there is positive direct evidence about the time of occurrence, it is not open to the court to speculate about the time of occurrence by the presence of faecal matter in the intestines; *Sheo Dershan v State of UP*, (1972) SCC (Cr) 394. The question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That may be a factor which should be considered along with other evidence, but that fact alone cannot be decisive; *R Prakash v State of UP*, (1969) 1 SCC 48 . Also see *Shivappa v State of Karnataka*, (1995) 2 SCC 76 [LNIND 1994 SC 1111] ; *Jabbar Singh v State of Rajasthan*, (1994) SCC (Cr) 1745. *Bijendra Bhagat v State of Uttarakhand*, 2015 Cr LJ 3150 , the injuries suffered by the deceased are incised wounds and one fire arm injury. However, none of the injuries on the person of the deceased could be attributed to the lathi which was supposedly in the hands of the appellant. Benefit of doubt given.

159. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031] .

160. *Deepa v State of Haryana*, 2015 Cr LJ 2508 .

161. *Jagtar Singh v State of Haryana*, 2015 Cr LJ 3418 .

162. *Alagarsamy v State by DSP*, 2010 Cr LJ 29 : AIR 2010 SC 849 [LNIND 2009 SC 1914] . See also *Arun Kumar Sharma v State of Bihar*, (2010) 1 SCC 108 [LNIND 2009 SC 1866] : 2010 Cr LJ 428 , where FIR was sent to the Magistrate after five days.

163. *Awadesh Kumar Shukla v State of UP*, 2015 (7) ADJ 530 [LNIND 2015 ALL 190] : 2015 (6) ALJ 665 (All).

164. *Dilawar Singh v State of Haryana*, 2014 Cr LJ 4844 : (2015) 1 SCC 737 [LNIND 2014 SC 823] .

165. *State of Rajasthan v Chandgi Ram*, 2014 Cr LJ 4571 : 2014 (10) Scale 352 [LNIND 2014 SC 811] .

166. *Sudarshan v State of Maharashtra*, 2014 Cr LJ 3232 : 2015 (5) SCJ 358 . See also *State of Karnataka v Sateesh*, 2015 Cr LJ 3427 .

167. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Sukhram v State of Maharashtra*, 2007 (7) SCC 502 [LNIND 2007 SC 969] ; *Sunil Clifford Daniel (Dr) v State of Punjab*, 2012 (8) Scale 670 [LNIND 2012 SC 551] , *Pannayar v State of TN by Inspector of Police*, 2009 (9) SCC 152 [LNIND 2009 SC 1687] .

168. *Sanaulla Khan v State of Bihar*, (2013) 3 SCC 52 [LNIND 2013 SC 120] : 2013 Cr LJ 1527 ; *Ujjagar Singh v State of Punjab*, 2007 (13) SCC 90 [LNIND 2007 SC 1486] .

169. *Gosu Jairami Reddy v State of AP*, AIR 2011 SC 3147 [LNIND 2011 SC 2666] : 2011 Cr LJ 4387 : (2011) 11 SCC 766 [LNIND 2011 SC 2666] ; *Abu Thakir v State*, (2010) 5 SCC 91 [LNIND 2010 SC 366] : AIR 2010 SC 2119 [LNIND 2010 SC 366] : 2010 Cr LJ 2840 .

170. *Ashok Rai v State of UP*, 2014 Cr LJ 3085 : 2014 (10) SCJ 729 [LNINDU 2014 SC 21] .

171. *Rambraksh v State of Chhattisgarh*, 2016 Cr LJ 2939 : 2016 (5) SCJ 600 ; *Dharam Deo Yadav v State of UP*, 2014 Cr LJ 2371 : 2014 (2) ALT (Cr) 322 (SC).

172. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Mohibur Rahman v State of Assam*, 2002 (6) SCC 715 ; in *Arjun Marik v State of Bihar*, 1994 Supp (2) SCC 372 , Supreme Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v Kuntala Mishra*, 1996 (11) SCC 264 [LNIND 1996 SC 1719] , the Supreme Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances; *State of Goa v Sanjay Thakran*, 2007 (3) SCC 755 [LNIND 2007 SC 274] ; *Bodh Raj @ Bodha v State of Jammu and Kashmir*, 2002 (8) SCC

45 [LNIND 2002 SC 539] ; *Jaswant Gir v State of Punjab*, 2005 (12) SCC 438 ; see *Manthuri Laxmi Narasaiah v State of AP*, 2012 Cr LJ 2172 : AIR 2011 SC (Supp) 73, in which the evidence of last seen rejected by the Supreme Court.

173. Also see *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Inspector of Police TN v John David*, (2011) 5 SCC 509 [LNIND 2011 SC 441] : 2011 Cr LJ 3366 : (2011) 2 SCC (Cri) 647 , 'last seen alive theory accepted'. See also *Mannan v State of Bihar*, (2011) 5 SCC 317 [LNIND 2011 SC 440] : 2011 Cr LJ 3380 : (2011) 2 SCC (Cri) 626 .

174. *Arabindra Mukherjee v State of WB*, 2012 AIR (SCW) 1032 : 2012 Cr LJ 1207 .

175. *State Through CBI v Mahender Singh Dahiya*, (2011) 3 SCC 109 [LNIND 2011 SC 114] : AIR 2011 SC 1017 [LNIND 2011 SC 114] : 2011 Cr LJ 2177 , last seen evidence would not always mean that the accused had killed the deceased.

176. *C Perumal v Rajasekaran*, 2012 AIR (SCW) 3641 : 2012 Cr LJ 3491 .

177. *Rambraksh v State of Chhattisgarh*, 2016 Cr LJ 2939 : 2016 (5) SCJ 600 .

178. *Kanhaiya Lal v State of Rajasthan*, 2014 Cr LJ 1950 : 2014 (4) WLN 299 (SC).

179. *Mahavir Singh v State of Haryana*, 2014 Cr LJ 3228 : 2014 (7) Scale 477 .

180. *Surender Prashad v State*, (2014) 209 DLT 461 : 2014 VI AD (Del) 234.

181. *Bikau Pandey v State of Bihar*, AIR 2004 SC 997 [LNIND 2003 SC 1027] : (2003) 12 SCC 616 [LNIND 2003 SC 1027] ; *Dalbir Singh v State of Haryana*, AIR 2008 SC 2389 [LNIND 2008 SC 1218] : (2008) 11 SCC 425 [LNIND 2008 SC 1218] ; *Nishan Singh v State of Punjab*, AIR 2008 SC 1661 [LNIND 2008 SC 2718] : (2008) 17 SCC 505 [LNIND 2008 SC 2718] . See also *Balraje v State of Maharashtra*, (2010) 6 SCC 673 [LNIND 2010 SC 487] : 2010 Cr LJ 3443 ; *Satvir v State of UP*, AIR 2009 SC 1741 [LNIND 2009 SC 124] : 2009 Cr LJ 1586 : (2009) 4 SCC 289 [LNIND 2009 SC 124] .

182. *Mukesh v State for NCT of Delhi*, 2017 (5) Scale 506 .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 301] Culpable homicide by causing death of person other than person whose death was intended.

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

COMMENT.—

Doctrine of transferred malice.—Section 301 of IPC, 1860 specifies that if a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing death of any person whose death he neither intends, nor knows himself to be likely to cause, culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person, whose death he intended or knew himself to be likely to cause.[183.] Blow aimed at the intended victim, if alights on another, offence is the same as it would have been if the blow had struck the intended victim.[184.] This section lays down that culpable homicide may be committed by causing the death of a person whom the offender neither intended, nor knew himself to be likely, to kill. This section embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under this section, if A intends to kill B but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is, by law attributed to him.[185.]

If the killing takes place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out.

Where a mistake is made in respect of the person, as where the offender shoots at A supposing that he is shooting at B, it is clear that the difference of person can make none in the offence or its consequences; the crime consists in the wilful doing of a prohibited act; the act of shooting at A was wilful, although the offender mistook him for another.

