

Critical Analysis on the Role of Judiciary Against the Offence of Murder in the Criminal Justice System of India

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Abstract

Judiciary is the one of the four pillars of our democracy. It has got immense role and power in dispensing criminal justice. It can examine lower court's conviction and acquittal of persons involved in the offence of murder. It can issue direction, order to any organ of the criminal justice system including law enforcement agencies, prison administration to enhance their efficacy. It is the ultimate guardian and protector of the constitution, so that no injustice is done to anybody including the victim and the accused person. It can issue direction to those cases which invite intervention of the apex court. The scholar delve into various areas, the role played by apex court against the offence of murder in the Indian criminal justice system.

Role of Supreme Court in the Criminal justice system

Judiciary includes the Supreme Court, High Court and the lower courts. Of all the courts the Supreme court of India play a pivotal role in the administration of criminal justice. There are numbers of functions assigned to the Supreme Court in the criminal justice system which are as follows¹

1. Uniformity in Justice is the main function of the Supreme Court which is bestowed on it by the Constitution.
2. It is the apex court initiative that the citizens must be conscious and aware about the laws of the land.
3. As the law is fixed ,it is the apex court to see that no discrimination should be found in the administration of justice
4. The ultimate guardian of rule of law i.e the apex court to ensure that least chance of wrong be going on.

Supreme Court on Mens rea:---

Mens rea and Actus rea are the two essential elements in criminal jurisprudence, but out of these two elements mens rea is overlooked and not taken into consideration in heinous offences including the offence of murder. Supreme Court found that Guilty mind need not to be looked upon in case of heinous offences¹. To presume innocence evidence must be heavier in most serious offences²

¹ Pradeep Kumar, "Appointment of Supreme Court and High Court Judges: a study of emerging problem and issue, available at <https://hdl.handle.net/10603/661507>

² Supra Note at 1

Rarest of Rare Cases;---

Rarest of rare cases are those cases of murder which involves extreme brutality, which is diabolical in nature, mass protest come from the people after the offence wherein death sentences are imposed. The researcher would put some lights on such types of cases that come across by the Supreme Court which are as follows³

Bachan Singh Vs State of Punjab⁴:--Objection was raised before the Supreme court by the appellant against the imposition of death penalty . He had objected on the ground that as India was a signatory of the United Nations Convention on civil and political rights which directed the member countries to abolish death penalty. Besides he argued that since the decision of Maneka Gandhi –Vs- Union of India, interpretation of article 14,19 and 20 need to be taken into consideration. Per Sarkaria J, on behalf of the co-judges held that (1)If the crime involves extreme brutality then death penalty can be imposed. Before imposing death penalty there must be due regard which need to be given on the circumstances of the crime and the offender. The court can impose death sentences by looking the mitigating and aggravating circumstances as well as following the rule that the life imprisonment is the rule and death sentence is the exception. Besides , few factors need to be considered for the imposition of extreme penalty and these are,(1)Murder have been committed in pre-meditation and it involves extreme brutality,(2) It must be involving exceptional depravity .The court rejected the challenge of the constitutional validity of death sentence .

Machi Singh Vs State Of Punjab⁵ In this case 17 lives were lost due to enmity between two families including women, men, children in 5 incidents in different villages of Punjab. In this case 4 of them awarded extreme penalty of death ,9 have been given life imprisonment. In this particular case the apex court evolved out the necessary guideline for imposition of death penalty which are:-

- Manner of commission of murder---If the murder involves extreme brutality, grotesque, diabolical and in a dastardly manner arising public outcry. For example the victim body is cut into pieces, victim body is roasted by burning alive as well as very act of inhuman torture and extreme cruelty.
- The crime is antisocial and socially abhorrent in nature.
- There must be a total depravity of the motive of the murder.
- The personality of the victim of the murder specially when the victim is an innocent child, helpless lady, old and infirm one, victim is in a position on whom murderer on dominion or on trust as well as the victim is a public figure.

