

l) ordinarily, issue in the first instance. it



i) There must be a gang of persons, ii) That the accused belonged to it, iii) The gang must be associated for the purpose of habitually committing dacoity. Section 400 provides for the punishment of those who belong to a gang of persons who make it their business to commit dacoity. For the purpose of Section 400, it is not necessary that the person should have done any overt act of committing robbery or dacoity. Mere association with a gang is sufficient to constitute an offence under Section 400. The word 'gang' means any band or company of persons who go about together or act in concert. The expression 'belong' implies something more than casual association for the purpose of committing one or two dacoities by a person who was ordinarily living by honest means. It refers to those persons who habitually associated with a gang of dacoits and actively assist them in their operation.

If a person with bad past record participates in the commission of dacoity even on one occasion in association with a well-known gang of habitual dacoits knowing them to be such a gang, it may be reasonably inferred that he belongs to that gang unless there is some other material on record to justify an inference that the association was of a casual nature. The person or offender should have had a continuous association with this gang, so as to be identified with the gang and the common purpose for which the gang has been formed so as to 'belong' to the gang. The fact that women lived with dacoits as their wives or mistresses are not enough to prove that they belong to a gang of dacoits. It is essential to prove that the women themselves were associated with the husbands or protectors for the purpose of themselves habitually committing dacoits.

The offence under Section 400 is cognizable, and warrant should, ordinarily, issue in the first instance. It is both non- bailable and non-compoundable, and is exclusively triable by the Court of Session.