Where the accused was deliberately trying to shoot at a fleeing man who had criticised his father in a School Committee Meeting but unfortunately his own maternal uncle came in between him and the intended victim and thus got killed, it was held that the act of the accused was nothing but murder under section 302 read with section 301, IPC, 1860.[186.] In an altercation between parties, the accused persons fired indiscriminately upon the fleeing party, one shot hit a person and second caused the death of the complainant's 10-year-old son. The episode took place in a commercial locality. The death was held to be intentional murder punishable under sections

300/301.[187.] The accused reached his intended victim's house. The latter hid himself somewhere else. The accused chased him there and standing before that house fired into it. The housewife became prey and fell dead. It was held that under the doctrine of transfer of malice, the accused must be convicted under sections 302 and 307 and sentenced to life imprisonment.[188.] Where the accused intended to kill a particular person by his lorry but another person chanced to come before the lorry and happened to be killed, an offence under this section was committed and the accused was convicted under section 302.[189.]

Similarly, there will be no difference where the injury intended for one falls on another by accident. If A makes a thrust at B, meaning to kill, and C throwing himself between, receives the thrust and dies, A will answer for it as if his mortal purpose had taken place on B.

The same principle is applicable where, through accident or the mistake of a party not privy to the criminal design, the mischief falls either on a person not intended, or on the party intended but in a different manner from that intended.[190.] Accused had entered the house of witness to kill him but due to non-availability of electricity and under the wrong impression he killed the deceased. Death of deceased can be said to be accidental due to mistaken identity rather than any intentional act of accused. Order of conviction of accused under section 302, IPC, 1860 is modified to one under section 304, Part II, IPC, 1860.[191.]

In a scuffle between accused persons and the complainant's party, one member on the accused's side fired a shot at a particular member on the complainant's side but the shot actually hit another person who died. The Court held that the doctrine of transferred malice was attracted. The act of the accused would be covered by section 304 and he was liable to be convicted under Part II of that section, though the deceased was neither aimed at nor intended to be harmed by the accused.[192.]

It is not a disputed fact as to whose fire shot resulted in the death of the deceased. The only question which is to be examined here is whether the offence committed by the respondent is culpable homicide amounting to murder, punishable under section 302 or culpable homicide not amounting to murder, punishable under section 304, Part I. Here, the intention on the part of the respondent-accused in causing bodily injury as is likely to cause death is also not a disputed fact. The only thing which is to be tested is whether the bodily injury is covered under either of the clauses of section 300 of IPC, 1860 (*transfer of malice doctrine applied*).[193.]

[s 301.1] Transfer of malice.—

The accused intended to cause death of his victim. But the stab aimed at him fell on the chest of the deceased resulting in his death. It was held that as per the doctrine of transfer of malice, it must be presumed that the accused intended to cause death of the deceased alone. His act attracted the offence under section 301 read with section 302.[194.]

[s 301.2] CASES.—

Four persons were shooting at R in furtherance of their common intention to kill M, in the *bona fide* belief that R was M. R died as a result of the gunshot wounds. It was held by the Supreme Court that the accuseds were guilty under section 302 read with section 34 and that section 301 had no application.[195.]

183. *Dan Behari v State of UP*, 2003 Cr LJ 4959 .

184. *Viswanath Pillai v State of Kerala*, 1994 Cr LJ 1037 , the court **referred** *Ballan v The State*, AIR 1955 All 626 [LNIND 1955 ALL 71] , wherein the scope of section 301 was discussed and *Suba v Emperor*, AIR 1928 Lah 344 : 1928 (29) Cr LJ 280 .

185. *Shankarlal*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : (1965) 2 Cr LJ 266 .

186. *Gyanendra Kumar v State*, 1972 Cr LJ 308 : AIR 1972 SC 502 [LNIND 1971 SC 601] .

187. *Abdul v State of Gujarat*, (1995) 1 Cr LJ 464 : AIR 1994 SC 1910 [LNIND 1994 SC 209] .

