Section 460 has been substituted by Criminal Law (Fourth Amendment Ordinance XXX of 1991) which later on became Act II of 1997. It deals with persons jointly concerned in luring house trespass or house breaking at night. Section 461 deals with dishonestly breaking upon receptacle containing property while section 462 provides punishment for same offence when committed by person entrusted with custody.

Of Theft

378. Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

Explanation 1. A thing so long as it is attached to the earth, not being movable property, is not the subject of theft but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2. A moving effected by the same act which effects the severance may be a theft.

Explanation 3. A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4. A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5. The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent, A has committed theft.

(e) Z, going on a journey entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, thought he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault has not committed theft, inasmuch as what he did was not done dishonestly.

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1 See Also S. 14 of Ordinance VI of 1979.

(j) *If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he, commits theft, inasmuch as he takes it dishonestly.*

(k) *Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.*

(l) *A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.*

(m) *A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.*

(n) *A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.*

(o) *A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.*

(p) *A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.*

SYNOPSIS

1. Theft.
2. Dishonest intention.
3. Removal under *bona fide* claim.
4. By mistake.
5. "Out of possession of any person".
6. "Moves that property in order to such taking".
7. Explanation 1—Earth.
8. Without that person's consent—Explanation 5.
9. Lessee.
10. Debtor.
11. Property.
12. Movable property.
13. Animals and birds.
14. Theft of Government wood.
15. Theft of the aircraft.
16. Theft of fish in water.
17. Theft of salt.
18. Theft of water.
19. Theft of electricity.
20. Theft of gas.
21. Removal of cattle.
22. Cutting and removing of trees.
23. Lessee of residential premises.
24. Removal of crops.
25. Joint possession.
26. Removal of property by spouses.
27. Stealing one's own property.
28. Creditor removing property of debtor.
29. Temporary removal.
30. Master and servant.
31. Hire purchase agreements.
32. Theft and criminal trespass.
33. Theft and unlawful assembly.
34. Theft and robbery.
35. Charge of theft combined with rioting.
36. Attempt to commit theft.
37. Theft by more persons than one.
38. Theft or mischief.
39. Theft and criminal breach of trust.
40. Defence—Colour of legal right.
41. Question of fact.
42. Charge.
43. Section 378 read with Anti-Terrorism Act, 1997—Section 6(2)(c).

379. Punishment for theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Burden of proof.
5. Possession of stolen property—Presumption.
6. Appreciation of evidence.
7. Conviction.
8. Section 379/409, P.P.C., read with Punjab Anti-Corruption Establishment Rules, 1985.
9. Section 379 read with Offence Against Property (Enforcement of Hudood) Ordinance, 1979.

1. Scope. Section 379 of the Code provides punishment for theft in its simpliciter form. If the offence of theft terms an aggravated form such as extortion, robbery *etc.*, the punishment would correspond to the offence actually committed. Section 378 provides, 'intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft'. Commission of theft therefore, consists in:

(1) moving a movable property of a person out of his possession without his consent;

(2) the moving being in order to the taking of the property with a dishonest intention, thus;

1) the absence of the person's consent at the time of moving, and

2) the presence of dishonest intention in so taking and at the time, are the essential ingredients of the offence of theft. *[PLD 1957 S.C. (Ind) 317]*

The prosecution must prove:-

i) That the property in question was movable or made so if happened to be attached or fastened to earth;

ii) That such property was in possession of a person;

iii) That the accused moves such property;

iv) That he did so without the consent of that person;

v) That he did so in order to take same out of possession of that person;

vi) With the intention to cause wrongful loss to that person or wrongful gain himself;

Recovery of stolen property is not necessary to have theft, *[PLD 1952 Lah 55]* nor does it. Constitute separate offence. *[PLD 1949 Bal. 14]* Where the initial complaint and the charge disclosed an offence under section 379, P.P.C., the conviction u/s 427, P.P.C., is bad in law and not maintainable. *[PLD 1956 Dacca 140]* It is necessary that the stolen property recovered from the accused should be put to the accused u/s 342, Cr.P.C. No compliance of this section has been considered to be fatal for the prosecution. *[1989 P.Cr.L.J. 878]*

1.1 Section 379 read with Offence Against Property (Enforcement of Hudood) Ordinance, 1979. Offence liable to Hadd is alone punishable under the Ordinance, while offence of theft liable to tazir is punishable as on offence of theft under P.P.C. Tractor stolen while parked by road-side unattended, not covered under the Ordinance 1979 has no repealed Ss. 379, 380, 392, 395 and 397, P.P.C. As far as these offences conviction u/s 22 of Ordinance altered to one u/s 379. *[1982 P.Cr.L.J. 172]* Ordinance, Ordinance by its Ss. 14 & 20 expressly provides that the punishment awardable shall be the one provided by the Pakistan Penal Code. *[PLD 1989 Lah. 272]* Offences committed under Ss. 379 & 380 P.P.C., cannot be offence is under the ordinance merely because S. 14 of the Ordinance provides that theft liable to ta'zir was liable to

7.5 Magistrate concurring with police report and discharging accused. Magistrate concurring with police report and discharging accused such an order is administrative made in discharge of his duties not as a Court but as a *persona designata*. Mere name or designation of a Magistrate is not decisive of the question. *[PLD 1985 S.C. 62]*

8. Section 379/409, P.P.C., read with Punjab Anti-Corruption Establishment Rules, 1985. Where public servants were alleged to have committed a scheduled offence jointly with any other person, case against them can only be registered under the orders of the Officers mentioned in R. 8 of the Punjab "Anti-Corruption Establishment Rules, 1985. *[1999 MLD 1174]*

9. Section 379 read with Offence Against Property (Enforcement of Hudood) Ordinance, 1979. Offence committed u/ss 379 and 380, P.P.C., cannot be said to be offences under the Ordinance, merely because s. 14 provides that theft liable to Tazir is liable to punishment for offence of theft as provided in the Pakistan Penal Code. Jurisdiction of High Court with regard to offences under Ss. 379 & 380, P.P.C., is not ousted. *[PLD 1989 Lah. 272]*

380. Theft in dwelling house, etc.—Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Vessel.
5. Any building.
6. Not a building.
7. Evidence/Proof.
8. Appreciation of evidence.
9. Section 380 read with S. 452/34—Appreciation of evidence.
10. Discharge of accused by Magistrate.
11. Offence in Respect of Bank (Special Court) Ordinance, 1984—Suspension of sentence.

