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The section, as is clear, does not enumerate the circumstances under which either of these sentences can be imposed. Naturally, the courts are guided by the Code of Criminal Procedure and the pronouncements made by the Supreme Court in the process. Under section 367(5) of the Code of Criminal Procedure, 1898, before its amendment in 1955, the normal rule was to pass a sentence of death in cases of murder, and if a court was not inclined to pass such a sentence, it was required to specifically state the special reasons in the judgment for doing so.

In other words, during that time imposition of death sentence was the rule and imprisonment for life (transportation for life, before the same was replaced by section 117, Schedule of Act XXVI of 1955 to imprisonment for life) was the exception. The Code of Criminal Procedure (Amendment) Act, 1955 amended section 367(5) of the Code of Criminal Procedure, 1898 and this amendment came into effect on January 1, 1956. By this amendment that part of the law which obliged the court to write reasons for imposing imprisonment for life was dropped. This, in effect, means that the court was empowered to pass either a sentence of death or of imprisonment for life at its discretion.

The old Code of Criminal Procedure was repealed in 1973 when a new Code was enacted. Section 354(3) of this Code of Criminal Procedure, 1973 states : ‘ When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence’.

Therefore, the present position with respect to the question of imposition of

death sentence or imprisonment for life is that the normal sentence for murder convicts is imprisonment for life while special reasons need to be given when death sentence is being awarded.

The following discussions of case law should consequently be understood in the light of what has been stated above. Pre-planned deliberate murder Where the accused, a qualified Ayurvedic doctor, deliberately killed his friend and his entire family of nine persons for wrongful gain, and also tried to destroy the evidence of his crime, it was held that the cruel murders justified the imposition of death sentence even though the accused was not economically sound and had to support a family consisting of his wife and two children. Where the accused was a bully or a hired murderer who killed only for reward, the proper punishment is sentence of death, and situation remains the same where the accused killed the deceased deliberately so that he could commit theft unhindered. Highway dacoities with murders, many times heinous and most brutal, have increased manifold times in recent years which require to be dealt with an iron hand and consequently death sentence is the appropriate deterrent punishment in such cases. Cruel, barbaric or heinous murder Where there was a dispute between the accused and the complainant over the boundary between their fields, and also the accused could not pay for the grocery items which he bought on credit from the complainant, and on the night of the incident he threw a hand-grenade into the courtyard of the complainant's house which exploded and killed his wife and child, the dastardly act needed to be punished with a sentence of death.

Murder under religious fanaticism or communal hatred Where certain Hindus gruesomely killed a Muslim, who was the only bread-winner in his family, during the course of a communal frenzy under religious fanaticism, it was held that death sentence was appropriate. Murder because of caste enmity Deliberate murders under caste considerations have been punished severely. Where a girl belonging to a high caste married a Harijan boy which was presented to by certain members of the high caste as a result of which they killed five persons belonging to low caste in a most barbaric manner, it was held that the murders shook the judicial conscience and deserved to be visited with the extreme penalty of death as they fell under the rarest of rare category.

But where the accused was a 'Thevar' and the deceased woman a 'Vellala' and the deceased had beaten the accused by a broomstick as he had beaten her son by 'chappal' earlier, and she also made certain sarcastic remarks against Thevars, after which the accused killed her by an 'aruval', it was held that circumstances of the case were not such as to justify imposition of death sentence. Frequent quarrels resulting into murder Where the accused, a bachelor 'Sadhu', used to live with his half-brother who was married, and there were frequent quarrels between him and the deceased, the half brother's wife, and on the day of the incident he killed her by a gadasa when his half-brother was not at home, it was held that there were no extenuating factors to justify imposition of a lesser sentence than death. Similarly, where the accused who was a spendthrift and his wife lived at his father-in-law's place and there were frequent quarrels between him and his wife, and on the night of the incident he beat her for which he was scolded

by his father-in-law, and he then attacked his wife and father-in-law by aruval causing a very large number of injuries on them as a result of which they both died, it was held that death sentence was the proper penalty under the circumstances. Murder under unfounded belief The accused used to believe that his wife was practising witchcraft. He killed her. The body of the deceased could not be found but he was convicted of murder on the basis of circumstantial evidence mainly. It was held that imposition of imprisonment for life was more appropriate under the circumstances because the court was not in a position, in the absence of corpus delicti, to carefully analyse the exact circumstances of the crime and the injuries inflicted and, therefore, to err on the side of leniency is more justifiable.

Political murder The deceased, who was the Vice-President of an organisation of agriculturists, was waylaid and killed by the accused persons who were workers of a marxist party on account of ill-will between them.

The death sentence passed on the five accused was changed into imprisonment for life as the murder was an overzealous act on the part of them which was based on misguided political intolerance. It was, however, specifically observed by the court that it was not laying down any general principle to be followed in all political murder cases especially because freedom of thought and expression has been guaranteed by the Constitution.

Murder because of abject poverty Where the accused killed his wife under utter stress of abject poverty especially when he was frequently been taunted by her and other relatives for his poverty, and the fact of their happy married life for about ten years was proved and they had three little children to look after, it was held that imprisonment for life was the appropriate

sentence under the circumstances. Similarly, where the accused was very poor and could not afford the expenses of a surgery for removal of tumour from the uterus of his wife and, therefore, killed her along with their two little children, it was held, that death sentence was not justified and this was not a rarest of rare case. Murder where accused himself is also injured Proof of injuries on the accused, by itself, does not justify imposition of the lesser sentence of imprisonment for life. There can be no general principles of law laid down and the facts and circumstances of each case have to be looked into very carefully. Where the appellant inflicted only one injury by a sword on the deceased at the instigation of his co-accused while other accused persons had also caused many injuries on the deceased as a cumulative result of which he died, and the accused himself received nine injuries on himself, and while some of the co accused were acquitted while some others were sentenced to imprisonment for life, the appropriate sentence for the accused would also be imprisonment for life. Failure of prosecution to explain the case Where the prosecution has failed to explain all the circumstances of a case in the proper perspective, and it could not be known as to how the incident culminating in the death of the deceased originated, the death sentence deserves to be reduced to imprisonment for life.

Murder under mental distress The fact that the accused at the time of commission of murder was passing through mental distress has been given due consideration by the courts while awarding sentences. Where the appellant who was young and mentally not sound went into a tantrum on a slight provocation and caused the death of three persons, it was held that he deserved to be treated lightly as far as the sentence against him was

concerned and imprisonment for life was proper under the circumstances. Similarly, where the accused killed his wife and two minor daughters without any cause or motive and explained that he had been suffering from mental disorder since the time he was bitten by a dog, it was held that the accused must have committed the crimes under some mental imbalance as such behaviour was not expected of a normal man, and consequently he deserved to be dealt with leniently with the sentence of imprisonment for life. Murder under provocation Exception 1 to section 300 of the Code dealing with provocation recognises diminished responsibility under conditions stated therein, but if the provocation is not such as has been stated there should it be considered by the court at the time of awarding a sentence in a murder case, is an important question.

The courts do give due consideration to the aspect, and provocation may or may not be held to have a bearing on the quantum of sentence, depending upon the circumstances of a case. Where the husband of the deceased died and she was left alone with her little son, and after some time she developed intimacy with the accused and even lived with him for some time, and one day when she went to his room he told her that she had lost her affection towards him as she had been going to cinema with another man to which she retorted by saying that it was none of his business as a result of which the accused got provoked and after sending her son out on some pretext he killed her and then consumed a large amount of insecticide to commit suicide from which he was barely saved, it was held that the slight provocation and consequent quarrel between the two before her murder and his consequent attempt to commit suicide deserved to be taken into account

while passing a sentence against him, and that death sentence was not called for. Murder on a trivial cause Where a trivial dispute arose between the accused persons and the deceased as to who of them should be served first with potato chops by the road side vendor, and they abused each other, and while two of the accused caught hold of the deceased the accused appellant stabbed him to death, it was held that life sentence was appropriate under the circumstances. Murder by a physically handicapped person The law does not distinguish between murders committed by a normal person and by physically handicapped ones. However, while passing a sentence the court may sometimes give importance to this aspect, taking an overall view of the facts and circumstances of the case. Where the accused, a deaf and dumb person was held guilty of murder, the sentence of imprisonment for life was passed against him. Murder by a woman The law gives no importance to the fact of the sex of the accused and it does not matter whether a murder has been committed by a man or a woman.

But in practice death sentences against women convicts are far less in number which does prove that the courts do give a consideration, directly or indirectly, to this fact. The accused, a married woman, was having illicit intimacy with a shepherd. She discovered that he was having an affair also with the deceased, another married woman with a child. She lured the deceased into a jungle on a false pretext along with her child and then killed them both. To confuse the evidence the accused then clothed the deceased with her own clothes and burnt her face and buried the child in the river sand.