188. *Jagpal Singh v State of Punjab*, AIR 1991 SC 982 : 1991 Cr LJ 597 : 1991 Supp (1) SCC 549 .

189. *Padmanabhan v State of Kerala*, 1988 Cr LJ 591 (Ker).

190. 7th Parl Rep 26; *Jeoli*, (1916) 39 All 161 .

191. *Geja Sabar v State of Orissa*, 2009 Cr LJ 4685 .

192. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] . *Rameshwar v State of UP*, 1997 Cr LJ 2677 (All), a minor killed by gunshot injury, the accused wanted to kill the victim's father. Conviction under section 304, Part I.

193. *State of Rajasthan v Ram Kailash*, AIR 2016 SC 634 [LNIND 2016 SC 41] : (2016) 4 SCC 590 [LNIND 2016 SC 41] .

194. *Nagaraj v State*, 2006 Cr LJ 3724 (Mad—DB).

195. *Shankarlal*, AIR 1965 SC 1260 [LNIND 1964 SC 230] . See also *Balwinder v State of Punjab*, (1987) 1 SCC 1 [LNIND 1986 SC 482] : 1987 Cr LJ 330 : AIR 1987 SC 350 [LNIND 1986 SC 482] where a conviction was upheld on the basis of circumstantial evidence only, such as, last seen together, abscondence, recovery of dead body at his instance, and false pleas. But no such conviction was upheld in *Kansa Bahera v State of Orissa*, 1987 Cr LJ 1857 : (1987) 1 SCC 480 : AIR 1987 SC 1507 [LNIND 1987 SC 383] , because the circumstances were not capable of leading to the single point conclusion of the guilt of the accused person. The Supreme Court has **reiterated** that a High Court should not grant anticipatory bail to a person against whom a report of dowry death is under investigation. *Samunder Singh v State of Rajasthan*, (1987) 1 SCC 466 [LNIND 1987 SC 38] : AIR 1987 SC 737 [LNIND 1987 SC 38] . For an example of conviction under the section for bride-burning see *Surinder Kumar v State (Delhi Administration, Delhi)*, (1987) 1 SCC 467 [LNIND 1987 SC 38] : AIR 1987 SC 692 : 1987 Cr LJ 537 . For burning a mistress and conviction on the basis of her dying declaration, see, *Suresh v State of MP*, (1987) 2 SCC 32 : 1987 Cr LJ 775 : AIR 1987 SC 860 . Unless there is infirmity, illegality, failure of justice or question of principle, the court does not interfere in a concurrent sentence and conviction by trial and High Court. *Gopal v State of Tamil Nadu*, (1986) 2 SCC 93 [LNIND 1986 SC 26] : AIR 1986 SC 702 [LNIND 1986 SC 26] . *Ashok Kumar Chatterjee v State of M.P.*, AIR 1989 SC 1890 : 1989 Cr LJ 2124 : 1989 Supp (1) SCC 560 ; Death caused by gunshot injuries, remarkable eye-witness account, conviction, *Bikkar Singh v State of Punjab*, AIR 1989 SC 1440 : 1989 Cr LJ 1457 , but acquittal where eye-witness's account was doubtful, prosecution version different from dying declaration and no explanation of injuries on the person of the accused; *State of U.P. v Madan Mohan*, AIR 1989 SC 1519 : 1989 Cr LJ 1485 : (1989) 3 SCC 390 ; charges of abduction, murder and rape, trial court acquitting because body was not traceable, High Court convicting for abduction, conviction sustained, *Arun Kumar v State of U.P.*, AIR 1989 SC 1445 : 1989 Cr LJ

1460 : 1989 Supp (2) SCC 322 . Re-appreciation of evidence in the absence of the counsel, conviction found justified, *Daya Ram v State (Delhi) Admn)*, (1988) 1 SCC 615 [LNIND 1988 SC 41] : AIR 1988 SC 613 : 1988 Cr LJ 865 .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 302] Punishment for murder.

