and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

COMMENT—

Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence. The second para distinguishes robbery from theft, the third distinguishes it from extortion.

[s 390.1] Object.—

The authors of the Code observe: "There can be no case of robbery which does not fall within the definition either of theft or of extortion; but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though, in general the consent of a sufferer is a circumstance which vary materially modifies the character of the offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial".[140.]

The Explanation and illustrations (b) and (c) mark the distinction between simple extortion and extortion which is robbery. Illustration (a) indicates when theft is robbery.

An analysis of section 390 IPC, 1860 would show that in order that theft may constitute robbery, prosecution has to establish:

(a) if in order to the committing of theft; or

(b) in committing the theft; or

(c) in carrying away or attempting to carry away property obtained by theft; or

(d) the offender for that end i.e. any of the ends contemplated by (a) to (c); or

(e) voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint.

In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurl or instant wrongful restraint.

If the ends does not fall within (a) to (c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint, the offence would not be robbery. The Court emphasised that (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only

when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d) and (e) would theft amount to robbery.[141.]

[s 390.2] Theft, extortion and robbery.—

Theft or extortion when caused with violence causing death or fear of death, hurt or wrongful restraint is robbery. When there is no theft, as a natural corollary, there cannot be robbery. Robbery is only an aggravated form of theft or extortion. Aggravation is in the use of violence causing death or fear of death, hurt or restraint. Violence must be in the course of theft and not subsequently. Also, it is not necessary that violence should actually be committed, even attempt to commit it is enough.[142.]

1. 'Carrying away'.—Even if death, hurt or wrongful restraint, or fear of any of these, is caused after committing theft, in order to carry away the property obtained by theft, this offence would be committed.

2. 'For that end'.—Death, hurt or wrongful restraint must be caused in committing theft, or in carrying away property obtained by theft. The expression "for that end" clearly means that the hurt caused by the offender must be with the object of facilitating the committing of theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by theft.[143.] Where a person caused hurt only to avoid capture when surprised while stealing[144.] it was held that theft, and not robbery, was committed. The use of violence will not convert the offence of theft into robbery, unless the violence is committed for one of the ends specified in this section. Where the accused abandoned the property obtained by theft and threw stones at his pursuer to deter him from continuing the pursuit, it was held that the accused was guilty of theft and not of robbery.[145.] The victim was relieved of his watch in a running train by one of the two accused who were associates in crime. As the snatcher was trying to get down from the train, the victim raised alarm. Whereupon the second accused gave a slap to the victim. It was held that the hurt caused was directly related to the theft i.e., to facilitate carrying away of the property obtained by theft and as such the accused were rightly convicted under section 392, IPC, 1860.[146.]

3. 'Voluntarily causes'.—These words denote that an accidental infliction of injury by a thief will not convert his offence into robbery. Thus, where a person while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner, who at the moment tried to seize and keep the basket, and ran away with it, it was held that the offence committed was theft and not robbery.[147.] But where in committing theft, there is indubitably an intention seconded by an attempt to cause hurt, the offence is robbery.[148.] In order to make an offence of theft a robbery there must be either theft and injury or threat of injury while committing theft.[149.]

4. 'Person'.—The word 'person' cannot be so narrowly construed as to exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed.[150.]

[s 390.3] CASES.—

Where participation of the accused, was not explained by the prosecution and there were contradictions in the evidence of prosecution witnesses, the Court acquitted the accused.[151.]

The accused sprinkled chilli powder in the eyes of certain persons and snatched their attaches containing cash. The evidence of persons who were carrying was found to be reliable. Cash was recovered as a result of disclosures made by the accused. Presumption under section 114 of the Indian Evidence Act, 1872 applied. The accused was accordingly convicted.[152].

---

140. Note N, p 162.

141. *State of Maharashtra v Joseph Mingel Koli*, 1997 (2) Crimes 228 [LNIND 1996 BOM 667] (Bom.).

142. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

143. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

144. *Kalio Kerio*, (1872) Unrep Cr C 65.

145. (1865) 1 Weir 442; *Kalio Kiero, sup.*

146. *Harish Chandra*, 1976 Cr LJ 1168 : AIR 1976 SC 1430 : (1976) 2 SCC 795 .

147. *Edwards*, (1843) 1 Cox 32.

148. *Teekai Bheer*, (1866) 5 WR (Cr) 95.

149. *Padmanava Mohapatra*, 1983 Cr LJ NOC 238 (Ori). Proved case of robbery and murder. *State of Kerala v Naduvectil Vishwanathan*, 1991 Cr LJ 1501 .