It was held that the social and personal factors of the accused, her femininity, youth, unbalanced Sex and expulsion from the conjugal home along with the facts that she was the mother of a young boy who needed her and that the threat of a death sentence had been hanging over her for more than two years, were enough grounds, for sentencing her to imprisonment for life. A young college girl fell in love with a medical doctor, married and father of three children. Numerous love letters were exchanged by the two. After some time the girl discovered that he was having affairs with other girls also. She called him to her home on the night of the incident and they had an altercation, and when he was leaving after some time she shot him dead.

It was held that although it was a deliberate murder, the ends of justice would meet if she was sentenced to imprisonment for life. Sentencing in joint liability cases Where more than one person are convicted for the commission of a murder, should they all be sentenced to undergo the same punishment or can they be sentenced differently is an important question. Where thirteen accused persons were charged with murder out of whom ten were acquitted by the lower court and another two by the High Court, the only remaining accused, the appellant, should be punished with imprisonment for life. Where two accused persons were sentenced to undergo imprisonment for life by the lower court for murdering the deceased and one of them gifted some land to the widow of the deceased by way of compensation and his conviction was, therefore, changed by the High Court into one for causing death by rash or negligent act to be visited with a lesser penalty, it was held that it was a gross error on the part of the High Court which deserved to be set aside as it was defective in law and would also allow other wealthy

convicts to get away after committing murders by making compensations in the form of land or money, and consequently, the case was remanded back to the High Court to be disposed of according to the law. The prayer of the accused that the deceased's widow must be ordered to return the land gifted to her by the father of the accused who had gifted it to her could not be entertained.

Where two accused persons were convicted of murdering the deceased but it could not be clearly established that the death was caused by poison, but the appellant had also bodily lifted the deceased and then had dropped him on the ground as a result of which fatal head injury resulted, it could not be said that he had taken more part in the crime than the other accused who had been sentenced to undergo imprisonment for life and consequently the death sentence passed against the appellant deserved to be altered to imprisonment for life. Where the accused and others, armed with revolvers and daggers, took up positions near the two gates of a bus, and fired in the air to scare away other persons while some of them entered the bus and killed the deceased by inflicting forty-four injuries on him, but due to inadequate evidence all except the accused were acquitted, it was held in appeal, that the conviction was justified as he was the only one whose identity was established beyond doubt and the appropriate sentence against him was imprisonment for life. Where the case against the appellant and other co-accused could not be differentiated and he alone was sentenced to death while others were sentenced to imprisonment for life, his sentence must also be reduced to that of imprisonment for life.

Where the appellant was sentenced to death for killing the deceased by firing at him but the charge of instigating the murder against his brother could not be substantiated and in the process the brother was acquitted, it was held that it was appropriate to alter the death sentence to imprisonment for life. Where two persons were convicted of murdering the deceased in revenge and it was proved that the shots fired by one of them had caused such injuries which were sufficient in the ordinary course of nature to cause death while that of the other hit only the thigh of the accused and as such was not sufficient in the ordinary course of nature to cause death, it was held that this other person could not be visited with death penalty. Where the appellant and another had been convicted of murder of the deceased and while the appellant was sentenced to death the other was sentenced to imprisonment for life only, it was held that death sentence passed against the appellant was justified as he had a stronger motive to kill the deceased, had threatened him earlier also with death and had in fact fired from close range on the head, a vital part of the body. The accused persons were convicted of dacoity with gruesome murders. Two of them, alleged to be armed with firearms did not even enter the house to commit dacoity and remained outside and caused the death of two persons outside the house. The other accused persons, differently armed, had gone inside the house and had inflicted a number of injuries on the deceased by weapons other than firearms. It was held that this being not a rarest of rare case, the death sentence must be reduced to life imprisonment.

When can enhancement of sentence be interfered with? The general policy is that the Supreme Court does not interfere with the discretion exercised by

the High Court on the question of sentence even when it has enhanced the sentence passed by the lower court. But where the lower court had analysed the facts, circumstances of the case and materials on record very carefully while passing a sentence but the High Court interferes with it without any basis whatsoever and enhances it, the Supreme Court is fully authorised to quash the enhancement of the sentence by the High Court. Similarly, where the High Court imposes an additional sentence which in fact is an enhancement, without following the necessary procedure of hearing the convict and thus an important principle of natural justice too is violated, the enhancement deserves to be quashed by the Supreme Court. Power of High Court to appreciate evidence must be exercised very carefully: Even though the High Court is fully empowered to appreciate the evidence in a case, the same must be done very carefully and only on sound reasons because the High Court must never forget that the trial ' court has always an advantage over the appellate courts of seeing and hearing all the witnesses.

Age of the convict Age of the convict has frequently been taken into consideration by the court while sentencing him for murder. Sometimes it has been a ground for reduction of sentence while at other times it has not been held to be so. Reasons given in either case have been convincing at times and not so convincing also in many cases.

Where the accused, about nineteen years of age, attempted to take away the new bicycle of the deceased by force, thus attempting to commit robbery, which was resisted by the deceased and the accused stabbed him to death in the process, it was held that age alone could not be a ground for awarding the lesser sentence of imprisonment for life even though the same

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could be placed before the executive in a mercy petition. In another case, it was observed by the Supreme Court that the fact that the accused was under eighteen years of age at the time of commission of murder is an important factor to be taken into consideration at the time of passing a sentence against him. Where two persons who had allegedly instigated the nineteen year old accused to fire upon the deceased were given benefit of doubt and acquitted, it was held that the accused also deserved to be punished only with imprisonment for life for the murder.

In *Gopal Mahadeo Tambada v. State of Maharashtra*, the Bombay High Court held that the fact that the accused was 76 years old is not a reason sufficient not to send him back to jail to serve out a life term when he is squarely guilty of murder. Children Acts It is important to note that there is a central legislation, the Children Act, 1960, in India, section 22 of which states that no delinquent child can be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing security. Beside this, various Children Acts have been enacted by many States in India, and the courts have been giving benefits to the delinquent children committing murders from time to time under these Acts and Article 39 (f) of the Constitution. In *Babban Rai v. State of Bihar*, two accused persons were convicted for murder and sentenced to imprisonment for life.

Both were below sixteen years of age on the day of the incident. The Supreme Court held that they were entitled to the protection of section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The sentence of imprisonment for life was liable to be set aside as they now being major could not be sent to the remand home. Old Age Old age of the convict, on <https://assignbuster.com/the-for-doing-so-in-other-words-during/>

similar lines, has sometimes been taken into account while awarding a sentence against him, while at other times this has been held to be not of much consequence.

The 'rarest of rare' principle for imposing death sentence As stated already section 354(3) of the Code of Criminal Procedure, 1973 makes it mandatory for the court to state reasons for the sentence awarded, and in case of sentence of death 'special reasons' for the same. The Supreme Court was seized of the question of imposition of death sentence in Bachan Singh v. State in which the appellant was held guilty of murder of three persons and sentenced to death by the lower court which was subsequently confirmed by the High Court. The question for consideration in appeal was whether the facts found by the courts below would be 'special reasons' for awarding the death sentence under section 354(3) of the Code of Criminal Procedure, 1973. The Supreme Court observed by a 4 to 1 majority that now, according to the changed legislative policy which is patent on the face of section 354(3) the normal punishment for murder and six other capital offences under the Indian Penal Code is imprisonment for life or imprisonment for a term of years and death penalty is an exception. In this context section 235(2) of the Code of Criminal Procedure, 1973 which is also relevant provides for a bifurcated trial and specifically gives the accused a right of pre-sentence hearing at which stage he can bring on record material or evidence which may have a bearing on the choice of sentence.

The present legislative policy discernible from sections 235(2) and 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under section 302, Indian Penal Code, the

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court should not confine its consideration principally or merely to the circumstances connected with the particular crime but also give due consideration to the circumstances of the criminal. The Supreme Court should not venture to formulate rigid standards in an area in which the legislature so warily treads. Only broad guidelines consistent with the policy indicated by the legislature in sections 354(3) and 235(2) can be laid down. It is quite clear that in making the choice of punishment or for ascertaining the existence or absence of ‘ special reasons’ in that context the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not these two aspects are so intertwined that it is difficult to give a separate treatment to each of them.

In many cases the extremely cruel and beastly manner of the commission of murder is itself a demonstrated index of depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that ‘ special reasons’ can legitimately be said to exist. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. It cannot be overemphasised that the scope and concept of mitigating factors in the area of death penalty

must receive a liberal and expansive construction by the courts in accord with the sentencing policy.

