'crime';

(iii) 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 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;

(iv) 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.

[*Bachan Singh v State of Punjab*.[208.]]

The judgment in *Machhi Singh v State of Rajasthan,*[209.] did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues.[210.] Despite the legislative change and *Bachan Singh* discarding proposition (iv)(a) of *Jagmohan Singh*, Supreme Court in *Machhi Singh* revived the "balancing" of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to a crime with the mitigating circumstances pertaining to a criminal. It hardly need be stated, with respect, that these are completely distinct and different elements and cannot be compared with one another. A balance sheet cannot be drawn up of two distinct and different constituents of an incident. Nevertheless, the balance sheet theory held the field post *Machhi Singh*.[211.]

Supreme Court Guidelines in Machhi Singh

Factors to be considered while determining the "rarest of rare" case

I. Manner of commission of murder

33. 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. For instance.

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house,

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance, when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

(a) 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. For instance, when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' 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.

IV. Magnitude of crime

35. 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.

V. Personality of victim of murder

36. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust, (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

[*Machhi Singh v State of Punjab*.[212.]]

It is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects namely aggravating and mitigating circumstances have to be given their respective weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts.[213.]

The aggravating and mitigating circumstances required to be taken into consideration while applying the doctrine of "rarest of rare" crime

39. Aggravating circumstances:

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, etc. by the accused with a prior record of conviction for capital felony.
2. The offence was committed while the offender was committing another serious offence.
3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
5. Hired killings.
6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
7. The offence was committed by a person while in lawful custody.

8. The offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under section 43, Cr PC, 1973.

9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold-blooded murder without provocation.

13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

40. While determining the questions relatable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles:

(1) The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

Ramnaresh v State of Chhattisgarh;[214.] *Brajendra Singh v State of MP.*[215.]

[s 302.7] Considerations for or against death sentence.—Balance sheet of aggravating and mitigating factors.—

Both in *Bachan Singh and Machhi Singh's* cases, guidelines have been indicated by the Supreme Court as to when this extreme sentence should be awarded and when not. In fine, 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 mitigating circumstances before the option is exercised to award one sentence or the other.

The cardinal questions to be asked and answered are:—

(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 after taking into consideration all these circumstances, it is felt that death sentence is warranted, the Court would proceed to do so.[216.] Thus, where murder is premeditated[217.] or is committed in an organised manner,[218.] or by a hired assassin[219.] or by a lawyer[220.] or where it is gruesome[221.] or is committed with utmost depravity,[222.] death sentence seems to be the proper sentence in all such cases.

[s 302.8] Need for flexibility.—

The Supreme Court has re-examined the categories after a gap of 25 years in *Swami Shraddananda v State of Karnataka*.[223.] The circumstances and conditions of life have very seriously changed since then and, therefore, even if those categories are to be observed, some scope for flexibility should always be maintained. Giving a brief view of the changed scenario, the Supreme Court noted that a careful reading of the *Machhi Singh* categories makes it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983, the country was relatively free from organised and professional crime. Abduction for ransom and gang rape and murders committed in course of those offences were yet to become a menace for the society compelling the legislature to create special slots for those offences in IPC, 1860. At the time of *Machhi Singh*, Delhi had not witnessed the

infamous Sikh carnage. There had been no attack on the country's Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies, no mafia cornering huge Government contracts purely by muscle power, no reports of killings of social activists and "whistle-blowers", no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in *Bachan Singh*, therefore, even though the categories framed in *Machhi Singh* provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in *Bachan Singh* itself.

[s 302.9] Santosh Bariyar—A landmark.—

In *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*,[224.] while sharing Supreme Court's "unease and sense of disquiet" it was observed that:

> the balance sheet of aggravating and mitigating circumstances approach invoked on a case by case basis has not worked sufficiently well so as to remove the vice of arbitrariness from our capital sentencing system. It can be safely said that the Bachan Singh threshold of "the rarest of rare cases" has been most variedly and inconsistently applied by the various High Courts as also this Court.

The Judgments which are held to be *per incurium* in *Santhosh Bariyar*:

(1) *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*,[225.]

(2) *Mohan Anna Chavan v State of Maharashtra*,[226.]

(3) *Bantu v State of UP*,[227.]

(4) *Surja Ram v State of Rajasthan*,[228.]

(5) *Dayanidhi Bisoi v State of Orissa*,[229.] and

(6) *State of UP v Sattan @ Satyendra*.[230.]

In *Sangeet v State of Haryana*,[231.] in an unprecedented Judgment, a two-judge bench of the Supreme Court held that the Court has not endorsed the approach of aggravating and mitigating circumstances in the Constitution Bench Judgment in *Bachan Singh* and observed that it needs a fresh look. [See the Box with '*Principles summarised in Sangeet's Case by Supreme Court*'.] The bench observed that even though Bachan Singh intended "principled sentencing", sentencing has now really become judge-centric as highlighted in *Swamy Shraddananda* and *Bariyar.* This aspect of the sentencing policy in Phase II as introduced by the Constitution Bench in *Bachan Singh* seems to have been lost in transition.