150. *Jamnadas*, AIR 1963 MP 106 [LNIND 1962 MP 173] .

151. *Prabhat Marak v State of Tripura*, 2011 Cr LJ 1844 (Gau).

152. *Rameshwar Soni v State of MP*, 1997 Cr LJ 3418 (MP). As to when theft becomes robbery see *State of Maharashtra v Vinayak Tukaram*, 1997 Cr LJ 3988 (Bom), here the accused snatched three gold buttons from the shirt of the victim at a railway platform. He gave a knife blow on being caught. Convicted for robbery. The Court said that it could not be contended that he gave the knife blow only to extricate himself from the clutches of the person holding him and to ensure the taking away of the stolen gold buttons.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 391] 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 or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

COMMENT—

Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number. 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. 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.[153.]

Dacoity is perhaps the only offence which the Legislature has made punishable at four stages. When five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under section 402 merely on the ground of joining the assembly. Another stage is that of preparation and if any one makes preparation to commit a dacoity, he is punishable under section 399. The definition of 'dacoity' in this section shows that the other two stages, namely, the stage of attempting to commit and the stage of actual commission of robbery, have been treated alike, and come within the definition.[154.] In other words, attempt to commit dacoity is also dacoity.

"It will, therefore, be seen that it is possible to commit the offence of dacoity under section 395, IPC, 1860, by merely attempting to commit a robbery by five or more persons without being successful in getting any booty whatsoever. Thus, if in a particular case the dacoits are forced to retreat due to stiff opposition from the inmates or villagers without collecting any booty, then it must be held that the offence of dacoity is completed the moment the dacoits take to their heels without any booty".[155.] Even in such a case all the dacoits can be convicted and punished under section 395, IPC, 1860.[156.]

In a case of dacoity the circumstance that the inmates of the house, seeing the large number of dacoits, do not offer any resistance and no force or violence is required or used does not reduce the dacoity to theft.[157.]

[s 391.1] 'Conjointly'.—

This word manifestly refers to united or concerted action of the persons participating in the transaction. It is only when their individual action can be properly referred to their concerted action that the question of conviction under this section can arise.[158.] When there is doubt as to how many persons are involved in commission of offence and the accused/appellants were not identified during Test Identification Parade, they are entitled to benefit of doubt.[159.]

[s 391.2] Five or more persons.—

Interpretation of section 391 IPC, 1860 is simple, that there must be at least five persons in a dacoity; the section nowhere says that minimum five persons must be convicted of it.[160.]

[s 391.3] CASES.—

Where the allegation was that on the day of incident, victim was travelling on scooter with cash, two scooter borne accused armed with sword, knife, club and pistol stopped victim, asked him to leave scooter and get away and then accused with their accomplices fled away with scooter, accused were acquitted on the ground that test identification parade was conducted after 46 days of arrest of alleged accused.[161.]

The accused persons took away gold ornaments and service revolver of the victim. They were apprehended and, on the basis of their statements, stolen articles were recovered. Identification of the accused persons and the articles was made by the victim at TI parade. The conviction of the accused person was held to be proper.[162.]

Where there were only five named accused who committed the dacoity and out of five two were acquitted holding that only three took part in the offence, it was held that the remaining three could not be convicted of dacoity, as the offence of dacoity could not be committed by less than five persons.[163.] Where in spite of the acquittal of a number of persons, it is found as a fact that along with the persons convicted there were other unidentified persons who participated in the offence, bringing the total number of participants to five or more, it was held that the conviction of the identified persons, though less than five, was perfectly correct.[164.] Recovery of articles shortly after a dacoity at the instance of the accused persons has been held by the Supreme Court to be sufficient for conviction under section 396 as well as under section 412.[165.]

153. *Rafiq Ahmed @ Rafi v State of UP*, (2011) 8 SCC 300 [LNIND 2011 SC 726] : AIR 2011 SC 3114 [LNIND 2011 SC 726] .

154. *Dhanpat*, AIR 1960 Pat 582 .

155. R Deb, *PRINCIPLES OF CRIMINOLOGY, CRIMINAL LAW AND INVESTIGATION*, 2nd Edn, vol II, p 780.

156. *Shyam Behari v State*, 1957 Cr LJ 416 (SC-Para 5).

157. *Ram Chand*, (1932) 55 All 117 .

158. *Dambaru Dhar Injal*, (1951) 3 Ass 365.