Judges should never be blood-thirsty. Hanging of murderers have never been too good for them. The courts have inflicted the extreme penalty with extreme infrequency—a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality.

That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. With respect to section 235 (2), of the Code of Criminal Procedure, 1973 the Supreme Court stated that though this section does not contain a specific provision as to evidence and provides only for hearing of the accused as to sentence, yet it is implicit in this provision that if a request is made in that behalf by either by the prosecution or the accused or by both, the judge should give the party or parties concerned an opportunity of producing evidence or material relating to the various factors bearing on the question of sentence. The Supreme Court held by majority of 4 to 1 that the provision of death penalty as an alternative punishment for murder is not violative of Articles 19 and 21 of <https://assignbuster.com/the-for-doing-so-in-other-words-during/>

the Constitution. The procedure for sentencing in section 354 (3) of the Code of Criminal Procedure, 1973 does not violate Articles 14, 19 and 21 of the Constitution.

The above guidelines were still further clarified by the Supreme Court in *Machhi Singh v. State*, in which a feud between two families resulted in loss of seventeen lives in the course of a series of five incidents on a night which occurred in quick succession in five different villages situated in the vicinity of each other. The dead included men, women and children. Four of the accused were awarded death sentence and nine imprisonment for life by the High Court.

The Supreme Court while acquitting one person and confirming the death sentence on three and life imprisonment on nine, observed that the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime. Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the

mitigating circumstances before the option is exercised. In order to apply these guidelines, inter alia, the following questions may be asked and answered: (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence? (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender? If upon taking an overall view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded the community may entertain such sentiment in the following circumstances: 1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. 2. When the murder is committed for a motive which evinces total depravity and meanness, for example, murder by hired assassin for money or reward, or a cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course for betrayal of the motherland. 3. When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse

social wrath, or in cases of bride-burning or dowry death or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

4. When the crime is enormous in proportion, for instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality are committed. 5.

When the victim of a murder is an innocent child or helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community.

Bride burning or dowry death cases, whether rarest of rare *Lichhamadevi v.*

State, is a dowry death case where the accused mother-in-law of the deceased, was acquitted of the charge of murder by the trial court but the High Court reversed her acquittal and gave her the extreme penalty of death sentence. The Supreme Court observed that where there are two opinions as to the guilt of the accused by the two courts, ordinarily the proper sentence would not be death but imprisonment for life. Apart from that there was no direct evidence that the accused had sprinkled kerosene on the deceased and set her on fire. There must have been other persons also who had combined and conspired together and committed murder but they were not before the court. The Supreme Court deprecated the indifferent attitude of the investigating agency in not prosecuting the husband of the deceased and his brother. The observation of the High Court of Rajasthan that the appellant deserved to be publicly executed was more out of anger than on reasons. The judicial discretion should not be allowed to be swayed by emotions and indignation.

While reappraising the evidences in a case the Supreme Court came to the conclusion that the deceased woman was being tortured, both physically and mentally, by her husband and mother-in-law with dowry demands, and it were they who had dragged her on to the courtyard of the house, poured kerosene on her and set her on fire, and that the death consequently was not an accidental one as claimed, and their acquittal was set aside and they were imprisoned for life. In a subsequent case, however, the Supreme Court ruled that bride-burning cases deserved to be severely dealt with as they fell under the rarest of rare category and death sentence should normally be imposed so that it has a deterrent effect on others as well. However the Supreme Court did not award the death sentence as the lower court had imposed life imprisonment on the convict and the Supreme Court did not wish to interfere with the same. But again, in another case, where the husband after injuring his wife severely by attempting to burn her for bringing inadequate dowry at the time of marriage, did all to save her but could not be successful, it was held by the Supreme Court that the death must have been caused in a state of loss of balance of mind and consequently death sentence was not called for. Murder for hurling of abuses and insults etc., whether rarest of rare The appellant was employed as a car-driver with the family of the deceased earlier for some time but on the date of the incident he was not so employed. He and the deceased's sister had become friendly with each other.

The accused murdered the deceased, a college student, as he thought that the deceased was trying to wean his sister away from the accused. The evidence in the case had clearly established that the deceased had made

certain remarks against the accused on the preceding evening relating to the social and economic status of the accused suggesting that he was not fit to marry a rich man's daughter. The accused felt affronted and insulted as he believed, rightly or wrongly, that she was willing to marry him, and consequently shot dead the deceased the next day. The sentence of death passed against him was altered to imprisonment for life as the mental stress through which the accused was passing along with his social and economic backwardness because of which he perhaps acted the way he did deserved to be considered, and consequently murder was not of the rarest of the rare category. Murder for refusal to continue illicit relationship, whether rarest of rare Where the accused committed murder of his divorced wife because she refused to continue the illicit sexual relationship with him and also killed her mother and another woman without thinking anything about the sanctity of human life, it was held that the aggravating circumstances far outweighed the mitigating circumstances because of which the three murders fell under the rarest of rare category which deserved to be punished with death even though the accused was a bread-earner of his family and was a young man of twenty seven years of age. Murder after kidnapping for ransom, whether rarest of rare The petitioner had made a plan with another accused to kidnap school children by giving them lift in the car which they had stolen from somewhere and then would ask for ransom from their parents, and in the event of the same being not paid would kill them.

They gave lift to a sister and brother accordingly and proceeded with their plan. The children resisted bravely when they smelled their plan and were injured in the process. The girl was raped, and ultimately when they realised

that the father of the children was a mere government servant who would not be able to pay them a handsome ransom, they killed them both. They both were sentence to death as the gruesome killings were of the rarest of rare kind and the petitioner's case could not be separated from his co-accused's as both were actively involved throughout in their plan and its execution.

Similarly, where the accused kidnapped a minor boy and asked for ransom from the family and when the same was not paid, killed the boy whose body was never found, it was held that it was a rarest of rare case necessitating imposition of the death sentence. In Mohan v. State of Tamil Nadu, the charges against two of the four appellants were that they had kidnapped a young boy for ransom and brutally murdered him so that he would not disclose their names.

These two appellants did not accede to the request of the other two appellants not to kill him. They took active part in the brutal strangulation of the victim. They got the ransom money from the victim's father after the murder. Reiterating the High Court's verdict, the Supreme Court held that they deserved to be punished with death as their acts showed their depraved state of mind and brutality. However, one of the two other appellants was known to the father of the deceased and was instrumental in the kidnapping. But he and the other appellants played no role in killing or conceiving the idea of killing and on the contrary pleaded with the main accused not to kill the boy. He also refused to accompany the main accused to pick up the ransom money after the murder of the boy. No ransom was

paid to these two appellants and no incriminating material was recovered at their instance.

The Supreme Court held that since their activities were not diabolical or acts of depraved mind, death sentence awarded to these two deserved to be reduced to life imprisonment. Murder under the belief of unfair resistance, whether rarest of rare The accused was having a love affair with the daughter of his employer. The girl left her father's home and went with the accused to another town where both allegedly got married. Later on the girl's father forcibly brought the girl back. After a few days the accused came to the girl's parental home with the intention of taking the girl, whom he believed to be his lawfully wedded wife. On being prevented from doing so he shot to death two close relatives of the girl. It was held that the death sentence imposed on him deserved to be altered to life imprisonment as the murders were committed under a loss of mental balance without any motive and previous planning as a result of which the case could not be said to be in the rarest of rare category.

Gruesome murder for grabbing property, whether rarest of rare The accused killed two persons and injured four others in a gruesome incident of assault. He designed to extinguish the entire family of his brother and even his father to grab property. The victims were attacked by a crowbar in the dead of night when all of them were asleep. There were cogent, reliable and unimpeachable ocular testimony of injured witnesses, and minor discrepancies in the evidence of other witnesses did not warrant its rejection.

It was held that this was a rarest of rare case in which the accused was unfit to live in the society and death sentence was the appropriate punishment against him. Similarly, where the accused murdered two innocent girls to teach their mother a lesson over a property dispute, the case was held to be a rarest of rare kind and death sentence was imposed. Murder for theft etc., whether rarest of rare In Earabhadrapa v. State, the accused was the servant of the deceased. He strangled her to death and then committed theft of her ornaments, saris and cash etc.

