

# [The has to give due weight to](https://assignbuster.com/the-has-to-give-due-weight-to/)

The rule is that normally the ordinary sentence is life imprisonment and death sentence is awarded in exceptional cases. While considering the award of sentence the Court has to take into consideration the mental turmoil, social wrong and all reasonable possibilities having regard to the natural course of human affairs. If in a murder case the eye witnesses do not reveal the whole truth the Court has to give due weight to it also. The fact that the murder was terrific is not relevant for imposing death sentence.

On the other hand absence of overt act warrants leniency in sentence. But sentence of life imprisonment cannot be reduced. Practice has however developed that fine is not imposed when a sentence of death is given though such practice is contrary to law. If death is caused by firing gun shots by two persons and it is found that the shots fired at by one person were separately sufficient in the ordinary course of nature to cause death, but the shot which the other accused hit was not sufficient to cause death, he cannot be awarded the extreme penalty of death even if he had fired with the intention to kill. If it cannot be ascertained which of the two guns fired the fatal shot, in that case also the proper sentence would be life imprisonment and not death sentence. Long interval is a just ground for imposing imprisonment for life though the case is fit for death sentence. This aspect of the sentencing policy, including the award of death sentence, has already been considered earlier. It may be repeated that the formula of awarding death sentence in the ‘ rarest of the rare cases’ was envolved in Bachan Singh’s case in 1980 and it was later elaborated with detailed guidelines in 1983 in the case of Machhi Singh.

In Prem Sugar v. Dharambir and Others, the Supreme Court decided that the brutality is inbuilt in every murder but in case of every murder death sentence is not imposed. Life imprisonment is the rule and death sentence is the exception.

The death sentence is imposed in rarest of rare cases. In the famous murder case, Ram Singh v. Sonia, the Supreme Court again emphasised the rarest of the rare. In this case the accused Sonia along with accused Sanjiv has put an end the lives of her step brother and his whole family and also killed her own father, mother and sister in a very diabolic manner so as to deprive her father from giving the property to her step brother and his family. The Supreme Court was of the opinion that there would be failure of justice in case death sentence is not awarded in the present case as the same undoubtedly falls within the category of rarest of the rare case. There was, however, a provision in Section 303 of the Penal Code to the effect that whoever being under the imprisonment for life commits murder shall be punished with death.

Thus, a person convicted under Section 303 (i. e., murder by life convict) necessarily entailed the punishment of death with no choice for any other alternative at all. On the other hand an attempt to murder by a life convict is not necessarily punishable with death. (Section 307). The above noted Section 303 has been struck down as void and voilative of Articles 14 and 21 of the Constitution of India by the Supreme Court in Mithu v. State of Punjab. It is true that Section 303 having been struck down from the statute book it is no longer available for conviction of an offender.

The effect is that the conviction now has to be made under Section 302, I. P. C. But that does not mean that death sentence cannot be awarded to life convict if he commits a murder while serving his sentence. The only thing is that now there is no obstacle in sentencing such a convict to imprisonment for life if considered appropriate by the Court, e. g.

, the case may not be falling under the rarest of the rare cases calling for extreme penalty. Another aspect to be noted in this connection is that where an accused happens to be a “ child” within the meaning of the Children Act of any State on the date of the offence he should be sent to the approved school concerned rather than be sentenced to imprisonment. Thus, in Jaiendra v.

State of U. P an accused had been wrongly sentenced to imprisonment instead of being treated as a “ child” under Section 2(4) of the U. P. Children Act, 1952 and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz., 18 years, the Supreme Court held that the course to be followed was to sustain the conviction but however quashed the sentence imposed on the accused and directed his release forthwith. In a somewhat similar situation the same course has been adopted by the Court in Bhoop Ram v. State of U.

P. But where the Act of a particular State excludes such benefit or the like the convicted person shall not be entitled to such benefit.