1. Scope. Section 380, relates to theft in a building or a dwelling house *etc.*, *i.e.*, any building, tent or vessel which building, tent or vessel is used as a human dwelling, or used for custody of property. The object of the section is to give greatest security only to property deposited in a house so as to the under the protection of the house and not to property about the person of the party from home it is stolen. Theft from a person in a dwelling house is therefore, simple theft u/s 379 of the Code. *[(1876) PR No. 14 of 1876]* The offence under this section is an aggravated form of the offence of theft. The aggravation ties in the fact that the theft of property is committed in a building, tent or vessel. It is immaterial that the building is in the joint possession of the parties, *[1979 Cri LJ 446 (Him Pra)]* or whether the owner of the building is present or not at the time of the theft. *[1971 Rat Un Cr C 56 (DB)]* All that is necessary is that the property should be under the protection of the building; it is not necessary to show unlawful entrance into the building. *[(1875) 24 Suth WR 49 Cr (DB)]* Even the owner of the building himself may be guilty under this section, if he commits theft of property from it. *[1873-1892 LBR 367]* A trustee removing the jewels of the Deity from a temple is guilty of criminal breach of trust, and not of theft punishable under this section. *[(1896) 6 Mad LJ 14 (DB)]* The main ingredient of theft is that moveable property should be taken away dishonestly. If the wife takes away her own goods and money from the house of her husband in his absence, offence u/s 379 is not committed. *[1991 Law Notes 1239] Bona fide* believe as to ownership of a stolen property even if unfounded in law, would absolve the accused of the commission of offence u/s 379, P.P.C., obviously the reason being that the *mens rea* would be missing in such a case. *[1972 P.Cr.L.J. 94; 158 IC 282 relv.]* Removal of property on a *bona fide* claim of right, though unfounded in law and fact, does not constitute theft, but such a claim must not be colourable one. Whether the claim is a *bona fide* one or not has to be determined upon the facts and circumstances of each case. *[PLD 1965 Dacca 315]*

2. **Charge.** I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ at _____ being a clerk (*or servant or being employed in the capacity of clerk or servant*) to one *XY*, did commit theft by stealing certain property in the possession of the said *XY*; and thereby committed an offence punishable under section 381 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. **Procedure.** Cognizable, warrant case, not bailable, not compoundable, imprisonment upto 7 years or fine or both, Court of Sessions or Magistrate of the First Class or Second Class.

4. **Attempt to steal motor-cycle.** Assumption of jurisdiction by Anti-Terrorism Court not valid. Sentence set aside. *[2003 MLD 750]*

5. **Compromise.** Provisions of newly substituted Ss. 309 and 310, P.P.C., are available to parties even in cases where guilt of accused persons stands finally determined and where no cases are pending before any Court and further that even after final termination of litigation, composition can be made as long as sentences awarded not completely suffered. *[PLJ 1994 207]*

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[2]"**381-A. Theft or a car or other motor vehicles.**—Whoever commits theft of a car or any other motor vehicle, including motor-cycle, scooter and Tractor shall be punished with imprisonment of either description for a term which may extend to seven years and with fine not exceeding the value of the stolen car or motor vehicle."

[3][**Explanation**. Theft of an electric motor of a tube-well or transformer shall be within the meaning of this section.]

SYNOPSIS

1. Car snatching.
2. Attempt to theft a car.
3. Procedure.

1. **Car snatching.** Section 381-A relating to car snatching was inserted by Act I of 1996. It intends to curb the menace of lifting of car or other motor-vehicle. Car-snatching at gun-point was held to be covered by the definition of terrorism, *[1998 P.Cr.LJ. 1299]* but it is no more triable by the Anti-Terrorist Court after amendment introduced in Anti-Terrorism Act, 1997 vide Ordinance XXXIX of 2001, with the insertion of s. 39-C(2)(e) all such cases pending before the Anti-Terrorism Courts are required to be referred to the Sessions Courts having jurisdiction. *[PLD 2004 Kar. 652]* Trial of case before Anti-Terrorism Court *corum non judice* and finding of conviction of accused followed by sentence rendered by aid Court could not be sustained in law. *[PLD 2004 Kar. 290]*

2. **Attempt to theft a car.** Car parked in street and an attempt had been made for stealing it after replacement of its ignition switch. Attempt failed because of arrival of owner and other witnesses of neighbourhood. Even otherwise Court below had to be cured whether this case fell under S. 7-B of Anti-Terrorism Act, 1997 or under S. 381-A, P.P.C., and it had to proceed under either of these offences. As prosecution case was destitute of allegation of car snatching or lifting, case squarely fell under s. 381-A, P.P.C. And as only an attempt had been made and vehicle in question was not actually stolen and thieves had ran away, S. 381-A shall have to be read with S. 511, P.P.C. *[PLJ 2001 Cr.C (Lah.) 1284; PLD 2002 Lah. 33]*

3. **Procedure.** Cognizable, warrant case, not bailable, not compoundable, imprisonment upto 7 years or fine, Court of Sessions or Magistrate of the First Class.

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382. Theft after preparation made causing death, hurt or restraint in order to the committing of the theft.—Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to committing of such theft, or in order to the effecting of his escape after the committing of such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Theft by members of unlawful assembly.
5. Section 382 read with S. 10(3) Zina Ordinance VII of 1979—Appreciation of evidence.
6. Section 382 read with Offences Against Property (Enforcement of Hudood) Ordinance, 1979.
7. Trade Mark—Infringement.
8. Award of sentence.
9. Appreciation of evidence.