The murder was committed in the dead of night when everyone in the house was asleep. Even though it was a cold blooded premeditated murder for greed, the Supreme Court held that it did not fall under the rarest of rare category and consequently death sentence could not be imposed and its reduction to life imprisonment was warranted. Similarly, where a bank clerk, with the intention of committing theft in the strong room, caused death of an officer by a stitcher lying there, it was held that the nature of the weapon showed that the act was done in a momentary impulse and was not of a rarest of rare kind. In Amrutlal Someshwar Joshi v. State of Maharashtra, a domestic servant committed murders of three members of his master's family with the intention to commit robbery. The heinous crimes were committed in a cruel and diabolical manner. The Supreme Court held it to be a rarest of rare case warranting imposition of death sentence even though there was no evidence that at any time he had acted in a manner affecting traditional values attached to master-servant relationship because that is not a factor for not awarding death sentence when the motive was heinous and

the crime committed was cruel, cold-blooded and diabolical. In *Gentela Vijayvardhan Rao v.*

State of A. P., the accused persons sneaked into a passenger bus with petrol and match box and then set it ablaze at 4. 00 A. M. as a result of which twenty-three passengers were roasted to death. Not even faces of children and harmless passengers deterred the accused from committing the crime. The Supreme Court held that the facts that the accused were young and their prime motive was not murder but obtaining property and that they did not prevent a few passengers from escaping do not constitute mitigating factors.

They were sentenced to death. Murder because of frequent quarrel, whether rarest of rare In *Mathur Lohar v. State*, the accused killed his daughter-in-law and his brother in a pre-planned, cruel and cold-blooded manner. The main cause of the same was that his deceased brother had actively helped and arranged the marriage of the accused's son and daughter-in-law against the wishes of the accused. There used to be frequent quarrels between the accused on the one side and his deceased daughter-in-law and deceased brother on the other resulting into separation of their kitchen.

The accused also suspected that there was an illicit intimacy between the two deceased. It was held that in an overall view of the matter the case did not fall in the rarest of rare kind and consequently imprisonment for life was the appropriate punishment. Similarly, in another case, the accused suspected that his wife was leading an unchaste life because of which there used to be frequent quarrels between the two.

His wife went to her parental home along with her daughter aged about six years and stayed there for about fifteen days when the accused went there and asked her to come with him to the brook for washing clothes, and killed both his wife and daughter by an axe. It was held that the case was not such an extreme case as to justify imposition of death penalty. Murder in a state of frustration, whether rarest of rare Where two members of an unlawful assembly went ahead to kill their proposed victim in furtherance of the common object of the assembly but were frustrated in the process as they could not find the concerned victim, and while returning they spotted his two young daughters and killed them in frustration, it was held that the case was not one of the rarest of rare kind requiring imposition of death sentence. Similarly, where the accused had lost in a litigation, and in frustration and disappointment committed murder, it was held that he could not be sentenced to death as it was not a case of the rarest of rare degree. In Heera Lai v. State of Uttar Pradesh, the accused aged about thirty-five years butchered his wife and three children by a sickle (hasiya) and then attempted to commit suicide. He committed the offences since he had incurred a large debt of rupees ten lacs and was worried of the future of his family.

The Allahabad High Court observed that it was thus apparent that he was in great distress, frustration and emotional disturbance which is a vital mitigating factor along with the fact that he attempted to commit suicide too by the same weapon by which he had committed the murders. The Court held this to be not a rarest of rare case and so converted the death sentence to imprisonment for life. In Prakash Dhawal Khairnar v.

State of Maharashtra, the accused killed his brother, brother's wife and children because of frustration as the deceased brother was not partitioning the alleged joint property. The Supreme Court held that this was a heinous and brutal crime but was not a rarest of rare case. The accused did not have a criminal tendency. He was working as a water analyser in the State Government and was not a menace to the society. The confessional statement of his son who was another accused in the case showed that after commission of the offence he found tears in the eyes of his father. The Supreme Court changed the death sentence to imprisonment for life with the stipulation that the accused would not be released before serving at least twenty years in prison including the period already served by him. Protector committing murder, whether rarest of rare Where a guard, who was duty bound to protect the Prime Minister, himself killed her in cold blood, it was held to be a betrayal of the worst sort and all those involved in the conspiracy and its execution would fall under the rarest of rare category, even though they might have had a feeling that the victim had acted unjustly against a community. Murder in revenge believing act done by victim to be against a community, whether rarest of rare Where the accused persons believed that the victim had caused affront to a community in his capacity as the Chief of the Army Staff by ordering an armed operation in a holy place of worship, and thus killed him, it was held to be a case of the rarest of rare kind where the accused persons had not shown any remorse or repentance.

In Lokeman Shah and another v. State of West Bengal, there was an unlawful assembly the common object of which was to chase and kill persons whom

rioters believed to be responsible for defilement of a mosque. This incident took place seventeen years ago. The Supreme Court held that this was not a rarest of rare case and so imprisonment for life was the appropriate punishment when murder was committed in these circumstances.

Murder on caste considerations, whether rarest of rare Where thirty-one persons were alleged to have committed murders of nine Harijans, and some of them were acquitted, some sentenced to imprisonment for life and three sentenced to death, it was held that no special circumstances having been proved against the three, it was not a rarest of rare case and, therefore, these three also deserved to be punished with imprisonment for life. In *Krishna Mochi v. State of Bihar*, charge-sheet was prepared against 119 persons but ultimately thirteen accused persons were proceeded against. The accused persons arrived at the place of occurrence in a village, entered the houses by breaking open the doors, forcibly took inmates of the houses after tying their hands to a particular place and massacred them by slitting their throats. The accused militants were in police uniform and they killed thirty five persons in all while several others were injured.

They were proceeded under sections 302/149 of the Code and under section 3 of the Terrorist and Disruptive Activities Act, 1987. The Supreme Court held that all such acts were done pursuant to a conspiracy hatched up by them to eliminate members of a particular community in the village. Merely because some accused persons were not said to have assaulted either any of the deceased or injured persons, it could not be inferred that they had no complicity with the crime, all the more so as they were heavily armed with firearms and bombs etc. but did not use them. The case being rarest of rare, <https://assignbuster.com/the-for-doing-so-in-other-words-during/>

death sentence was awarded. Murder on supposed belief, whether rarest of rare In State of Maharashtra v. Damu Gopinath Shinde, accused persons abducted four children and killed three of them on the supposed belief that by doing so they would get hidden treasure. Confession of one accused proved the criminal conspiracy.

The Supreme Court held that since children were not abducted or killed for ransom, vengeance or robbery and it was because of utter ignorance that the accused persons became gullible to superstitious thinking which was motivated by greed for gold, the sentence of death imposed on them deserved to be commuted to imprisonment for life. Murder because of not being able to fulfil his wish, whether rarest of rare The relations between a couple not being good, the husband lived alone whereas their twelve years old son and a daughter stayed with their mother. The estranged woman became friendly with the accused but the relationship was not acceptable to the children as a result of which the woman declined to have this kind of a relationship with the accused. The accused attacked the woman and the children killing the woman and her son while the daughter was seriously injured. It was held that this was not a rarest of rare case because of the facts, inter alia, that at the time of the attack when he was challenged by a police officer he immediately stopped the attack and gave himself in to the officer and also that earlier he had seen a film with such a plot and consequently acted that way. Killing of a public servant on duty, whether rarest of rare Killing of public servants on duty have been taken serious note of by the courts generally and in a large number of such cases death sentences have frequently been passed.

The deceased, an Amin, had acted as an officer of the court in effecting an auction sale of the land of the accused appellant against whom arrears of land revenue were outstanding. The accused appellant and his son waylaid the deceased while he was returning after the auction. The appellant fired three shots at him two of which hit him causing him to fall down from his bicycle.

The appellant then beheaded him by a sword. He was convicted under section 302 read with section 34 and also under section 307. It was held, ignoring the absconding of the co-accused, that the case fell under the rarest of rare category obliging the Supreme Court to pass death sentence against the appellant. Similarly, where a Collector was murdered by throwing a bomb at him, it was held to be a case of rarest of rare nature deserving imposition of death sentence. But where the accused caused the death of a policeman suddenly to free himself from his grip, it was held that the case did not fall under the rarest of rare category and consequently death sentence was not called for. Where entire family wiped out, whether rarest of rare In a large number of cases of murder entire families have been wiped out because of some enmity or dispute.

Naturally causing of so many cold-blooded murders have generally been treated as gruesome and ghastly necessitating the imposition of death sentence. For instance, where the accused wiped out the entire family of his brother while they were asleep, or where the accused brutally murdered his uncle, aunt and young cousin with motive for property, the cases were held to be of rarest of rare kind and death sentences were imposed. In S. C.

Bahri v. State of Bihar, the accused killed his wife and two innocent children in a most callous and ghastly fashion. The Supreme Court ruled that there were no grounds for interference with the death penalty as it was a rarest of rare case because the murders were extremely brutal, gruesome, diabolical, revolting and dastardly. In Umashankar Panda v.

State of M. P. while all members of family were sleeping in a room the accused started killing his wife by a sword. When his eldest daughter tried to save her mother, the accused started inflicting wounds on her. He inflicted injuries on another daughter. Finding that the sword had bent, he took out another big sword and inflicted injuries on other children. As a result the wife and two children died while three children escaped death.

