

Robbery extortion or  
a serious theft.  
therefore, theft,



**ASSIGN  
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Robbery or attempted robbery by at least five persons is dacoity. It is not necessary that all the five persons must commit or attempt to commit robbery. If the total number of those who are committing or attempting to commit or are present and aiding such commission or attempt is at least five, all of them are guilty of dacoity. In other words, those who commit robbery and those who attempt to commit the same, and those who are present and aiding such commission or attempt are all counted, and if their number is five or more all of them would be guilty of committing dacoity. Dacoity is also called gang- robbery or attempted robbery by a gang provided the gang has at least five persons. It is thus a serious attempted robbery, or a serious robbery which itself is a serious extortion or a serious theft.

Therefore, theft, extortion, robbery and dacoity have close connections with one another. The word ' conjointly' means uniform intention along with unified or united or concerted action. This word, because of its deep rooted meaning, has been deliberately preferred over the word ' jointly'. Dacoity is committed as soon as robbery by five or more persons is attempted. It is not necessary for their conviction that their attempt must succeed. If the attempt does succeed it is a dacoity, and if the attempt fails even then the offence is dacoity. Where the accused persons, while carrying away property obtained by theft, exploded cracker with a view to scare away the inmates from pursuing them, it was held that they were guilty of dacoity.

Where several Hindus in concert forcibly removed an ox and two cows from the possession of a Mohammedan with a view to prevent him from killing the cows, the Allahabad High Court ruled that they were guilty of rioting only and

held that it would not amount to dacoity. But in the very next year of this decision the same court differed with this view and held it to be limited only to the facts of that case. Thus, where a large number of Hindus under the influence of religious sentiments concertedly attacked some Mohammedans who were driving cattle along a public road and forcibly deprived them of their possession, it was held that the Hindus were guilty of committing dacoity in view of the fact that all ingredients of this offence were present. Where the inmates of a house having received the information beforehand of an impending attack on their house by dacoits went away from that place because of the fear, and the accused persons came there, attacked the house and took away property, it was held that the fact that the inmates had run away was proof of fear of hurt or wrongful restraint, and as such the accused were guilty of dacoity. Whether conviction of less than five persons for dacoity justified The offence of dacoity can be committed by five or more persons only. Apparently it seems, therefore, that less than five persons cannot be convicted of this offence.

But the same is not true. There may be following five situations in this regard. 1.

Where the total number of participants in the crime is proved beyond doubt and also the participation of the less than five persons being convicted is proved, their conviction is legal. For instance, if the prosecution proves that a total of seven persons had committed the crime out of whom A, and Ñ were definitely there, then conviction of A, and Ñ is legal. 2. Where the total number of participants in the crime is not proved beyond doubt but participation of the less than five persons being convicted is proved, their

conviction is probably not good. For instance, where the prosecution fails to prove the total number of participants in the crime but proves that A, and Ñ were definitely there, then probably conviction of A, and Ñ will not be legal because the prosecution has failed to establish as to how many persons participated along with A, and C.

There may, however, be a difference of opinion in this regard because some people may argue that the prosecution has proved that there were at least five persons participating in the crime out of whom A, and Ñ were definitely there and therefore, their conviction should be legal. 3. Where the case of the prosecution is that all the participants are named and only they, and no others have participated in the crime and the less than five persons being convicted were definitely present even though who were the others with them is not proved, the conviction of these less than five persons is illegal and they have to be acquitted along with all others. For instance, if the prosecution insists that A, B, C, D, E, F and G only, and no others, had participated in the crime out of whom participation of A, and Ñ is proved beyond doubt but participation of D, E, F and G is not proved beyond doubt, the conviction of A, and Ñ is illegal and all the seven have to be acquitted. The reason for the same is that the prosecution fails to prove that A, and Ñ had conjointly committed the crime along with D, E, F and G. 4. Where the less than five persons being convicted are not public servants but others with them are public servants against whom sanction for prosecution has not been given by the appropriate authority and as such no case has begun against them.

In such a case, conviction of less than five persons is legal. For instance, A, and C, who are not public servants, are being prosecuted along with D, E,

F and G, who all are public servants. Since sanction for prosecution of D, E, F and G has not been given, no case in fact is pending against them. Here conviction of A, and C is legal. 5. If the prosecution has proved the participation of the less than five persons being convicted that they along with the others had participated in the crime but the others die during pendency of the case, the conviction of these less than five persons is legal. For instance, if the prosecution has proved the participation of A, and C beyond doubt and also that they along with D, E, F and G had participated in the crime, but D, E, F and G die during pendency of the case, the conviction of .

4. and C is legal. If, for instance, five persons are charged with this offence and the identity of two of them is established beyond doubt but that of the other three is doubtful, those three would be acquitted but the two would be convicted, because it has been established that there were five persons in all, and out of them the two being convicted were definitely there. But if there are five named accused and the case of the prosecution is that they alone had committed dacoity, and the court found that the case against three of them had not been proved beyond doubt while the case against two of them was established, the conviction of those two cannot be maintained in view of the case being that they along with the other three named had committed dacoity but those three named were not proved to be involved in it while there must be a minimum of five persons in a case of dacoity.

Thus, interpretation of the section 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. It can easily be seen thus that the principle underlying sections 34, 149, 120-A punished under sections 120-B and 391 punished under section 395 are same with respect to the liability of lesser number of persons than mentioned in the above-named sections of the Indian Penal Code.