1. Scope. Section 382, deals with theft committed having made preparation for causing death, hurt or restraint in order to commit the theft. It provides, whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to committing of such theft, or in order to the effecting of his escape after the committing of such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. This section too deals with an aggravated form of theft. Section 381 dealt with abuse of trust and confidence because of relationship this section consists in preparation of causing death, hurt or restraint. There must be something to show or from which it may properly be inferred, that the offender made preparation for causing one or more of the results mentioned in the section. *[(1903) 10 Burma LR 87]* Carrying a weapon at the time of committing a theft shows "preparation" to use it if necessary and it is not essential that the accused should actually cause hurt or attempt to do so. *[1980 Cri LJ 760]* Proof of actual theft is necessary before conviction under this section. *[AIR 1923 Lah 512]* Where all the accused came together to a spot and went together with the stolen property and two of them carried away the property while the others waited at a distance and all of them were armed, it was held that it could be presumed that all of them came with intent to commit theft and that all of them were liable for theft. *[AIR 1950 Kuth 29]* Where the accused caused hurt to a person in order to effect escape after committing theft, he should be convicted under this section. *[(1908) 7 Cri LJ 446]* If hurt is actually caused when a theft is committed, the offence is punishable as robbery, and not under this section. In robbery there is always injury. In offence under this section the thief is full of preparation to cause hurt, but he may not cause it. *[1980 Cri.L.J. 760 (MP)]*

1.1 Section 382 read with Ss. 392 and 398, P.P.C. Provision contained in S. 398, P.P.C., did not create any substantive offence, but simply provided that if any member of a gang of dacoits was armed with a lethal weapon during an attempt of commission of dacoity such member was to suffer minimum imprisonment of seven years. No separate sentence was warranted under law by reason of said section which simply placed a restraint on the power of the Court not to award sentence of less than seven years on conviction in case of attempt to commit robbery or dacoity when an offender was armed with any deadly weapon. Section 398, P.P.C., was applicable only to the

rope. Trial of accused by the Anti-Terrorism Court was not vitiated merely because they were not charged under the provisions of Anti-Terrorism Act, 1997 or convicted under the same. *[2002 YLR 875]*

9. Appreciation of evidence. Fact of accused receiving injury during fight suppressed by prosecution and defence version that a fight took place between parties over canal water in which persons on both sides received injuries appearing more plausible. Conviction set aside. *[1977 P.Cr.L.J. 335]*

9.1 Fugitive. Accused being a fugitive from law is not entitled to any concession or leniency in the matter of condonation of delay. Where ocular testimony is independent and confidence inspiring and is corroborated by the evidence of recovery, conviction maintained. *[1994 MLD 2225]*

9.2 Identification test. Accused persons must under go a test of identification parade if they are not known to the witnesses either by name or by face. *[PLD 1994 Kar. 122]* Delay in holding identification parade, non-examination of Magistrate holding such parade or the I.O., who had arranged such test will create a doubt in the prosecution case. *[PLD 1994 Kar. 122]*

9.3 Murder and robbery. Accused luring deceased a minor girl to a ditch on pretext of cutting jharu-reeds for her, cutting a few reeds and then suddenly snatching girl's dupatta, putting it around her neck starting twisting it causing her death and robbing her of her silver bangles and golden ear-rings. Accused leading police to recovery of ornaments concealed in a cement pipe also making extra judicial confession conviction for murder and robbery maintained. *[1982 SCMR 575]*

Of Extortion

383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

SYNOPSIS

1. Extortion.
2. Puts any person in fear of any injury.
3. Instances.
4. Dishonest inducement.
5. Delivery.
6. "To any person".
7. Distinction between S. 384 and S. 161, P.P.C.
8. Distinction between extortion and cheating.
9. Abetment of extortion.
10. Extortion and robbery.
11. Kidnapping or abduction for extorting property—Extortion—Distinction.
12. Extortion and criminal intimidation.
13. Extortion and criminal breach of trust.
14. Charge.

384. Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Trial—Offence under Ss. 384, 161, P.P.C.
4. Section 384 read with S. 511, P.P.C.—Attempt something more than preparation.
5. Procedure.

1. Scope. Section 384 of the Code provides punishment for extortion which is to the extent of three years R.I., with fine.

2. Charge. I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows:-

That you, on or about the _____ day of _____ at _____ committed extortion by putting *XY* in fear of a certain injury to wit _____ and; thereby dishonestly induced the said *XY* to deliver to you a certain property; and thereby committed an offence punishable under section 384 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. Trial—Offence under Ss. 384, 161, P.P.C. There is a big difference in a trial under section 384, P.P.C., and a trial under section 161, P.P.C. In the former case the whole onus is on the prosecution and in the latter case when payment of money is proved there are certain presumptions under section 4 of the Prevention of Corruption Act against the accused. *[PLD 1964 S.C. 266]*

4. Section 384 read with S. 511, P.P.C.—Attempt something more than preparation. 'Attempt' is the direct movement towards the commission after the preparation has been made, but mere wrongful confinement unattended by any overt act signifying an intention to commit extortion cannot come up higher than the stage of preparation. An attempt to commit a crime must be something more than mere preparation. Acts remotely leading towards the commission of the offence are not to be considered as attempt to commit it. Hence where the initial complaint did not indicate that the accused by putting the complainant in fear of any injury dishonestly attempted to induce the complainant to sign or affix his seal to blank paper and deliver the paper to the accused nor did it even show that the accused held out a paper and pen to the complainant and coerced him to sign it; held, that it could not be said that the initial complaint disclosed an offence punishable under section 384/511, Penal Code. *[PLD 1957 Dacca 279]*

5. Procedure. Non cognizable, warrant case, bailable, not compoundable, imprisonment upto 3 years or fine or both, Magistrate of the First Class or Second Class.