Principles summarised in Sangeet's Case by Supreme Court

> 80. 1. This Court has not endorsed the approach of aggravating and mitigating circumstances in Bachan Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.
>
> 2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

> 3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.
>
> 4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.
>
> 5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.
>
> 6. Remission can be granted under Section 432 of the CrPC in the case of a definite term of sentence. The power under this Section is available only for granting "additional" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under Section 432 of the CrPC can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.
>
> 7. Before actually exercising the power of remission under Section 432 of the CrPC the appropriate Government must obtain the opinion (with reasons) of the presiding judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner.

[*Sangeet v State of Haryana*.][232.]

In *Mohinder Singh v State of Punjab*,[233.] another two-Judge Bench analysed the various principles laid down in decisions reported in *Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka*,[234.] *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*,[235.] *Mohd Farooq Abdul Gafur v State of Maharashtra*,[236.] *Haresh Mohandas Rajput v State of Maharashtra*,[237.] *State of Maharashtra v Goraksha Ambaji Adsul*,[238.] and the Supreme Court's decision reported in *Mohammed Ajmal Mohammadamir Kasab @ Abu Mujahid v State of Maharashtra*,[239.] and held that a conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal and the expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.[240.]

Principles summarised in Mohinder Singh's Case by Supreme Court

(i) A conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal.

(ii) The expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

(iii) The decision in *Ravji @ Ram Chandra v State of Rajasthan*,[241.] which was subsequently followed in six other cases, namely, *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*,[242.] *Mohan Anna Chavan v State of Maharashtra*,[243.] *Bantu v State of UP*,[244.] *Surja Ram v State of Rajasthan*,[245.] *Dayanidhi Bisoi v State of Orissa*,[246.] and *State of UP v Sattan @ Satyendra and Others*,[247.] wherein it was held that it is only characteristics relating to crime, to the exclusion of the ones relating to criminal, which are relevant to sentencing in criminal trial, was rendered *per incuriam qua* Bachan Singh (*supra*) in the decision reported *in Santosh Kumar Satishbhushan Bariyar* (*supra*) at 529.

(iv) Public opinion is difficult to fit in the 'rarest of rare' matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal.

Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of *Bachan Singh* (*supra*). [2009 (6) SCC 498 [LNIND 2009 SC 1278] at p 535.]

(v) Capital sentencing is one such field where the safeguards continuously take strength from the Constitution. [(2009) 6 SCC 498 [LNIND 2009 SC 1278] at 539.]

(vi) The Apex Court as the final reviewing authority has a far more serious and intensive duty to discharge and the Court not only has to ensure that award of death penalty does not become a perfunctory exercise of discretion under section 302 after an ostensible consideration of 'rarest of rare' doctrine, but also that the decision-making process survives the special rigours of procedural justice applicable in this regard.[248.]

(vii) The 'rarest of rare' case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society.[249.]

(viii) Life sentence is the rule and the death penalty is the exception. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable.

(ix) The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.

State of Maharashtra v Goraksha Ambaji Adsul[250.] and *Mohinder Singh v State of Punjab*.[251.]

[s 302.10] Crime Test, Criminal Test and RR Test.—

The tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the RR Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc., the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (RR Test). RR Test depends upon the perception of the society that is "society centric" and not "Judge centric", that is, whether the society will approve the awarding of death sentence to certainty types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.[252.]

Some Cases where the Court applied the Criminal test to avoid Death Penalty:

(1) *Kumudi Lal v State of UP*,[253.]

(2) *Raju v State of Haryana*,[254.]

(3) *Bantu @ Naresh Giri v State of MP*,[255.]

(4) *State of Maharashtra v Suresh*,[256.]

(5) *Amrit Singh v State of Punjab*,[257.]

(6) *Rameshbhai Chandubhai Rathod v State of Gujarat*,[258.]

(7) *Surendra Pal Shivbalak v State of Gujarat*,[259.]

(8) *Amit v State of Maharashtra*.[260.]

[s 302.11] *Via media* between Death Sentence and Life Imprisonment.—

It was in *Swamy Shraddananda (2) v State of Karnataka*,[261.] that a three-Judge Bench of the Supreme Court concluded that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of 14 years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. But a two-Judge Bench in *Sangeet v State of Haryana*,[262.] in which it was held that:

> a reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done in *Swamy Shraddananda* and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in *Swamy Shraddananda* (*supra*), yet the same has not been referred to a larger Bench.

In *Sahib Hussain @ Sahib Jan v State of Rajasthan*,[263.] another two-Judge Bench reiterated the position held in *Swamy Shraddananda* (*supra*) by holding that the observations in *Sangeet* (*supra*) are not warranted. In *Gurvail Singh @ Gala v State of Punjab*,[264.] other two-Judge bench also termed the remarks in *Sangeet* (*supra*) as 'unwarranted' and opined that if the two-judge bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench. However, in some cases, the Court had also been voicing concern about the statutory basis of such orders.[265.] In a judgment,[266.] Supreme Court opined that:

> We are of the view that it will do well in case a proper amendment u/s. 53 of IPC is provided, introducing one more category of punishment—life imprisonment without commutation or remission. Dr. Justice V. S. Malimath in the Report on "Committee of Reforms of Criminal Justice System", submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

[s 302.12] Sessions' Court's power.—

The Session Judges do not have the power to impose the harsher variety of life sentence which is recognised by *Swamy Shraddananda* (*2*) *v State of Karnataka*[267.] as an option available in law for the Courts to avoid the harshest, irreversible and *incorrectable* sentence of death. That sentencing option is available only to Constitutional Courts —the High Courts and the Supreme Court.[268.]

