale basis of identification evidence not proper. *SK Jamir v State of Orissa*, 1998 Cr LJ 1728 (Ori), dacoity by entering into house, good evidence, conviction. Another similar conviction, *Satish v State of UP*, 1998 Cr LJ 3352 (All); *Subhaya Perumal Pilley v State of Maharashtra*, 1997 Cr LJ 922 (Bom), more than five were involved, force was used, threatening words were spoken, and gold was taken away, essentials of section 395, proved. No hurt or injury caused. 10 years imprisonment was reduced to 7 years. *Araf Mulla v State of Orissa*, 1997 Cr LJ 4213 (Ori), dacoity at petrol pump, no proper proof. *Abdul Gafur v State of Assam*, (2007) 12 SCC 627 [LNIND 2007 SC 1422] : AIR 2008 SC 607 [LNIND 2007 SC 1422] : 2008 Cr LJ 800 , acquittal, infirmities in the prosecution in the background of admitted animosity between the parties, the prosecution version was unacceptable.

189. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .

190. *T Alias Sankaranarayanan v State Rep. By Inspector of Police*, 2011 Cr LJ 4006 (Mad).

191. *Ram Babu v State of UP*, AIR 2010 SC 2143 [LNIND 2010 SC 365] : (2010) 5 SCC 63 [LNIND 2010 SC 365] ; *Arjun Mahto v State of Bihar*, AIR 2008 SC 3270 [LNIND 2008 SC 1627] : (2008) 15 SCC 604 [LNIND 2008 SC 1627] - the passage of time cannot wash away gravity of offence.

192. *Pareshbhai Annabhai Sonvane v State of Gujarat*, 2016 Cr LJ 2076 : 2016 (3) Scale 349 [LNINDU 2016 SC 73] .

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[s 396] Dacoity with murder.

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or [193].[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

Under this section extreme penalty of death may be inflicted on a person convicted of taking part in a dacoity in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it. The section declares the liability of other persons as co-extensive with the one who has actually committed murder. Where in the course of a dacoity one man was shot dead, and the accused person who was tried had a gun and others of the dacoits also had guns, and there was no evidence that the accused was the man who fired the fatal shot, the sentence was altered from one of death to one of transportation for life.[194.]

[s 396.1] Ingredients.—

The offence under this section requires two things:—

(1) The dacoity must be the joint act of the persons concerned.

(2) Murder must have been committed in the course of the commission of the dacoity.[195.]

Section 391 IPC, 1860 explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under section 392 IPC, 1860, the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. Section 396 IPC, 1860 brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.[196.] In the first instance, what is to be examined is whether the basic ingredient of the offence falling under sections 395, 396 and 397 of IPC, 1860, namely, participation of five or more persons was made out.[197.] On a plain reading of these provisions, it is

clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.[198.]

For recording conviction for dacoity, there must be five or more persons. In the absence of such finding, an accused cannot be convicted for dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in the absence of such finding, less than five persons cannot be convicted for dacoity. A similar situation arises in dealing with cases of "unlawful assembly" as defined in section 141 IPC, 1860 and liability of every member of such unlawful assembly for an offence committed in prosecution of common object under section 149 IPC, 1860. In this case there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. Therefore, as per settled law, four persons could not be convicted for dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under section 120-B IPC, 1860 as also for receiving stolen property in the commission of dacoity punishable under section 412 IPC, 1860. The conviction of the appellant in this case for an offence punishable under section 396 IPC, 1860, therefore, could not stand and must be set aside.[199.]

[s 396.2] Presence of all not necessary.—

The section says that if "any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity" then every one of those persons shall be liable to the penalty prescribed in the section. It is not necessary that murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed, it matters not whether the particular dacoit was inside the house where the dacoity is committed, or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity.[200.] The essence of an offence under this section is murder committed in commission of dacoity. It does not matter whether murder is committed in the immediate presence of a particular person or persons. It is not even necessary that murder should have been within the previous contemplation of the perpetrators of the crime.[201.] But in a case the dacoits were forced to retreat without collecting any booty, the offence of dacoity would be completed as soon as they left the house of occurrence and took to their heels. And if a murder was committed by any one of the dacoits in course of such a retreat without any booty, then only the actual murderer will be liable under section 302, IPC, 1860, and conjoint responsibility under section 396, IPC, 1860, could not be fixed on others though all of them could be convicted under section 395, IPC, 1860 as attempt to commit dacoity is also dacoity.[202.]