The Supreme Court did not interfere with the death penalty. In Surja Ram v. State of Rajasthan, the accused killed his real brother, brother's two minor sons and aunt while they were asleep. He also attempted to murder his brother's wife and daughter. The murders were committed in a cool and calculated manner. The Supreme Court held the case to be of rarest of rare category warranting imposition of death sentence. In Nirmal Singh v.

State of Haryana, the accused was earlier convicted of rape. He along with his brother attacked family members of the victim and caused death of five persons by giving brutal and merciless axe blows. The Supreme Court held this to be a rarest of rare case and awarded death sentence to him.

However, his brother co-accused was sentenced to imprisonment for life because he had assaulted only one person only after he was given 3 or 4 blows. In *Im Prakash v. State of Uttaranchal*, the accused domestic servant

killed three members of his master's family. The crime had been cleverly pre-planned and committed in a brutal and diabolical manner.

There was an attempt to kill even the fourth member but she saved herself by bolting the bathroom from inside. One member was killed in such a cruel manner that his neck was almost severed from his body. Multiple injuries were inflicted on vital parts of other victims. An earlier act of accused of killing a pet bird and piercing feathers in her revealed his cruel and savage behaviour.

The Supreme Court concluded that the crimes committed by the accused shocked the conscience of the society at large and of the Court and left an irresistible feeling that he was beyond reformation though young. He was a menace to the society. Therefore, death sentence was the appropriate punishment. In *Dayanidhi Bisoi v. State of Orissa*, the accused was related to the deceased and on visiting terms with him.

He was enjoying the hospitality and kindness of the deceased in the evening. He killed the entire family of the deceased including a three year old child in the night when the victims were asleep and when there was no provocation from the victims. The purpose of the killing was only to gain financial benefit. The Supreme Court concluded that the facts showed the cold-blooded and premeditated act of the accused which fell in the rarest or rare category and so imposition of death sentence was proper. The fact that the accused was a young man of thirty five years and had aged parents and a minor daughter and that there was possibility of his rehabilitation did not justify imposition of sentence of imprisonment for life.

In Karan Singh v. State of Uttar Pradesh, the accused killed five members of a family by butchering them with axes and other weapons in a very dastardly manner. The accused after killing three members of the family of the deceased went to the house of the deceased and killed children. He thus wanted to exterminate the whole family. The Supreme Court held that imposition of death sentence on him is proper. In Bahlu v. State of Rajasthan, the accused killed his wife and three daughters and a son aged nine, six, four and two and a half years of age respectively.

The Supreme Court held that these brutal acts by him are diabolic in conception and cruel in execution. These were inhuman acts without any remorse. Merely because he claims to be in a state of drunkenness at the relevant time does not take the case outside the rarest of rare category and thus imposition of death penalty on him is proper. In Ram Singh v. Sonia the accused husband and wife had put an end to the lives of her step-brother and her whole family including three little children aged one and a half months, two and a half years and four years and also her own father, mother and sister in a very diabolic manner so as to deprive her father from giving property to her step-brother and his family.

All the victims were asleep at the time of the murders caused without any provocation and were cold-blooded and premeditated. The Supreme Court observed that the accused completely lack the psyche or mind set which can be amenable for any reformation and thus they fell in the rarest of rare category. The High Court's decision was overruled and that of the lower court's restored and death sentence was awarded. Organised criminal activity whether rarest of rare In Shanker alias Gauri Shanker v.

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State of Tamilnadu, the crime indulged, i. e., multiple six murders, was gruesome, cold blooded, heinous, atrocious and cruel. The accused was a hardened criminal, a gang leader and thus a menace to the society. The Supreme Court held that it was a rarest of rare case and awarded death sentence.

It observed that this was an organised criminal activity, and criminally acquired social status by him was not a mitigating circumstance. It cannot be said that since it may not be possible to eradicate the crime itself, the criminals cannot be awarded death sentence though warranted by law.

Shooting and then crushing by vehicle, whether rarest of rare In Teja Singli v. Muklitiar Singh, the accused fired two shots at the deceased while sitting on a tractor and then crushed him by driving it. The Supreme Court held that this was not a rarest of rare case as there was nothing in it which would put it in that category and hence death sentence could not be imposed. Causing death in large numbers, whether rarest of rare In Sheikh Ishaque v.

State of Bihar the Supreme Court held that the number of victims alone would not make a case rarest of rare. Special reasons have to be given for awarding death sentence. In Shiv Ram v.

State of U. P., the accused persons formed an unlawful assembly and committed mass murders in most barbaric manner. Three heads were severed and an innocent boy often years was roasted alive in smouldering fire. The accused persons were under the belief that the family members of the deceased had given protection to the suspects who had earlier murdered

the brother of the main accused by severing his head, killing them by way of revenge in the same manner.

The Supreme Court held that the manner of commission of the crime, the motive and the magnitude of the crime pointed that it fell within the rarest of rare category and so death sentence was proper. Death sentence was, however, converted to life imprisonment. In *Manohar Lai v. State of Delhi*, the two accused killed four persons by setting them ablaze. The incident took place during riots following assassination of the Prime Minister of India. The Supreme Court ruled that even though the act was gruesome the accused had no personal enmity with the victims and had been blindfolded by the assassination, and so the death sentence was altered to imprisonment for life. In *Gurdev Singh v. State of Punjab*, the appellant accused persons were proved to be responsible for causing death of fifteen persons besides causing grievous injuries to eight others.

They had no grievance or enmity against any of the victims. The Supreme Court held that the acts of murder committed by the accused were so gruesome, merciless and brutal that aggravating circumstances far outweighed the mitigating circumstances. Moreover, the sentences of death imposed on two other accused persons had already been confirmed by the Supreme Court. In the circumstances the death sentence imposed on the appellant accused persons could not be commuted to imprisonment for life. In *Holiram Bordoloi v. State of Assam* the appellant accused along with other accused armed with deadly weapons surrounded the house of the deceased and set it on fire. The appellant accused caught hold of the minor son of the deceased who somehow had managed to come out of the burning house and

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threw him into the fire again. Thereafter, the elder brother of the deceased was dragged out from his house and hacked to death.

The Supreme Court held that the entire incident was pre-planned and there were no mitigating circumstances and so the imposition of death sentence to the appellant accused was proper. In *Gurmeet Singh v. State of Uttar Pradesh*, the accused, with the help of others, killed thirteen members of his family while most of them were asleep at night. Reason of the attack was flimsy and the manner dastardly. The Supreme Court held that the sentence of death awarded to him was proper.

Request for commutation of the sentence on account of delay in execution was rejected because the delay was occasioned by the judicial process.

Murder after rape, whether rarest of rare In *Kamta Tiwari v. State of M.*

P, the accused raped a seven years old girl child, strangulated her to death after that and threw her body in a well. The Supreme Court imposed death penalty on the ground that it was a rarest of the rare case. In *Molai v. State of M. P.*

, the victim, a 16 years old girl, was alone at the time in her home preparing for examinations. The two accused took advantage of her being alone raped her and then strangulated her with her undergarments and also caused injuries by sharp-edged weapons. They threw her body into the septic tank at the back of her house disregarding respect for the dead. There being no mitigating circumstances, the Supreme Court confirmed the death sentence on them.

In *Mohammad Chaman v. State (NCT of Delhi)*, the thirty year old accused was a neighbour of the family of the deceased. During temporary absence of the victims mother, the accused took the one and a half year old girl child into his room and raped her and in the process inflicted injuries on the liver of the child resulting in her death. The Supreme Court while balancing the aggravating and mitigating circumstances concluded that this was not a rarest of rare case and so converted the death sentence into imprisonment for life. In *Bantu alias Naresh Giri v. State of Madhya Pradesh* the accused was sentenced to death for rape and murder of a six year old child. The accused was less than twenty two years old on the date of the incident. There was nothing on record to show that the accused was having any criminal record.

He was not a grave danger to the society at large. The Supreme Court held that even though his act was heinous and requires to be condemned yet it cannot be said to be a rarest of rare case and consequently the death sentence was modified to imprisonment for life. In *State of Maharashtra v. Bharat Fakira Dili war* the accused found guilty of rape and murder of a three year old girl was convicted and sentenced to death by the trial court. The High Court, however, acquitted him. The Supreme Court held that even though the case is perilously close to being rarest of rare, imprisonment for life is the proper sentence against the accused as there was divergence of opinion between the lower court and the High Court. In *State of Uttar Pradesh v.*

Satish, a less than six years old child was raped and brutally murdered.