[s 302.13] Delay in execution of death sentence.—

It is well-established that exercising of power under Article 72/161 by the President or the Governor is a Constitutional obligation and not a mere prerogative.[269.] Time taken in Court proceedings cannot be taken into account to say that there is a delay which would convert a death sentence into one for life.[270.] In *TV Vatheeswaran*,[271.] **overruled** in *Triveni Ben v State of Gujarat*,[272.] a two-Judge Bench of Supreme Court considered whether the accused, who was convicted for an offence of murder and sentenced to death, kept in solitary confinement for about eight years was entitled to commutation of death sentence. It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death.[273.] But a three-Judge bench in *Sher Singh v State of Punjab*,[274.] held that though prolonged delay in the execution of a death sentence is unquestionably an important consideration for determining whether the sentence should be allowed to be executed, no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Art. 21 and demand the quashing of the sentence of death" can be laid down as has been done in *Vatheeswaran (supra). Javed Ahmed v State of Maharashtra*,[275.] re-iterated the proposition laid down in *Vatheeswaran* (*supra*) case and doubted the competence of the three-judge bench to overrule the *Vatheeswaran* case. The conflicting views are finally settled by the Constitution Bench in *Triveni Ben v State of Gujarat*.[276.] It **overruled** *Vatheeswaran (supra)* holding that undue long delay in execution of the sentence of death will entitle the condemned person to approach the Supreme Court under Article 32 but the Court will only examine the nature of delay caused and circumstances that ensued after sentence will finally be confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran's* case cannot be said to lay down the correct law. In *Madhu Mehta v UOI*,[277.] Supreme Court commuted the death sentence on the ground that the mercy petition was pending for eight years after disposal of the criminal appeal by Supreme Court.

It is well established that exercising of power under Article 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of the Supreme Court to step in and consider this aspect.[278.]

[s 302.13.1] *Nirbhaya Case*[279.].—

In this case, the Supreme Court analysed all the decisions, where the question of imposing the death penalty was discussed and examined the aggravating and mitigating circumstances and opined that the appetite for sex, the hunger for violence, the position of the empowered and the attitude of perversity of the accused, to say the least, are bound to shock the collective conscience which knows not what to do.

The Supreme Court observed that:

> the casual manner with which she was treated and devilish manner in which they played with her identity and dignity is humanly inconceivable. It sounds like a story from different world where humanity has been treated with irreverence. Aggravating circumstances outweigh mitigating circumstances.

The Supreme Court held the accused persons guilty of offences which are brutal, diabolic and barbaric in nature and fall within category of rarest of rare cases. The Supreme Court held that the sentence of death penalty was proper; there was no reason to differ with same.[280.]

[s 302.14] Mitigating factors.

At the material time, the accused was under influence of alcohol and the fact that his mental faculty was not in order, was considered as a relevant mitigating circumstance. It was accordingly held that it was not a fit case for extreme penalty. The sentence for life imprisonment was confirmed.[281.]

There was a conspiracy in the wake of a property dispute in which contract killers were hired and death was caused. Sethi, J, of the Supreme Court said that this was not the rarest of rare case. The accused was a misled youth. He was liable to be sentenced to life imprisonment for the major offence of murder.[282.] In a case arising out of partition between two brothers, one of them (the accused) killed his brother, his wife and children. He was frustrated over his failure to resist partition of joint property. The Court agreed that it was a heinous and brutal crime, but was not in the category of rarest of rare cases. The accused did not have any criminal tendency. He was a State Government employee and not a menace to the society. The Court directed his death sentence to be reduced to 20 years actual imprisonment including the period already undergone.[283.]

In a rape and murder case of an 11-year-old child, there was extra judicial confession made to a senior person to seek his help. He indicated the place where the body of the girl was lying. He struck her in the head twice over with a brick and then in the mouth only when she threatened to disclose. This showed that he had no intention to commit murder and injuries were inflicted only at the spur of the moment. He had no criminal record nor he was in any way a danger to the society. Death sentence was commuted to life imprisonment.[284.]

The Court has to draw a balance between the aggravating and mitigating factors. The accused in this case was the member of a para-military force. He killed seven members of a family in a pre-planned manner. He was 23 at the time and had no criminal record. He and his family members were suffering agony at the hands of the victim family. He had a cause to feel aggrieved for the injustice meted out to his family members. The Court said that it was not the rarest of rare cases. His death sentence was reduced to life imprisonment.[285.]

[s 302.14.1] *Where attribution of exact role not possible.—*