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385. Putting person in fear of injury in order to commit extortion.—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure..

1. Scope. Section 385, refers to putting person in fear of injury in order to commit, extortion. It provides that whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, would entail imprisonment of either description for a term which may extend to two years, with fine or both. The essential ingredients of the offence under this section are;

i) that the accused put or attempted to put any person in fear of any injury; and

ii) that such act of the accused was in order to commit extortion.

The offence u/s 384 includes the offence under this section which is a less serious offence than the offence u/s 384. *[AIR 1941 Sindh 36]* The injury contemplated by the section must be one which the accused can himself inflict or cause to be inflicted. A threat that God will punish a man for some act or omission of his is not such an injury as the section refers to. *[AIR 1944 Sindh 203]*

The word 'in order to' import intention. Where *A* sent a letter to *B* threatening to accuse him of an infamous crime, the intent to extort money from *B* can be inferred from the previous, contemporaneous and even subsequent conduct and his expressions to third parties. *[(1862) 6 F & F 310]* Where the accused who is alleged to have threatened another the injury kidnaps his child in order to commit extortion, but there is no evidence to show that the letter said to have been written by the accuse demanding ransom for restoration was written by him and the only evidence was about the complainant's child being found in a nearby field, it was held in the circumstances of the case that the accused could not be convicted u/s 385 or 386, but only u/s 365. *[1980 Chand Cri C 50 (Punj)]* A threat of picketing in order to prevent the sale of goods amounts to putting a person in fear of injury. Where a fine is levied from the complainant on a threat of picketing, it would amount to extortion punishable u/s 384. Where in such a case the accused was convicted under this section, it was held that he act of the accused would also be an offence under this section and the conviction and the sentence under this section were upheld. *[AIR 1922 All 529]* A threat of a criminal complaint amounts to putting the person threatened in fear of injury amounts to putting the threatened person in fear of injury, whether the complaint is true or false, the guilt or innocence of the party threatened being immaterial. *[AIR 1952 Kutch 54]*

1.1 Attempt. An attempt to commit extortion is punishable u/s 511 r/w S. 384. This section is not an "express provision providing for the punishment of such attempt' within the meaning of S. 511, so as to exclude the operation of S. 511. *[AIR 1927 Pat 89]*

1.2 Oral complaint. An oral complaint under this section is valid. *[(1970) 1 Malayan LJ 97]*

2. Charge. I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ at _____ put *XY* (*or attempted to put XY*) in fear of an injury, to wit, _____ in order to the committing of extortion; and thereby committed an offence punishable under section 385 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. Procedure. Not cognizable, warrant case, bailable, not compoundable, imprisonment upto 2 years and fine or both, Magistrate of the First Class or Second Class.

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386. Extortion by putting a person in fear of death or grievous hurt.— Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Offence under Anti-Terrorism Act.

1. Scope. Section 386 refers to extortion by putting a person in fear of death or grievous hurt. It provides whoever, commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other. would entail imprisonment of either description for a term which may extend to ten years, and also fine. The offence under Ss. 386 and 387 are aggravated forms of the offence defined u/s 383 and must be read with that section. *[AIR 1944 Sindh 203 (DB)]* Where the *modus operandi* disclosed in the letters written by the accused demanding ransom from the father of the boy kidnapped was by putting the father in fright of his kidnapped boy being murdered and there was throughout the likelihood of the boy being murdered in case the ransom money was not paid for one reason or other, the accused are guilty of the aggravated forms of kidnapping and extortion under sections 364 and 386 of the Penal Code. *[PLD 1957 S.C. (Ind) 331]* Where the accused abducted a girl but there was no evidence on record to show that the girl was even threatened or was put in danger of being murdered the accused could not be convicted u/s 386. *[1980 Chand Cri 50 (P & H)]* Where the accused persons had kidnapped child of complainant but no ransom was extorted, the conviction of accused would be proper u/s 387 and not u/s 386. *[1995 AIR SCW 2634]* Where the chain of events enquired to prove hypothesis of case was miserably incomplete, the accused were entitled to be given benefit of doubt and acquittal. *[(1999) 82 Delhi LT 730]* Where the complainant's son was kidnapped by accused appellant for ransom and when complainant went to appointed place and on his stating that he could not arrange for money demanded immediately, accused appellant placed the barrel of the gun on his chest and demanded reason for not bringing money, order convicting accused appellant u/s 386 was proper. *[1988 Cri LR (Raj) 316 (DB)]*

2. Charge. I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ at _____ committed extortion by putting *XY* in fear of death or grievous hurt to wit, _____ and thereby dishonestly induced the said *XY* to deliver to you a certain property; and thereby committed an offence punishable under section 386 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. Procedure. Not cognizable, warrant case, not bailable, not compoundable, imprisonment upto 10 years and fine, Court of Sessions.

10 **4. Offence under Anti-Terrorism Act.** Accused and his co-accused allegedly picking quarrel with their opposite party in the High Court premises and given kicks and fist blow to them. FIR silent as to use of fire-arm. Provisions of S. 7(h), ATA not attracted. *[PLD 2008 Lah. 74]*

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387. Putting person in fear of death or of grievous hurt in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.