Setting aside the judgment of acquittal by the High Court and reiterating the

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judgment of the trial Court sentencing him to death the Supreme Court held it a rarest of rare case in which death sentence was justified. In Shivu v. R. G., High Court of Karnataka the accused attempted twice to rape village girls. He was admonished by the Village Panchayat, yet he raped the eighteen year old deceased and to avoid detection murdered her brutally.

The Supreme Court held that it was a rarest of rare case and the sentence of death imposed upon him was proper. The Court observed that the principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. In Shivaji v. State of Maharashtra the accused raped the nine years old deceased after calling him on the pretext of giving her firewood. The Supreme Court held it is a rarest of rare case and awarded death sentence.

Conviction was based on circumstantial evidence. The Court said that circumstantial evidence is not a mitigating factor. In fact, in most rape cases conviction will be on circumstantial evidence as generally there will be no eye-witnesses.

Keeping Evil eye and murder, whether rarest of rare In State of M. P. v. Dhirendra Kumar the accused was sentenced to death by the lower Court for murdering his landlord's daughter-in-law on whom he allegedly had an evil eye. The High Court had, however, acquitted him in 1982.

The Supreme Court ruled that the accused having enjoyed acquittal, and also this case being not a rarest of rare case, death sentence could not be

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imposed. In *Krishan v. State of Haryana*, the accused was already serving a sentence of life imprisonment. He was found guilty of committing another murder while he was released on parole. The Supreme Court ruled that felonious propensity of the offender cannot be made the sole basis for awarding death sentence and the case did not fall under the rarest of rare category. The death sentence was commuted to imprisonment for life.

Political murder, whether rarest of rare In *State of Tamil Nadu v. Nalini and others*, a former Prime Minister of India was assassinated in pursuance of a criminal conspiracy.

One of the main accused was an educated woman without whose support commission of the offence was not possible. The Supreme Court held that merely because she was a woman and a mother of a child who was born while she was in custody was no ground not to award her the death sentence. The role of other main accused persons was prominently direct and active without whose support the crime could not have been committed. There being no mitigating circumstances the death sentence against them also could not be interfered with. Such other accused who did not form part of the hardcore nucleus which took the decision to assassinate could not be sentenced to death and their punishment deserved to be altered to imprisonment for life. In *Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh*, the appellant and others were alleged to have killed a member of Parliament and his gunman and had injured others.

It was not disputed that the appellant was a member of a terrorist group. His participation was proved. The Supreme Court refused to interfere with his conviction under sections 302 and 120-B of the Code. Murder under the

belief that accused is not the real father of his son/daughter but someone else is, whether rarest of rare In State of Maharashtra v.

Raju Dadaba Borge, the accused caused the death of his wife and children under the influence of extreme mental or emotional disturbance. He was labouring under the impression that he was not the father of his three daughters. The Bombay High Court converted the death sentence to

imprisonment for life as it was not a rarest of rare case. Murder of indoor patient in hospital, whether rarest of rare In Referring Officer v. Arja

Narasimha Rao, the accused caused death of his wife by hacking her with knife on her head while she was admitted in hospital. The Andhra Pradesh High Court reduced the death sentence to imprisonment for life as the case was not of rarest of rare kind. Murder under superstition and greed, whether rarest of rare In Subhash Chandra Panda v.

State of Orissa, a four year old boy was allegedly kidnapped by the accused persons with motive to sacrifice him in their field under instructions of a Tantrik for being blessed with a son and a golden pot. The Orissa High Court held this to be a gruesome murder committed for gain, being blessed with a son and a golden pot. It said that the crime is so brutal and diabolical as to shock the collective conscience of the community. This being a rarest of rare case extreme penalty of death was warranted. What is a rarest of rare case?

Sushil Murmu v. State of Jharkhand, is a case where very important observations were made by the Supreme Court with respect to the concept of rarest of rare in relation to imposition of death sentence.

The Court said that this was an exemplary case of a nine year old child sacrificed before a deity by the appellant for his own prosperity. The fact that the appellant was having his own child of the same age at the time of the occurrence showed that he was not possessed of the basic humanness and completely lacked psyche of mindset which could be amenable for any reformation. The grotesque and revolting manner in which the helpless child's head was severed amplified the brutality of the act. Imploring face and voice of the innocent child raised no trace of kindness in the heart of the appellant. The non-challant way in which he carried the severed head in a gunny bag and threw it in a pond unerringly showed that the act was diabolic of most superlative degree in conception and cruel in execution. Superstition cannot and does not provide justification for any killing, much less a planned and deliberate one.

The accused was also facing a trial for sacrificing his own brother. The death sentence imposed called for no interference. Death Sentence to a woman, whether can be awarded? Women murderers are far less in number than men in most societies. The reason is obvious. But a more important aspect is can a woman be sentenced to death. Some of the cases discussed above relate to this aspect including the famous case of State of Tamilnadu v.

Nalini and others.- Such cases come up before the courts sometimes and the courts deal with them as per the law. Death sentences against women in India are very few. In Renuka Bai and another v.

State of Maharashtra? the accused appellants were involved in a series of kidnapping and murder of children (along with the approver who was

pardoned). The Supreme Court observed that this demonstrates depravity of their mind. The crimes were not committed under any compulsion but very casually when the children were no longer useful to them. The accused were menace to the society and the people in the locality were horrified when the crimes came out in the open. There was no likelihood of reformation of these women criminals and as such the sentences of death imposed on them are proper.

Delay as a ground for commuting, or not imposing, death sentence The courts have many a time been, especially during the recent years, seized of the question of a long delay in the execution of a death sentence, or a long and protracted trial, or the like. Can such a ground be relevant for commuting death sentence or for not imposing the same? Where the appellants had been sentenced to death for the offence of murder of the deceased, but had to undergo two successive trials because the High Court in its wisdom had ordered for a trial de novo upon the first reference, and it seemed that they had committed the crime under emotional distress because the wife of the deceased had abused the mother of the first accused, which had upset them and which they thought was unbearable, it was held that the case did not deserve the extreme penalty of death. Extremely excessive delay of six years in disposal of a case of the accused appellant would by itself be sufficient for imposing a lesser sentence of life imprisonment and the matter should not be left for mercy decision of the State Government under section 402, Code of Criminal Procedure, 1898 (section 433, Code of Criminal Procedure, 1973).

Where the accused was tried and convicted of murder, along with an attempt of rape, of a young woman but the High Court had acquitted him on a misappreciation of evidence believing the case was not proved beyond a reasonable doubt, the Supreme Court held that imprisonment for life was the proper penalty having regard to a long lapse of four years. Similarly, where the accused who was nineteen years of age was convicted of murder of his wife by throttling her and was acquitted by the High Court, the Supreme Court while maintaining his original conviction by the lower court sentenced him to life imprisonment as three years had elapsed. Where in a case of train robbery with murder there was a long delay between the date of commission of the offence and final judgment by the Supreme Court, and in the mean time the accused persons had been acquitted by the High Court, the death sentence was reduced to imprisonment for life as they had to undergo a long period of mental agony and there was no initial intention on their part to commit murder. The appellant was clearly on terms of improper intimacy with the deceased and while committing her murder was perhaps overcome by a sense of jealousy or indignation of what he thought was unfaithfulness on her part.

There was a long lapse of time since the imposition of death sentence on him by the trial court. He remained in the condemned cell for a long time. It was held that these considerations were enough ground to reduce the death sentence to imprisonment for life.

In a murder trial death sentence was awarded to the accused by the lower court. This was confirmed by the High Court which also rejected his request for granting certificate of fitness for appeal to the Supreme Court. The

Supreme Court granted special leave to appeal. There was no inordinate delay in such judicial process invoked by the convict. It was held that the circumstances did not constitute a ground for interference with the death sentence.

However the power of executive clemency remained with the government. The appellant and another had committed murders by gunshots. While the other was awarded life sentence, the appellant was sentenced to death. The prosecution story that the appellant had caused death in a brutal manner by putting his leg on the chest of the deceased was not accepted. The appellant was a young man of twenty-four years of age at the time of the occurrence and was under the agony of death sentence for a considerable period of time.

It was held that under these circumstances ends of justice would be met if he was sentenced to imprisonment for life under section 302 read with section 34, and section 302 simpliciter. Similarly, where the death sentence awarded to the accused for murder had been hanging over him for over twenty one months, this was held to be sufficient ground for commuting it to imprisonment for life. On the other hand, in another case, the conduct of the accused in attempting to disrupt the matrimonial home of the deceased was highly immoral and could not be looked upon with commiseration, particularly when after her marriage the deceased returned to path of rectitude and was firmly faithful to her husband. She was murdered in a dastardly fashion. No less than four unarmed persons were indiscriminately stabbed when most of them were asleep, unaware and helpless. The crimes were premeditated and pre-planned. The injuries caused to the husband of <https://assignbuster.com/the-for-doing-so-in-other-words-during/>

the deceased were dangerous to life and but for timely medical aid the same would have proved fatal.