Whoever commits murder shall be punished with death, or [196][imprisonment for life], and shall also be liable to fine.

COMMENT.—

Section 302 provides the punishment for murder. It stipulates a punishment of death or imprisonment for life and fine. Once an offender is found by the Court to be guilty of the offence of murder under section 302, then it has to sentence the offender to either death or for imprisonment for life. The Court has no power to impose any lesser sentence.

[s 302.1] Punishment for murder.—Evolution.—

Cr PC, 1898 had section 376(5) which required that if an accused is convicted of an offence punishable with death and the Court sentences him with any punishment other than death, the Court shall, in its judgment, give reasons why death sentence was not passed. The provision of section 367(5) of the 1898 Code reads as follows:

(5) *If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed.*

In 1955, Cr PC (Amendment) Act, 1955 deleted the aforesaid section 367(5) of the 1898 Code. As a result of this amendment, which came into effect from 1 January 1956, it was no longer necessary for a Court to record in its judgment, in case of conviction in connection with an offence punishable with death, any reason for not imposing the death sentence. Thus, in the new Code, the discretion of the judge to impose death sentence has been narrowed, for the Court has to provide special reasons for imposing a sentence of death. It has made imprisonment for life the rule and death sentence an exception, in the matter of awarding punishment for murder.[197.] Reference to extenuating or mitigating circumstances in a case of death penalty was made possibly for the first time by Supreme Court in the case of *Nawab Singh v State of UP*.[198.] The Court held that in the facts of that case, murder was a cruel and deliberate one and there were no extenuating circumstances. After the amendment of 1898 Code, in the year 1955, the first case relating to death sentence, which came before Supreme Court was that of *Vadivelu Thevar v State of Madras*,[199.] in which it was held that the question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. If the Court is satisfied that there are such mitigating circumstances, only then, it would be justified in imposing the lesser of the two sentences provided by law.

[s 302.2] Constitutionality of Death penalty.—

The constitutionality of death sentence was challenged in the case of *Jagmohan Singh v State of UP*.[200.] The Constitution Bench while upholding the constitutionality of death penalty examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute does not provide any guidelines on how to exercise the same. The decision in Jagmohan Singh (*supra*) was rendered when Cr PC, 1973 was not in existence. However, the aforesaid position substantially changed with the introduction of a changed sentencing structure under Cr PC, 1973. In *Rajendra Prasad v State of UP*,[201.] it was held that the special reasons necessary for imposing a death penalty must relate not to the crime but to the criminal. It could be awarded only if the security of the state and society, public order in the interest of the general public compelled that course.

Proposition laid down by the Constitution Bench in Jagmohan Singh's Case

(i) The general legislative policy that underlines the structure of our criminal law, principally contained in the IPC, 1860 and Cr PC, 1973, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefore, and to allow a very wide discretion to the Judge in the matter of fixing the degree of punishment.

With the solitary exception of section 303, the same policy permeates section 302 and some other sections of IPC, 1860, where the maximum punishment is the death penalty.

(ii) (a) No exhaustive enumeration of aggravating or mitigating circumstances which should be considered when sentencing an offender, is possible. "The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler plate' or a statement of the obvious that no Jury (Judge) would need." (referred to *McGoutha v California*.[202.]

(b) The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment.

(iii) The view taken by the plurality in *Furman v Georgia*,[203.] decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our Constitution any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. There are grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.

(iv) (a) This discretion in the matter of sentence is to be exercised by the Judge judicially, after balancing all the aggravating and mitigating circumstances of the crime.

(b) The discretion is liable to be corrected by Superior Courts. The exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused. In view of the above, it will be impossible to say that there would be at all any discrimination, since crime as crime may appear to be superficially

the same, but the facts and circumstances of a crime are widely different. Thus considered, the provision in section 302, IPC, 1860 is not violative of Article 14 of the Constitution on the ground that it confers on the Judges an unguided and uncontrolled discretion in the matter of awarding capital punishment or imprisonment for life.