1. Scope. Section 387 of the Code deals with extortion by putting in fear of death or grievous hurt, in order to commit extortion. It provides, whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description to the extend of seven years, and also fine. The offence under this section is an aggravated form of the offence defined u/s 383 and must be read in conjunction with it. The very act of putting a person in fear of death or grievous hurt is by itself an offence under this section where it is done in order to commit extortion. There ought to be some visible overt act which may reflect the natural and normal

presence that the wrong doer had, in fact, put a person in fear of death or of grievous hurt. In the absence of any apparent overt act leading towards the act of extortion and thus putting any person in fear of death or of grievous hurt it cannot be said to be an offence committed for extortion by threat. Without any visible sign of physical act, simple use of words is not enough to constitute that offence in the absence of any physical act on the part of the petitioner and also any such material which may indicate that, as a matter of fact, the petitioner had practiced extortion by threat of fear of death and hurt, the offence was not constituted. To illustrate, if any person is confronted by any wrong doer armed with dagger or pistol and thereafter he made some utterances demanding some money, that can be said to be an act of extortion, but in broad day light within the hearing of every one having some financial relationship, if demand for money is made by uttering some threat that cannot be said to be an act of extortion as contemplated under this section. *[1987 Cri.L.J. 137 (Pat)]* The word "in order to" import intention. A drunken man cannot be said to be incapable of committing the offence under this section unless it is shown that his mind was so affected by drink that he was incapable of forming the intention necessary to constitute the offence. *[(1912) 13 Cri LJ 864]*

1.1 **Factitious attempt.** The feigning of an attempt to commit suicide in order to extort money is an offence under this section. *[(1866) 1 Ind Jur N S 423]*

2. **Charge.** I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ at _____ put *XY* (*or attempted to put XY*) "in ear of death or grievous hurt" to wit _____ in order to the committing of extortion; and thereby committed an offence punishable under section 387 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. **Procedure.** Not cognizable, warrant case, not bailable, not compoundable, imprisonment upto 7 years and fine, Court of Sessions.

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388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.—Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.

1. **Scope.** Section 388 deals with extortion by threat of accusation of an offence punishable with death or imprisonment for life, *etc.* It provides whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

The term 'to accuse" means to charge a person before any third person. The threat to accused need not be a threat to accuse before a judicial tribunal: a threat to charge him before ay third person is sufficient. *[(1849) 3 Cox Cri C 547]* It is not material whether the charge of the crime leveled against the prosecutor by the accused is true or not. But it is material in considering the question whether in the circumstances of the case, the intention of the accused was to extort money or merely to compound the offence. *[(1868) 11 Cox Cri C 43]*

2. Charge. I (*name and office of Court of Sessions*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ at _____ committed extortion by putting *XY* in fear of an accusation made against him or against _____ or having committed (or *attempted to commit*) the offence of _____ (*name offence*) which is an offence punishable with death (*or with transportation for life or with imprisonment for a term which may extend to 10 years or under section 377*) and hereby dishonestly induced the said *XY* to deliver to you _____ (*specify thing*); and thereby committed an offence punishable under section 388 of the Pakistan Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. Procedure. The offence u/s 388 has two parts, both of them are not cognizable, triable as warrant case, first part not bailable, not compoundable, entails imprisonment upto 10 years and fine, second part, bailable, but not compoundable, entails imprisonment for life both triable by Court of Sessions.

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389. Putting person in fear of accusation of offence, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine: and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

NOTES

Charge. I (*name and office of Court of Sessions*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ at _____ "in order to the committing of extortion did put any person" *XY* in fear of an accusation made against him or against _____ or having committed (*or attempted to commit*) the offence of _____ (*name offence*) which is an offence punishable with death (*or with transportation for life or with imprisonment for a term which may extend to 10 years or under section 377*) and thereby dishonestly induced the said XY to deliver to you _____ (*specify thing*); and thereby committed an offence punishable under section 389 of the Pakistan Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

Procedure. Not cognizable, warrant case, bailable, not compoundable, imprisonment upto 10 years and fine or imprisonment for life, Court of Sessions.

Of Robbery and Dacoity

390. **Robbery.**—In all robbery there is either theft or extortion.

When theft is robbery: Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carrying away property obtained by the theft the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restrain, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery: Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person to put in fear then and there to deliver up the thing extorted.

Explanation. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse, Z, in consequence, delivers his purse. A has extorted the purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of instant death of child.

SYNOPSIS

1. Robbery.
2. Charge.
3. "For that end".
4. "Wrongful restraint".
5. "The offender".
6. Use of force.
7. "In committing the theft".
8. Carrying away stolen property.
9. "Voluntarily".
10. Robbery by extortion.
11. Conviction.
12. Identification of stolen property.
13. Recovery of stolen property.
14. Possession of stolen property.
15. False implication.
16. Benefit of doubt.
17. "Present and aiding".
18. Robbery or attempt to commit robbery.
19. Dishonest intention.
20. Motive.
21. Abetment.
22. Unlawful assembly and dacoity.

1. **Robbery.** Robbery is nothing but an aggravated from of theft or extortion. It means a felonious taking from the person of another or in his presence against his will, by violence or putting him in fear. *[AIR 1928 Cal. 498]* In all robbery there is either theft or extortion. Theft becomes robbery if the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or instant hurt or of instant wrongful

S. 391] **391. Dacoity.**—When five or more persons conjointly commit or attempt to commit a robbery, or where 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".

SYNOPSIS

1. Dacoity.
2. "Five or more person".
3. Conjointly.

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1. Dacoity. The offence of dacoity is the most aggravated form of Robbery. When fire or more persons conjointly commit or attempt to commit a robbery, it becomes dacoity.

The essential elements of the offence of dacoity as defined in this section are:-

(i) Five or more persons must act co-jointly.

(ii) Such act must be robbery or attempt to commit robbery.