Even the mother of the deceased was not spared. The delay in hearing of the appeal due to extremely heavy load of work in the High Court and the Supreme Court could not be said to be extraordinary. It was held that the case was fit for imposition of death sentence. Where the accused had been convicted of murder and sentenced to death by the lower court and the High Court had acquitted him, and four years had elapsed between the lower court's conviction and the High Court's acquittal, the sentence which should be passed by the Supreme Court if a conviction was returned was imprisonment for life. The accused was convicted of murders of his father and brother. While reducing his sentence to imprisonment for life it was held that the crimes had been committed in the heat of a quarrel amongst the family members for which the extreme penalty was not called for, all the more so because the appellant had been under the sentence of death for six years. While reducing the sentence it was also held that the widow and her minor children should be paid ten thousand rupees for the loss they had suffered by the death of the second deceased.

Where six long years had elapsed since the murder committed by the accused and he was not responsible in any manner for such lapse of time, it was held that this was enough justification for reducing the death sentence to life imprisonment. Where the accused had been convicted of murders extremely gruesome, brutal and dastardly and sentenced to death, and the High Court acquitted them, and it took another five years before the Supreme Court, making a total of more than eight years since the day of the

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occurrence, it was held to be a fit case for reduction of sentence to imprisonment for life. In another case, the accused petitioners committed a series of murders during January, 1976 to March, 1977. Each one of them was sentenced to death by the trial court on September 28, 1978. The High Court confirmed the sentences on April 6, 1979.

Their special leave petition against convictions and sentences were dismissed by the Supreme Court on November 17, 1980. It was held that their request for commutation of death sentence to life imprisonment because the death sentence had been hovering over them for over five years deserved to be rejected because the murders were gruesome and successive petitions by the accused themselves took time to be disposed of. In T.

Vatheeswaran v. State the accused was convicted of murder and sentenced to death. However, there was prolonged delay exceeding two years in the execution of the death sentence.

It was held by the Supreme Court that death sentence was liable to be quashed because a person under sentence of death is also entitled to fundamental rights under Articles 14, 19 and 21 of the Constitution. The court also observed that procedure established by law does not end with the pronouncement of sentence only but includes carrying out of the sentence also. But in another case of the same year Sher Singh v. State the Supreme Court held that delay exceeding two years in the execution of death sentence by itself does not entitle the convict to demand its quashing. But yet again in Javed Ahmad Abdul Hamid Pavala v. State there was a delay of more than two years in the execution of death sentence on the accused who

was only twenty two years of age and who was convicted and sentenced to death for murdering a young woman, her two little children and one child servant in a cruel, callous and fiendish manner.

The Supreme Court held that Article 21 of the Constitution could be invoked in such cases and death sentence could be commuted to life imprisonment. The court also ruled that a Bench of three Judges of the Supreme Court could not overrule the decision given by a Bench of two Judges of the Supreme Court. In R. S.

Budhwar v. Union of India in a trial before the general Court Martial the accused was sentenced to death. There was a delay of three and a half years by the Court Martial in disposing of the appeal, and no explanation by the authorities for such a long delay was given. The murder was not committed by the accused on his own volition but on command by the superiors. The superior officers master minding the crime were awarded only imprisonment for life. The accused had surrendered before the authorities within two days of the murder and had given a confession. The Supreme Court held that in view of these mitigating circumstances the death sentence deserved to be commuted to life imprisonment. In a bride burning case the accused persons had been convicted and sentenced to death by the lower court but the High Court had acquitted them. The Supreme Court overruled the High Court decision but held that in view of the fact that since two years had elapsed since their release ordered by the High Court, the appropriate sentence against them would be imprisonment for life. It was also observed that the court should remain dissociated from the heat generated outside the court room either through news media or through flutter in public opinion. In

Triveniben v. State the Supreme Court held that no fixed period of delay could be held to make death sentence inexecutable. It was observed that it is now well settled that undue long delay in execution of the sentence of death would entitle the condemned person to approach the Supreme Court, but the apex court would only examine the nature of delay caused and circumstances that ensued after the sentence was finally confirmed by the judicial process and it would have no jurisdiction to reopen decision. The Supreme Court went one step further when it ruled in Madhu Mehta v. Union of India that delay in execution of a death sentence because of the inordinate delay in disposing of mercy petition by the President of India, making the convict to suffer mental torture for a long time, is a valid ground for death sentence to be commuted to imprisonment for life. Where in a case of gruesome and cold-blooded murder the accused had been convicted under section 302 read with section 34 of the Indian Penal Code and sentenced to death by the trial court, but the High Court had set aside the conviction and sentence, and the Supreme Court in a special leave petition overruled the High Court and affirmed the trial court's verdict of conviction, it was held that since the occurrence had taken place over a decade ago the appropriate sentence would be imprisonment for life. The accused murdered his parents, brother, brother's wife and niece by a sharp edged iron weapon bansla while they were asleep. He was convicted and sentenced to life imprisonment by the lower court. It was held that even though this was a rarest of rare case requiring imposition of capital punishment, the sentence could not be enhanced in view of the delay of eight years caused in hearing the appeal and the fact that the accused was serving his sentence during that period. Conclusion regarding imposition of death sentence or life

imprisonment It can be seen from the above discussion that imposition of death sentence or life imprisonment depends on the facts and circumstances of each case, and the aggravating and mitigating circumstances need to be considered very carefully. With the reformist approach towards the criminal in Yogue life imprisonment is the rule and death sentence an exception. In *Ediga Anamma v. State*, the Supreme Court did discuss this matter and observed: “ Let us crystallise the positive indicators against death sentence under Indian law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, juridical commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under section 302 read with section 149, or again the accused has acted suddenly under another’s instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like steel the heart of the law for a sterner sentence. We cannot obviously feed into judicial computer all such situations since they are astrological imponderables in an imperfect and

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undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accepting the trend against the extreme and irrevocable penalty of putting out life.” Special leave to appeal Under Article 136 (1) of the Constitution the Supreme Court is empowered to grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India, while under Article 136 (2) nothing in Article 136 (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. The principles governing interference by the Supreme Court in a criminal appeal by special leave under this Article may be summarised as under: 1. That the Supreme Court would not interfere with a concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence; 2. That the Supreme Court will not normally enter into a re-appraisal or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure, or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence, and so on; 3. That the Supreme Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court; 4. That the Supreme Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudices or

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injustice to the accused; 5. That the Supreme Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence. Imposition of fine According to section 302 of the Code whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. In view of this, imposition of fine in a murder case in addition to a sentence of death or imprisonment for life is legal. However, at times impositions of fine have been set aside, or reduced, or in a large number of cases, especially in the recent times, the same has been directed to be paid to the next of kin of the victim, more as a relief from economic hardship than being compensatory in nature. Facts and circumstances of each case would clinch the issue about desirability of imposition of fine. Difference of opinion amongst judges There have been some occasions where brother judges have differed on the quantum of sentence to be passed against a convict of murder. The Supreme Court had opined in a case that in such a case the proper course would be to impose the less serious penalty of imprisonment for life. But in a subsequent case it was observed that this would mean that the judge in favour of awarding the lesser penalty would always have his way to the exclusion of his brother judge who favoured a stiffer punishment, and this could thus never be a rule. After the clear observation of the Supreme Court in *Bachan Singh v. State*, that life imprisonment is the rule and death sentence an exception and that the aggravating circumstances must be balanced with the mitigating circumstances, it is hoped that such differences of opinion will be far less in number now, but the issue remains unresolved. Execution of an insane person An important issue, in the form of the case of *Amrit Bhushan Gupta v.*