Kehar Singh Vs Delhi Administration⁶ In this case three appellants Kehar Singh, Balbir Singh and Satwant Singh were convicted and sentenced to death. They were all involved in the murder of Prime Minister of India, Indira Gandhi. Beant Singh was killed by the security guard. Prime Minister Indira Gandhi carried out Operation Blue Star in the Amritsar Golden Temple to evacuate the terrorist activities inside the temple. Hurt by religious feeling and sentiments of Sikh community, the appellants made a conspiracy to kill prime minister Indira Gandhi, as all of them were security guards at that time. They attacked with several bullets injury. They have been reposed to secure the life of the Prime minister but they have abused their position of security guard and killed the Prime minister. Supreme Court held that no mitigating circumstances exist because they have killed a prime Minister who did not have any arms

³ K.D. Gaur, “Commentary on IPC,(Universal Law Publishing Co. Pvt. Ltd,New Delhi,2006)

⁴ AIR 1980,SC 898

⁵ AIR 1983SC 957

⁶ AIR 1988,SC 1883

to protect herself. Trust were imposed on the security guard but they have killed the Prime Minister. So extreme brutality was found on the four accused persons and Supreme Court upheld the conviction and confirmed the sentence of death of the High Court.

State of Maharastra Vs Sukhdeo Singh⁷ The case relating to the involvement of two appellants Sukhdeo Singh and Hajinder Singh at the killing of General A.S. Baidya by gun shot on 10 August 1986. A.S. Baidya the then chief of arms forces carried out the operation Blustar at Amritsar Golden Temple at the advice of Prime Minister Indira Gandhi. Both of them since then became the targets of Sikh Community as militants were flushed out from the Golden Temple. Supreme Court held this case as the rarest of rare case.

State of CBI/SIT Vs Nalini and others, On the night of May 21, 1991, a crime which involving extreme indignation, grotesque and diabolical in nature took place in the killing of then Prime Minister Rajiv Gandhi by human bomb explosion. The intensity of the blast was so acute and intense that the body of the Prime Minister along with his security guards were blown away approximately 100 foot above from ground and fallen on the ground. The legs and bodies were found in pieces because of the strong intensity of the blast. At that night the Prime minister Rajiv Gandhi along with 15 persons including 9 policemen perished and 43 suffered grievous injuries. Dhanu an LTTE activists who kept bomb on her waist and a photographer Haribabu died on the spot. Later on when Haribabu's Camera was developed, it revealed the dastardly act and their planning. A charge of conspiracy under the TADA Act 1987, IPC 1860, Explosive substances Act 1908, Arms Act 1959, Passport Act 1967, Foreigner's Act 1946 and Indian wireless telegraphy Act 1933 was laid against 41 persons, 12 of whom already died due to suicide committed and three absconded. Out of these, 26 faced the trial and all were awarded death sentences on charge of conspiracy to murder u/s 120 B read with 302 IPC. Apex court unanimously set at liberty to 19 accused out of 26 accused for charges u/s 120 B r/w 302 IPC and confirmed the death sentence imposed by the trial court in respect of three accused viz Santhan, Murugan, Arivu and commuted death sentence to life imprisonment in respect of Robert Payas, Jayy Kumar and Ravichandran. Extreme penalty of death to Nalini was confirmed by a majority of 2 to 1 (Wardha and Qureshi Concurred) but J Thomas disagreed with majority and commuted death sentence to life imprisonment. All the four accused persons were released from jail after passing 31 years of jail term because of showing good behaviour inside the jail and were engaged in social work.

Sushil Murmu Vs State of Jharkhand⁸. This is another case where the SC imposed death penalty. A young child of nine years was sacrificed before Goddess Kali on 11th December 1996 by the appellant for his own overall development. In his extra judicial confessional statement the accused confessed the guilt, dead body was recovered which was found in a bag in a pond which was confirmed by police on the basis of another eye witness. The appeal was rejected and the S.C upheld the conviction and sentenced to death, because it shocked the collective conscience of the community due to the following circumstances.