(iii) The five persons must consist of those who themselves commit or attempt to commit robbery or of persons who commit or attempt to commit the robbery and those who are present and aid them in such commission or attempt. *[AIR 1957 S.C. 320]*

The definition of 'dacoity' in his section shows that the stages, namely the stage of attempting to commit and stage of actual commission of robbery have been treated alike, and come within the definition. Thus, in other words, attempt to commit dacoity is also considered and treated as an offence of dacoity. *[(1996) 2 Guj LR 251]* It is possible to commit dacoity by merely attempting to commit a robbery by five or more persons without being successful in getting any booty whatsoever. Therefore, it is in a particular case, the dacoits are forced to retreat due to stiff opposition from the villagers or witnesses without collecting money or any other items or any booty, then it could be held that the offence of dacoity is completed the moment the dacoits take to their heels without any materials or valuables. *[(1996) 2 Guj LR 251]* The infliction of visible injury is not an essential ingredient of the offence of dacoity that is an aggravated form of theft. If the offender in committing the theft etc., voluntarily causes or attempts to cause to any person death, hurt, *etc.*, or fear of instant death or instant death, *etc.*, it is enough. *[(1999) 25 All Cri R 1555]* Inasmuch as robbery may be committed by putting a person in fear of hurt the actual causing of hurt is not a necessary element in dacoity. *[AIR 1933 All 114]* The section contemplates actual participation by every one of the five or more persons in the commission of the robbery, whether as aiders or as major actors. *[AIR 1973 S.C. 760]*

1.1 Attempt. Offences of preparation and assemblage for committing dacoity punishable u/s 399 and 402, P.P.C. *[1995 MLD 1779]*

2. "Five or more person". One of the essential ingredients of the offence under this section is that five or more persons must conjointly act, whether directly or indirectly as aiders. *[AIR 1958 Cal 25]* Unless it is proved that at least five persons took part in the act, no offence under this section is established against any one. *[1977 Ker LT 714]*. Where out of six accused persons, only six were put to trial and the trial Court disbelieved the prosecution case regarding the involvement of three accused and consequently acquitted them, it would be obligatory for the trial Court to first decide whether on available evidence, a case u/s. 395 or s. 392 or s. 394 has been made out against the accused petitioner. *[(1996) 81 Cut LT 83]* Where five persons were charged under this section and it was not the prosecution case that there were any more persons who took part in the robbery and one of the accused was acquitted the remaining four cannot be convicted under this section. *[AIR 1958 Andh Pra 510]* Where it is proved that the accused persons along with others, whether charged or not, were five or more than five and conjointly committed the act, they can be convicted under this section. *[(1964) 66 Pun LR 173]* Where though in the charge-sheet six persons were named, from the evidence on record it was apparent that 11 to 12 persons had participated in the crime, even though some of the named accused persons were acquitted by the trial Court it would not be said that the

offence was not committed by five or more persons including the accused. Conviction of accused u/s. 395 would be proper. *[(1997) 3 Cur Cri R 150]* Where, out of six persons charged for dacoity three were acquitted Court held that he other three accused could not be convicted for dacoity in the absence of proof that there were other unknown persons who, along with the accused, were five or more in number. *[AIR 1956 S.C. 441]*

3. Conjointly. Robbery becomes dacoity when it is committed by five or more persons conjointly. The word 'conjointly' used in S. 391, P.P.C., means jointly in union or together. *[1995 MLD 1779]* To constitute the offence of dacoity, five or more persons should be acting conjointly in committing robbery as principals or aiders. *[1974 Ker LT 328]* The word 'co-jointly' manifestly refers to counter or concerted action of the person participating in the transaction. Mere presence of the accused amongst the robbers is not sufficient. The accused should be shown to have conjointly committed robbery or aided such commission. *[1981 Cri LJ (NOC) 110]* *D* with his wife and daughter was sleeping outside their house at night. The five accused came, beat *D* and his wife and daughter when they resisted their actions. Accused 1 then broke open the door. Three of the accused went inside and the other two kept guard outside. All the accused then removed the boxes and the two accused who had kept guard actually carried way the boxes. It was held that the beating and the robbery were part of the same transaction and that all the accused acted conjointly and were guilty under this section. *[AIR 1948 Mad 96]*

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392. Punishment for robbery.—Whoever commits robbery shall be punished with rigorous imprisonment for a term which [1][shall not be less than three years nor more than] ten years, and shall also be liable to fine; and, if the robbery be committed on the Highway [2][***] the imprisonment may be extended to fourteen years.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Trial.
5. Appreciation of evidence.
6. Recovery.
7. Compounding of case.
8. Recent possession of stolen articles.
9. Section 392 r/w Anti-Terrorism Act, 1997 and West Pakistan Arms Ordinance, 1965, S. 13-D Vehicle snatching.
10. Section 392, 353 and 324, P.P.C.—Not scheduled offence.
11. Robbery.
12. Sentence.
13. Appeal.

1. Scope. Section 392 provides punishment for robbery, which entails punishment to the extent of ten years and also fine. If the offence is robbery is committed on the highway, the imprisonment has been made extendable to fourteen years. The definition of robbery contemplates that accused should from the very beginning have the intention to deprive another person of the property and to achieve that end, either hurt is caused or a person is placed under wrongful restraint, or it must be actually found that victim was put in fear of instant death, hurt or wrongful confinement. In absence of positive evidence and the findings of the nature to establish the robbery as defined u/s 390, P.P.C., the mere removal of articles by the accused armed with deadly weapon from the victim would not make out a case of robbery. *[PLD 1994 Lah. 141]* Where a police man on duty took away farer aside at night and relieved him of his money, offence not simple theft but aggravated to robbery. *[PLD 1966 (W.P) Lah. 379]* Accused taking away property after killing deceased, offence would fall within the ambit of S. 392 as accused would be treated as having committed murder for the purpose of stealing property. *[NLR 1994 Cr. 485]* Occurrence taking place inside the house of the complainant where accused by extending threats looted the house hold articles lying in the house which was recovered after their arrest and were identified by the complainant party. Both eye

1 Subs. by Ordinance III of 1980, dated 3.2.1980.
2 The words "between sun set and sun rise" omitted by Act VII of 1993, PLJ 1993 Cent. St. 143

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.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Appreciation of evidence.
5. Award of sentence.