Union of India, as to whether an insane person could be executed in compliance of an order of the court, came up before the Supreme Court. The appellant was convicted and sentenced to death by the lower court for the murders of three innocent sleeping children by burning them alive. He was also sentenced to seven years' rigorous imprisonment for attempting to murder the intervener petitioner, the father of the three deceased children almost a year after the children's murders. The death sentence was confirmed by the High Court. Certain relatives of the appellant raised an unsuccessful plea of insanity in the High Court after the pronouncement of the judgment by the High Court but this was not even entertained. A Division Bench of the High Court dismissed a petition against execution on the ground of insanity with the remarks that invocation of its power under Article 226 of the Constitution was not justified and the court was certain that if the petitioner was really insane, appropriate authorities would take necessary action. The Supreme Court granted special leave to appeal. The following additional facts were mentioned by the intervener petitioner which were not controverted. The writ petition and another writ petition were dismissed in July, 1971 and August, 1975 respectively. The Supreme Court had dismissed various petitions of the petitioner in April, 1970, September, 1970, April, 1971 and January, 1976. In between another petition filed in May, 1971 was withdrawn by the appellant petitioner in August, 1976. The President of India had also rejected his mercy petitions in August, 1970, December, 1970, November, 1971 and February, 1972. The dates of his execution were first fixed in December, 1970, again in August, 1975 and yet again in December, 1975. The intervener alleged that the appellant petitioner and his relatives had been delaying his execution on one pretext or another and they alone

were solely responsible for passing of so long a time since the death penalty was first imposed in 1969. While dismissing the prayer of the appellant petitioner, the Supreme Court ordered for his execution holding that the sentence of death passed on him and confirmed subsequently could not be interfered with either by the High Court acting under Article 226 or the Supreme Court under Article 136 of the Constitution and that such convicted person could be executed even if he had become insane. It was clarified by the Supreme Court that the courts in India have no power to prohibit the carrying out of a sentence of death legally passed on the ground that either there is some rule in the English common law against the execution of an insane person sentenced to death or some theological, religious or moral objection to it. Indian statute law on the subject is based entirely on secular considerations which place the protection and welfare of society in the forefront. What the statute law does not prohibit or enjoin could not be enforced by means of a writ of mandamus under Article 226 so as to set at naught a duly passed sentence of a court. It is important to note that a senior psychiatrist who examined the appellant petitioner under orders of the court observed that he was a person of unsound mind suffering from schizophrenia which is basically an incurable type of insanity characterised by remissions and relapses at varying intervals. The other psychiatrist, also acting under court orders, too was of the view that the appellant petitioner was suffering from chronic schizophrenia and was, therefore, of unsound mind under the Indian Lunacy Act, 1912. The Supreme Court, while rejecting the contention of the appellant petitioner that anyone becoming insane after his conviction and sentence could not be executed until he regained sanity, with respect, rather strangely observed that the question whether on the

facts and circumstances of a particular case, a convict, alleged to have become insane, appears to be so dangerous that he must not be let loose upon society, lest he commits similar crimes against other innocent persons when released or because of his antecedents and character, or, for some other reasons, he deserves a different treatment, are matter for other authorities to consider after a court has duly passed its sentence. Is Governor's power to grant pardon subject to judicial review? In *Satpal v. State of Haryana* the Supreme Court observed that when an accused is convicted of heinous offence of murder and is sentenced to imprisonment for life the authority who has been conferred with power to grant pardon and remission of sentence under Article 161 of the Constitution must be made aware of the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he has been undergoing the sentence which would be all germane considerations for exercise of the power. Not being aware of such material facts tend to make an order of granting pardon arbitrary and irrational. In the instant case, the order granting pardon remitting the unexpired period of sentence was passed even before the accused had surrendered to serve out the sentence: But the order stated that the accused was confined in jail. The Governor was not made aware of as to what is the total period of sentence the accused has really undergone, and if at all has undergone any sentence. The record showed an uncanny haste with which the file has been processed and the unusual interest and zeal shown by the authorities in the matter of exercise of power to grant pardon. The only irresistible conclusion would be that the Governor had not applied his mind to the material on record and has mechanically passed the order just to allow the prisoner to overcome the conviction and sentence

passed by the court. Thus, the order granting pardon was liable to be set aside. The Court enumerated the following five situations which may call for its interference: (1) If the Governor is found to have exercised the power himself without being advised by the government, or (2) if he transgresses the jurisdiction in exercising the same, or (3) it is established that he has passed the order without application of mind, or (4) the order in question is mala fide, or (5) he has passed the order on some extraneous consideration.

Constitutionality of death sentence It has been held by the Supreme Court in *Jagmohan Singh v. State*, that death sentence is not violative of Articles 14, 19 and 21 of the Constitution. It cannot be regarded per se as unreasonable or not in public interest. The provision does not suffer from the vice of excessive delegation on the ground that the legislature has abdicated its essential function in not providing by legislative standards in what cases the judge should pass death sentence. The provision is not violative of Article 14 on the ground that unguided and uncontrolled discretion is given to the judges to impose death sentence or imprisonment for life. Death sentence is not unconstitutional on the ground that no procedure has been laid by law for determining as to whether the sentence of death or a lesser punishment is appropriate in a case. Provisions of clemency by the President of India and the Governor of a State under the Constitution show that death penalty is constitutional. Article 134 (a), which gives a constitutional right of appeal to the Supreme Court where an accused is acquitted by the court of session but is convicted and sentenced to death by the High Court, proves the constitutionality of the provision. In cases of premeditated murder motivated by ill feeling nurtured for years, the sentence of death is appropriate. The same question as to whether death sentence is constitutional or not again

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came up before the Supreme Court in *Bachan Singh v. State*, which once again held it constitutional. It was observed that the provision of death penalty as an alternative punishment for murder in section 302 is not unreasonable and it is in the public interest. Therefore, the provision neither violates the letter nor the ethos of Article 19. Laws which define offences and prescribe punishment for the commission of offences do not attract the application of Article 19 (1). The deprivation of freedom consequent upon an order of conviction and sentence is not a direct and inevitable consequence of the penal law but is merely incidental to the order of conviction and sentence which may or may not come into play. Therefore, section 302 does not have to stand the test of Article 19 (1) of the Constitution. Retribution and deterrence are not two divergent ends of capital punishment. They are convergent goals which ultimately merge into one. The provision of death penalty as an alternative punishment for murder is not violative of Article 21. The founding fathers of the Constitution recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. There are several other indications in the Constitution, including entries 1 and 2 in the Concurrent List specifically referring to the Indian Penal Code and the Code of Criminal Procedure, which show that the Constitution makers were fully cognizant of the existence of death penalty. Under the successive Codes of Criminal Procedure which have been in force for about a hundred years a sentence of death is to be carried out by hanging. By no stretch of imagination can it be said that death penalty, either per se or because of its execution by hanging, constitutes an unreasonable, cruel or unusual punishment. By reason of the same constitutional postulates, it cannot be said that the framers of the

Constitution considered death sentence for murder or the traditional mode prescribed for its execution as a degrading punishment which would defile the dignity of the individual within the contemplation of the Preamble to the Constitution. On parity of reasoning, it cannot be said that death penalty for the offence of murder violates the basic feature of the Constitution. Article 6 of the International Covenant on Civil and Political Rights to which India acceded in 1979 requires that death penalty shall not be arbitrarily inflicted and it shall be imposed only for most serious crimes in accordance with a law which shall not be an ex post facto legislation. These requirements are similar to the guarantees provided by Articles 20 and 21 of the Constitution of India. The Indian Penal Code prescribes death penalty as an alternative punishment only for heinous crime which are not more than seven in number. Section 354 (3) Code of Criminal Procedure, 1973 in keeping with the abovementioned International Covenant, has further restricted the area of death penalty. In addition to this, section 235 (2), Code of Criminal Procedure, 1973 provides for hearing of the accused for sentence. It is implicit in this provision that if a request is made either by the accused or by the State or by both, opportunity for producing evidence or material relating to various factors relating to a question of sentence should be given by the court. Thus, circumstances not only of the crime but of the criminal as well have been given due importance. What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. For persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the

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rarest of rare cases when the alternative option is unquestionably foreclosed. In view of the above section 302 of the Indian Penal Code and section 354 (3) of the Code of Criminal Procedure, are constitutional. Justice Bhagwati who gave a minority opinion held that section 302, in so far as it provides for imposition of death penalty as an alternative to life sentence, is ultra vires and void as being violative of Articles 14 and 21 of the Constitution since it does not provide any legislative guidelines as to when life should be permitted to be extinguished by imposition of death sentence. In *Deena alias Deen Dayal v. State of Rajasthan* the Supreme Court reiterated that execution of death sentence by hanging as provided by section 354 (5), Code of Criminal Procedure, 1973 does not violate Article 21 of the Constitution as the system of hanging is as painless as possible in the circumstances and causes no greater pain than any other known method of execution, and there is no barbarity, torture or degradation involved in it. In *Shashi Nayar v. Union of India* the Supreme Court observed that the procedure provided by the law for awarding death sentence is reasonable. The death sentence should be awarded in rarest of rare cases and it does not violate the mandate of Article 21. The Law Commission had opined in 1967 that the country should not take the risk of abolishing the death sentence. Judicial notice can be taken of the fact that the law and order situation in India has not improved since 1967 but has deteriorated over the years and is fast worsening today. It was also observed that the method of execution of capital punishment by hanging is scientific and is one of the least painful methods and so no other method seems to be warranted. The offence under section 302 of the Code is cognizable, non-bailable and non-compoundable, and is triable by court of session.