(v) (a) Relevant facts and circumstances impinging on the nature and circumstances of the crime can be brought before the Court at the preconviction stage, notwithstanding the fact that no formal procedure for producing evidence regarding such facts and circumstances had been specifically provided. Where counsel addresses the Court with regard to the character and standing of the accused, they are duly considered by the Court unless there is something in the evidence itself which belies him or the Public Prosecutor challenges the facts.

(b) It is to be emphasised that in exercising its discretion to choose either of the two alternative sentences provided in section 302, IPC, 1860:

> the Court is principally concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under inquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the CrPC. The trial does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the Court. The only thing that remains is for the Judge to decide on the guilt and punishment and that is whats. 306(2) and s. 309(2), CrPC purport to provide for. These provisions are part of the procedure established by law and unless it is shown that they are invalid for any other reasons they must be regarded as valid. No reasons are offered to show that they are constitutionally invalid and hence the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional under Art. 21.

[*Jagmohan Singh v State of UP*.][204.]

[s 302.3] Evolution of Sentencing Policy

Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case.[205.]

[s 302.4] Phase-I (Focus on Crime).—

Jagmohan Singh's Case (*supra*) laid down that discretion in the matter of sentencing is to be exercised by the judge after balancing all the aggravating and mitigating circumstances "of the crime". *Jagmohan Singh* also laid down in proposition that while choosing between the two alternative sentences provided in section 302 of IPC, 1860 (sentence of death and sentence of life imprisonment), the Court is principally concerned with the aggravating or mitigating circumstances connected with the "particular crime under inquiry".

[s 302.5] Legislative Change.—

The 41st Law Commission Report proposed extensive changes in the 1898 Code. In paragraph 23.2 of the said report, the Law Commission recommended a set of new provisions for governing "trials before a Court of sessions". With regard tosection 309 of the 1898 Code, the Law Commission recommended that hearing of the accused was most desirable before passing any sentence against him. This recommendation was accepted and incorporated while enacting section 235, Cr PC in 1973 Code within Chapter XVIII of the same under the heading "Trial before a Court of Sessions". The most significant change brought about by the incorporation of the recommendation of the Law Commission, is the giving of an opportunity of hearing to the accused on the question of sentence. This opportunity of hearing at the post-conviction stage gives the accused an opportunity to raise fundamental issues for adjudication and effective determination by Court of its sentencing discretion in a fair and reasonable manner. In *Santa Singh v State of Punjab*,[206.] the Supreme Court held that this provision is in consonance with the modern trends in penology and sentencing procedures. It was further held that proper exercise of sentencing discretion calls for consideration of various factors like the nature of offence, the circumstances—both extenuating or aggravating, the prior criminal record, if any, of the offender, the age of the offender, his background, his education, his personal life, his social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of his rehabilitation in the life of community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others.

[s 302.6] Phase-II Doctrine of "Rarest of rare" (Shifting the focus from crime to criminal).—

In *Bachan Singh v State of Punjab*,[207.] another Constitution Bench, while upholding the constitutional validity of death sentence observed that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. The principal questions considered in this case were:

> (i) Whether death penalty provided for the offence of murder in Section 302, Penal Code is unconstitutional.
>
> (ii) If the answer to the foregoing question be in the negative, whether the sentencing procedure provided in Section 354(3) of the CrPC, 1973 (Act 2 of 1974) is unconstitutional on the ground that it invests the Court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly imposed on a person found guilty of murder or any other capital offence punishable under the Indian Penal Code with death or, in the alternative, with imprisonment for life.

The conclusion of the Constitution Bench was that the sentence of death ought to be given only in the **'rarest of rare cases'** [See the Box with '*Supreme Court Guidelines in Bachan Singh*'] and it should be given only when the option of awarding the sentence of life imprisonment is "unquestionably foreclosed". It laid down the framework law on this point. Bachan Singh effectively opened up Phase II of a sentencing policy by shifting the focus from the crime to the crime and the criminal.

Supreme Court Guidelines in Bachan Singh

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the