1. Scope. Section 393 of the Code deals with attempts to commit robbery. This is one of the specific sections which provide punishment for the offence of attempt. Presence of the intent to rob combined with an act in execution of such intention which falls short of the offence intended is an attempt to rob. In order to constitute an attempt, firstly, there must be an intention to commit a particular offence, secondly; some act must have been done which would necessarily have to be done towards the commission of the offence; and thirdly, such act must be proximate to the intended result. The measure of opportunity is not in relation to time and action but in relation to intention. In other words, the act must reveal, with reasonable certainty, in conjunction with other facts and circumstances and not necessarily in isolation, an intention, as distinguished from a mere desire or object to commit the particular offence, though the act by itself may be itself may be merely suggestive or indicative of such intention, but that it must be indicative or suggestive of the intention. *[AIR 1961 S.C. 1698]* There is distinction between 'preparation and attempt'. Attempt begins where preparation ends. Broadly speaking all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage, he makes preparation to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such act was or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence. Such act must be an act during the course of committing the offence. *[AIR 1980 S.C. 1111]* Theft or extortion is an essential ingredient of the offence of robbery and each requires dishonest intention on the part of the accused as an essential factor to constitute the offence. Therefore, an intention to rob is an essential ingredient of the offence of attempt to commit robbery made punishable under this section. Where the appellant tried to commit robbery inside the house of complainant using a deadly weapon and on the complaint raising alarm, neighbours and passers by rushed to the spot and apprehended the appellant at the spot, in the circumstances, the question of identity of the appellant does not arise and therefore his conviction was proper. *[(1999) 2 Rec Cri R 491 (P & H)]* An attempt to commit robbery was made and it continued even up tot eh stage that the culprits tried to make good their escape; and they were resisted by the village people. Therefore, a charge u/s. 393 r.w. s. 398 is well made out. *[1987 All WC 1360]* Where the accused along with two others entered the house of complainant and demanded valuable articles by threatening them of death and identity of accused was clearly established by complainant and his wife since, he was known to them as the person married to daughter of one of their neighbours. Presence of accused along with the other two was clearly established and hence his conviction u/s. 393 was upheld. *[(1996) 1 All Cri LR 449 (SC)]* Where trial Court acquitted all except appellant, on appeal held that individual action of appellant caused fatal blow of spear as stated by all witnesses and in the absence of evidence regarding formation of unlawful assembly and probable common object, conviction is proper. *[1998 Cri LJ 1548]*

1.1 What constitute the offence. A person commits the offence of 'attempt to commit that particular offence' when:-

i) He intends to commit that particular offence; and

ii) He, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. *[AIR 1961 S.C. 1698 p. 1703]*

2. **Charge.** I (*name and office of the Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:-

That you, on or about the _____ day of _____ did an act, to wit _____ and which amounted to an attempt to rob *AB*, and thereby committed an offence punishable under section 393 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. **Procedure.** *Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session or Magistrate of the first Class as the case may be.*

4. **Appreciation of evidence.** Accused was apprehended on the spot and trustworthy evidence had come on record on that point through eye-witnesses and trial Court was justified in believing the same. Fire arm namely T.T. Pistol used in commission of offence, was also secured thereby corroborating version of eye witnesses. Defence plea had duly been considered and rejected as improbable and unbelievable. Finding of conviction of accused, in circumstances, could not be interfered with. *[2002 MLD 1973]*

5. **Award of sentence.** Case being of attempt to commit robbery by using deadly weapon the accused should be convicted under S. 392, P.P.C., and S. 398, P.P.C. *[2008 P.Cr.L.J. 1185]*

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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 imprisonment for life, or with rigorous imprisonment for a term which [3][shall not be less than four years nor more than] ten years, and shall also be liable to fine.

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SYNOPSIS

1. Voluntarily causing hurt in committing robbery.
2. Charge.
3. Procedure.
4. Appreciation of evidence.
5. Benefit of doubt.
6. Non-appealing accused.
7. Sentence/Conviction.
8. Accused chose more than one offences *e.g.*, Ss. 394/397/34, 376/109, 266, 161, 392 & 409/109.
9. Benefit of Government remission.
10. Pardon or compromise.
11. Revisional power.

1. **Voluntarily causing hurt in committing robbery.** Section 394 deals with 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 entail imprisonment for life, or with rigorous imprisonment for a term, which shall not be less than four years, nor more than ten years, and shall also fine. The definition of robbery in s. 390 shows that in order that theft may amount to "robbery" the offender need not actually cause hurt for the purpose of committing the theft or carrying away the property got by the theft; it is sufficient if the offender attempts to cause hurt. The general provision as to punishment for robbery is contained in s. 392. But this section is a special provision applicable to cases where the offender has actually caused hurt to the victim for the purpose of the robbery. The offence of voluntarily causing hurt of either description in committing, or attempting robbery is punishable under this section. Which postulates and contemplates the causing of the hurt during the commission of robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery whereas when hurt is caused to facilitate is robbery the offence is punishable u/s 392, P.P.C. *[1979 Cr.L.J. NOC 52 (Orissa)]* The offence under this section is a more serious one than that u/s. 392. To constitute offence under this section the prosecution must prove the following:-

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3 Subs. by Ordinance III of 1980. [In NWFP these words subs. by the words "and shall also be liable to forfeiture of his property to the Government" by NWFP Act XXVI of 1950].

6. **Non-appealing accused.** Where no appeal has been filed by a co-accused and the other accused placed in the same circumstances have been acquitted, the non-appealing accused can also be acquitted. *[2004 P.Cr.L.J. 1492; PLD 1991 S.C. 447; 1985 SCMR 662]*

7. **Sentence/Conviction.** Accused neither using any deadly weapons during theft nor found in possession of such weapons. Accused however, found in possession of stolen property soon after theft. Sections 394, 397 would not apply in such a case, however accused can be convicted u/s 411, P.P.C. *[1969 P.Cr.L.J. 43; 1968 P.Cr.L.J. 878]* Evidence of victim and fact that she was victim of a robbery in circumstances alleged established by medical evidence. Conviction maintained. *[PLD 1974 Kar. 195]*

7.1 **Reduction of sentence.** To obtain expeditious justice is a right of every citizen but unfortunately accused constantly remained either on bail or confined to jail, when the case remained pending in various Courts for about 22 years. Such a prolonged criminal proceeding has been considered to be a factor to be considered for reduction of sentence. *[2004 P.Cr.L.J. 1747]*