[s 396.3] Number of Persons.—

Conviction for an offence of dacoity of less than five persons is not sustainable.[203.] For recording conviction, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons — or even one can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.[204.]

[s 396.4] Presumption from recent possession.—

Simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery.[205.] The nature of the presumption under Illustration (a) of section 114 of the Indian Evidence Act, 1872 must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise. Each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according "as the stolen article is or is not calculated to pass readily from hand to hand". If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed could not be said to be too long particularly when the appellant had been absconding during that period.[206.]

[s 396.5] Section 396 and Section 302.—

The ingredients of both these offences, to some extent, are also different in as much as to complete an offence of 'dacoity' under section 396 IPC, 1860, five or more persons must conjointly commit the robbery while under section 302 of the IPC, 1860 even one person by himself can commit the offence of murder. But, as already noticed, to attract the provisions of section 396, the offence of 'dacoity' must be coupled with murder. In other words, the ingredients of section 302 become an integral part of the offences punishable under section 396 of the IPC, 1860. Resultantly, the distinction with regard to the number of persons involved in the commission of the crime loses its significance as it is possible that the offence of 'dacoity' may not be proved but still the offence of murder could be established, like in the present case. Upon reasonable analysis of the language of these provisions, it is clear that the Court has to keep in mind the ingredients which shall constitute a criminal offence within the meaning of the penal section. This is not only essential in the case of the offence charged with but even where there is comparative study of different penal provisions as the accused may have committed more than one offence or even offences of a graver nature. He may finally be punished for a lesser offence or vice versa, if the law so permits and the requisite ingredients are satisfied.[207.] On the conjoint reading of sections 396 and 302 IPC, 1860, it is clear that the offence of murder has been lifted and incorporated in the provisions of section 396 IPC, 1860. In other words, the offence of murder punishable under section 302 and as defined under section 300 will have to be read into the provisions of offences stated under section 396 IPC, 1860. In other words, where a provision is physically lifted and made part of another provision, it shall fall within the ambit and scope of principle akin to 'legislation by incorporation' which normally is

applied between an existing statute and a newly enacted law. The expression 'murder' appearing in section 396 would have to take necessarily in its ambit and scope the ingredients of section 300 of the IPC, 1860. The provisions are clear and admit no scope for application of any other principle of interpretation except the 'golden rule of construction', i.e., to read the statutory language grammatically and terminologically in the ordinary and primary sense which it appears in its context without omission or addition. These provisions read collectively, put the matter beyond ambiguity that the offence of murder, is by specific language, included in the offences under section 396. It will have the same connotation, meaning and ingredients as are contemplated under the provisions of section 302 IPC, 1860.[208.]

[s 396.6] Charge under section 396.—Conviction under section 302.—

No prejudice has been caused to the appellant by his conviction for an offence under section 302 IPC, 1860 though he was initially charged with an offence punishable under section 396 IPC, 1860 read with section 201 IPC, 1860. The circumstances which constitute an offence under section 302 were literally put to him, as section 302 IPC, 1860 itself is an integral part of an offence punishable under section 396 IPC, 1860. Once the appellant has not suffered any prejudice, much less a serious prejudice, then the conviction of the appellant under section 302 IPC, 1860 cannot be set aside merely for want of framing of a specific/ alternate charge for an offence punishable under section 302 IPC, 1860. It is more so because the dimensions and facets of an offence under section 302 are incorporated by specific language and are inbuilt in the offence punishable under section 396 IPC, 1860. Thus, on the application of principle of 'cognate offences', there is no prejudice caused to the rights of the appellant.[209.]

[s 396.7] Rarest of the rare.—

Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod with the help of four other. The crime was obviously committed after pre-meditation with absolutely no consideration for human lives and for money. Even though the appellant was young, his criminal propensities are beyond reform and he is a menace to the society. death sentence was held to be the appropriate punishment.[210.] In a dacoity with double murder, the accused had gained confidence of the lady of the house and other inmates and visited them frequently. They committed dacoity after killing the lady and her grandson cold-bloodedly and attempted to kill two others. Their guilt was proved duly by circumstantial and direct evidence. The offences were found to be both heinous and barbaric and it was a 'rarest of rare case'.[211.]

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193. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

194. *Lal Singh*, (1938) All 875 . See also *Nanhau Ram v State of MP*, 1988 Cr LJ 936 : AIR 1988 SC 912 : 1988 Supp SCC 152 . Where all the ingredients were established and the conviction