159. *Musku Pentu v State of AP*, 2005 Cr LJ 1355 (AP).

160. *Allaudin v State (NCT of Delhi)*, 2016 Cr LJ 1617 (Del) : 2016 (2) RCR (Criminal) 734.

161. *Asif Ahmad v State of Chhattisgarh*, 2011 Cr LJ 4461 (Cha).

162. *Lalu v State of Orissa*, 2003 Cr LJ 1677 (Ori).

163. *Debi*, (1952) 2 Raj 177 ; *Lingayya*, AIR 1958 AP 510 ; See also *Ram Shankar*, 1956 Cr LJ 822 (SC); *Khagendra Gahan*, 1982 Cr LJ 487 (Ori); *Ram Lekhan*, 1983 Cr LJ 691 (1) : 1983 All LJ 283 : AIR 1983 SC 352 (1) : (1983) 2 SCC 65 : 1983 SCC (Cr) 339. *Atar Singh v State of UP*, 2003 Cr LJ 676 (All), the informant alleged that 3-4 persons entered into the house forcibly, the offence could not amount to dacoity.

164. *Ghamandi v State*, 1970 Cr LJ 386 ; See also *Saktu v State*, 1973 Cr LJ 599 : AIR 1973 SC 760 . Conviction for dacoity requires proper identification of the persons involved. *Ram Ishwar Paswan v State of Bihar*, 1989 Cr LJ 1042 (Pat), acquittal because no identification. *State of HP v Jagar Singh*, 1989 Cr LJ 1213 , conviction for highway dacoity.

165. *Lachman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : 1985 SCC (Cr) 263. Failure in filing the list of articles supposed to have been taken away or in indicating their nature makes the complaint liable to be dismissed. *Suresh v State of UP*, 1990 Supp SCC 138 : 1990 SCC (Cr) 643. Revision against acquittal not allowed in a case where the trial court considered every piece of evidence and gave cogent reasons, *Mohamed Nagoor Meeran v State of TN*, (1995) 1 Cr LJ 857 (Mad). *Joseph v State of Kerala*, AIR 2000 SC 1608 [LNIND 2000 SC 746] : (1998) 4 SCC 387 [LNIND 1998 SC 328] , conviction of accused for murder and for robbing the victim of her jewelry, good proof. *George v State of Kerala*, (2002) 4 SCC 475 [LNIND 2002 SC 256] , robbery, rings and wristwatch recovered from the accused, presumption under section 114A, conviction. *Sanjay v State (NCT) of Delhi*, 2001 Cr LJ 1231 (SC), robbery with murder, proved against accused, conviction. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] robbery with triple murder. Conviction.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 392] Punishment for robbery.

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

COMMENT—

This section no doubt allows the Court discretion as regards the minimum punishment to be awarded, but when the offence is attended with circumstances which would make the attempt to commit it punishable with the minimum sentence of seven years, it would not be a proper exercise of discretion to award a lesser sentence when the offence has been accomplished.[166.] A person who has been convicted of robbery under this section need not be convicted of theft.[167.] Where the wholly of the robbed property was not recovered from the persons accused, it was held that the proper section to convict was section 411.[168.]

[s 392.1] Essential ingredients for punishment under Section 392.—

Essential ingredients for punishment under section 392 are:

(1) The accused committed theft;

(2) he voluntarily caused or attempted to cause:

  (i) death, hurt or wrongful restraint,

  (ii) fear of instant death, hurt or wrongful restraint;

(3) he did either act for the end:

  (i) of committing theft,

  (ii) while committing theft,

  (iii) in carrying away or in the attempt to carry away property obtained by theft.[169.]

Where section 397 also applies, (robbery accompanied by attempt to cause death or grievous hurt) the punishment has to be for a period not less than seven years. The Supreme Court has held that this minimum prescribed sentence cannot be by-passed by resorting to plea bargaining.[170.] Section 392 itself provides that when robbery is

committed on a highway and between sunset and sunrise, deterrent punishment is called for.[171.]

[s 392.2] CASES.—

In a case of alleged dacoity and murder, seven accused persons were convicted under section 396 as looted property was recovered from their possession within a very short time after the offence. The evidence of an eye-witness showed that murder was committed only by the three of the accused persons of whom one was given benefit of doubt. It was held only the remaining two accused were liable to be punished under sections 392 and 302 and other only under section 411.[172.] Where the accused was alleged to have committed dacoity alongwith four other co-accused who were acquitted, his conviction under section 395 was altered to one under section 392 (robbery).[173.] When articles recovered from accused were identified to be articles of theft by complainant, the fact that watch recovered was not mentioned in FIR is not sufficient to reject testimony of complainant. No explanation was offered by accused as to how they came into possession of articles recovered. The Supreme Court held that Recoveries proved sufficient to connect accused with crime.[174.]