8. **Accused chose more than one offences e.g., Ss. 394/397/34, 376/109, 266, 161, 392 & 409/109.** Armed persons forced their entry in Bank. Taking staff on pistol points refraining them move. Firing and bulled lit in abdomen of one Bank Officer, dacoity, robbery, eye-witnesses, corroboration, recovery memos, confessional statement, recovery of silencer, live cartridges, a dagger, kalashnikov. It may be pointed out here that though u/s 497, P.P.C., the Court is competent to direct that in case a person is already undergoing a sentence of imprisonment any sentence passed subsequent thereto shall run concurrently with such previous sentence and normally direction in this regard is made under S. 561-A, Cr.P.C., yet, the power to vested has to be exercised sparingly in certain cases only where imposition of subsequent sentence either offends any Constitutional or legal provision or the direction to make the sentences concurrent is necessary to secure the ends of justice. For instance, for an act or omission constituting an offence under two or more enactments the offender shall be liable to be prosecuted and punished under either or any of those enactments as provided by S. 26 of the General Clauses Act, yet, he cannot be punished twice for the same offence keeping in view the provisions of Article 13 of the Constitution of Pakistan read with S. 403, Cr.P.C. *[2001 S.L.R. 433]*

9. **Benefit of Government remission.** Benefit of the remissions allowed by the Government to the prisoners declined to accused because the case against tem was one of dacoity which category had been expressly excluded for the purpose of the said remissions. Accused were never convicted for an offence of dacoity and they had been in fact convicted u/s 394, P.P.C., which pertains to voluntarily causing hurt in committing robbery. Offence of robbery and dacoity are quite distinct from each other carrying different sentences and having different constituting ingredients. Offence of dacoity being a graver offence than the offence of robbery appeared to have been excluded by the Government of the purpose of aforesaid remissions, but not the offence of robbery. *[2001 YLR 2971]*

10. **Pardon or compromise.** Once a case is brought before Court of justice no pardon or compromise is admissible in crimes entailing Hudood, if matter was related to right of public or "*Haqooq Ullah*". However such a circumstances by no stretch of imagination, can be taken or considered as an incriminating piece of evidence or circumstance against accused. *[1999 P.Cr.L.J. 664]*

11. **Revisional power.** Revisional power in Hudood cases under Article 203-DD and 203-G of the Constitution are exercisable only bye the Federal Shariat Court. *[1999 P.Cr.L.J. 1996]*

395. Punishment for dacoity.—Whoever commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a term which [4][shall not be less than four years nor more than] ten years and shall also be liable to fine.

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4 Subs. by Ordinance III of 1980, dated 3.2.1980.

11. **Withdrawal of case by prosecution.** Government decision to drop case impelled by spirit of maintaining peace and harmony between two warring sections of population. No untoward incident ever-since day of incident occurred between two quarrelling parties. Since emotion had subsided and tension no longer existed between the parties and situation had become normal, it was in the interest of public peace and maintenance of harmonious relation between parties that ugly chapter of conflict and quarrel between them should be closed rather than to kept alive by pursuing case. *[1984 P.Cr.L.J. 621]*

12. **Forum of appeal.**

12.1 **Offence of *haraba*.** Where the conviction falls within the scope of s. 20 of the Offences Against Property (Enforcement of Hadood) Ordinance, 1979 and on that score the appellate forum would be the Federal Shariat Court as contemplated u/s. 24 of the Ordinance, 1979. *[2004 P.Cr.L.J. 573]* Offences Against Property (Enforcement of Hudood) Ordinance, 1979 is a special law dealing with the offence relating to the offence of theft *etc.*, whereas the Penal Code was a general law and in case where both special law and general law were applicable, preference would be given to the provisions of the Special Law. *[2000 YLR 289; 1995 P.Cr.L.J. 724; 1996 P.Cr.L.J. 475; PLD 1986 S.C. 13 ref.]*

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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 imprisonment for life, or rigorous imprisonment for a term which [5][shall not be less than four years nor more than] ten years, and shall also be liable to fine.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Joint trial.
5. "In committing dacoity".
6. Appreciation of evidence.
7. Confession.
8. Benefit of doubt.
9. Conviction.
10. Non-compliance of mandatory provision of S. 342, C.P.C.
11. Compromise
12. Section 396 read with S. 20 offence against Property (Enforcement of Hudood) Ordinance, 1979.
13. Section 396 read with s. 6, Anti-Terrorism Act, 1997.

1. **Scope.** Section 396 of the Code deals with the offence of dacoity with murder. It any of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons are liable to be punished with death, or imprisonment for life, or rigorous imprisonment for a term which, shall not be less than four, years nor more than ten years, and shall also be liable to fine. This section declares that the liability of other participants is coextensive with that of the actual murderer, and, for this purpose, all that is require to be proved is that they should have been 'conjointly committing" the dacoity and any death caused by a dacoit in the course of the dacoity would be murder, and is attributed to all of them. The death need not be proved against any one of the dacoits in particular so long as death is the result of cumulative effect of the violence used by the gang. *[AIR 1955 Hyd. 147]* This section has two ingredients:-

i) Commission of dacoity by five or more persons; conjointly;

ii) During which murder also committed.

Where a murder is committed neither in the furtherance of the common object of the dacoits nor it was a result which was known to be likely, for example if one of the dacoits; in the course of the dacoity happens to see a person who has run away with his wife and kills him, the other dacoits cannot escape liability u/s 396, P.P.C., simply because the murder resulted as the dacoit responsible for tit had personal grudge against the victim, but it may not be possible to commit the companions of the murderer under section 302/ 149, P.P.C. Another class of cases to which section 396 of the Code may apply in preference to s. 302/149 is where, without the companions knowing it, one of the dacoits caries a weapon with which he