[s 392.3] Bank Robbery.—

The identity of the accused was proved by fingerprint impressions available at the door of the bank. The photographs of the fingerprints were to be proved by examining the photographer. However, this lapse in the prosecution cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise. The result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.[175.]

[s 392.4] Sentence.—

The offence was committed in a cool, calculated and gruesome manner. The accused could have easily committed the robbery without taking away the life of the victim, if robbery had been the motive. Keeping in mind the macabre nature of the crime, the High Court of Madras ordered that the sentences imposed on the accused should run consecutively and not concurrently.[176.]

---

166. *Chandra Nath*, (1931) 7 Luck 543 . See also *Suryamoorthi v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , a conviction under the section for robbery; *Laxmi Raj Shetty v State of TN*, AIR 1988 SC 1274 [LNIND 1988 SC 260] : 1988 Cr LJ 1783 : (1988) 3 SCC 319 [LNIND 1988 SC 260] where the

death sentence was reduced to life imprisonment for offence of robbery with murder. More fully discussed under section 302. *Hardayal Prem v State of Rajasthan*, AIR 1991 SC 269 : 1991 Cr LJ 345 , charges against two under sections 302, 304 and 392 for murder and robbery. Both convicted of robbery and murder under sections 302/ 392. One did not appeal and the other having appealed by special leave earned his acquittal. His companion was also given the same right of acquittal; *Chandran v State of Kerala*, AIR 1990 SC 2148 : 1990 Cr LJ 2296 , setting aside of conviction for robbery because of irregularities. *Din Dayal v State (Delhi Admn.)*, AIR 1991 SC 44 , accused, a higher secondary boy of 14 years old, snatching wrist watch with others, sentence of 2½ years reduced to 8 months already spent in custody.

167. *State of Kerala v Suku*, 1989 Cr LJ 2401 (Ker).

168. *Shankar v State*, 1989 Cr LJ 1066 (Del). It has also been held that an accused should not be convicted both under sections 392 and 394, *Philip Bhimsen v State of Maharashtra*, (1995) 2 Cr LJ 1694 (Bom).

169. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

170. *Kripal Singh v State of Haryana*, 1999 Cr LJ 5031 : (1999) 5 SCC 649 ; *R v Williams*, (2001) Cr App R (S) 2 [CA (Crim Div)], maximum penalty imposed upon the accused who used and threatened violence to force the attendant to give him a whisky bottle from the vend out of vending hours.

171. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] .

172. *State of MP v Samaylal*, 1994 Cr LJ 3407 (MP).

173. *Madan Kandi v State of Orissa*, 1996 Cr LJ 227 (Ori); *Ram Rakha v State of Punjab*, AIR 2000 SC 3521 : 2000 Cr LJ 4038 the two convicts came to the house of the victim and took away his licensed rifle and also Rs. 3000, and jewelry belonging to some other person. Conviction under the section was upheld. *Ganga Din v State of UP*, 2001 Cr LJ 1762 (All), robbery, no proper identification, acquittal. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] , in a case of triple murder and robbery, the accused persons was recognised and articles recovered. Complete chain of circumstances, conviction not interfered with. *Ravi Magor v State*, 1997 Cr LJ 2886 , robbery by entering home, tying up people, recoveries, identification, conviction. Identification in court without test identification did not render evidence of identification inadmissible. *Kayyumkhan v State of Maharashtra*, 1997 Cr LJ 3137 (Bom) robbery in train, victims identified robbers, conviction. *Pravakar Behera v State of Orisssa*, 1997 Cr LJ 3291 (Ori), uncertainty as to number of persons involved. Conviction shifted from dacoity to robbery.

174. *Akil @ Javed v State of Nct of Delhi*, 2013 Cr LJ 571 : 2013 AIR(SCW) 59.

175. *Ajay Kumar Singh v The Flag Officer Commanding-in-Chief*, 2016 Cr LJ 4174 : AIR 2016 SC 3528 [LNIND 2016 SC 301] : (2016) 2 SCC (LS) 547.

176. *K Ramajayam v The Inspector of Police*, 2016 Cr LJ 1542 (Mad) : 2016 (2) MLJ (Crl) 715 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 393] Attempt to commit robbery.

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.