1. The murder involved extreme brutality, grotesque, diabolical and dastardly manner as a result it arose intense and extreme indignation of the community.
2. The murder involved extreme depravity and meanness.
3. The victim is a helpless child.

⁷ AIR 1992, SC 2100

⁸ AIR 2004, SC 394

Laxman Naik Vs State of Orissa⁹, In Laxman Nayak case S C held that cold blooded murder of a young girl after rape on her fall on the category of rarest of rare case to impose death penalty. In this case the young girl was raped first and then murdered in a dastardly manner by the victim's agnate and parental uncle in a remote village of Orissa fell under the category of rarest of rare case.

Kamta Tiwari Vs State of Madhya Pradesh¹⁰, the apex court in this case held that the accused person who raped a very young girl and threw her body in a well to cause disappearance of the evidence and caused the death of the child, fall under the rarest of rare case. In this case the accused and the father of the victim child were neighbour and the victim girl used to call him uncle. On the day of incident the victim along with her younger brother went to a salon for hair cut of her brother where the victim met the accused person. The accused convinced the victim girl to give her chocolates and in that pretext he took away her from that place to a nearby jungle where he committed sex and thereafter murdered the girl. He then decomposed the body in a nearby ditch. Later on the police recovered the body and the accused was sent to jail. The High Court confirmed the death sentence and later on the Supreme Court on appeal dismissed his appeal and upheld the conviction and sentenced him to death penalty on the ground that the case is fit case of rarest of rare case to impose death penalty.

Jai kumar Vs State of Madhya Pradesh¹¹, In this case the accused was 20 years of old and committed murder of a woman who was his sister in law of 30 years age and 8 years niece in a cold blooded manner. High Court confirmed death sentence. In this case the accused first of all entered into the room where his sister-in-law was sleeping, first he severed her head from body and thereafter taking away the child. In the jungle he cut the body of his niece and buried under a mahua tree, sacrificing in the name of Maharaj (Mahua). Later on he buried the body of his sister-in-law in the mahua tree. Supreme Court dismissed the appeal and found it extreme deprivation and criminality. The ground that he is only 22 years of age is not tenable in the relevance of the fact. The Supreme court stated that the incident shocked the conscience of the judiciary. It was cold blooded murder without any provocation and found it rarest of rare case to impose death penalty.

State of Rajasthan Vs Kheraj Ram¹², The Supreme Court held that the murder committed to a helpless woman and an innocent child in a very dastardly manner without any remorse call for implication of death penalty. The accused person doubted about the chastity of his wife and alleged that the children are not from his side. On the fate full night he assaulted fatally his wife, two children and his brother in law in a diabolical manner when all were asleep. As a result all died on the spot. The Apex Court held that there is a planned murder and meticulously he carried it out. The calmness with which he had smoked chillam after the incident did not arose any human touch on him and the Supreme Court upheld the death conviction and death sentence of High Court and imposed extreme penalty of death sentence on him.

Dhanajay Chatterjee Vs State of West Bengal¹³s case, In this case the security guard raped and murdered of a helpless child. He used to tease the girl whenever he get the opportunity to tease her. On his behaviour the victim reported the matter before his parents. Thereafter he was transferred as a security guard to an another residential flat. Being dissatisfied and aggrieved by the act of the victim's father he one day planned to commit the heinous crime of rape and murder of the victim when the victim

⁹ AIR 1995, SC 1387

¹⁰ AIR 1976, SC 2800

¹¹ AIR 1999, SC 1860

¹² 2003, 8 SCC, 224

¹³ Crl appl no 393-394 of 2004 decided on 26/3/2004

girl was alone in the house. He committed rape first and thereafter murdered the victim in a diabolical manner. He was convicted and sentenced to death for rape and murder. Supreme Court held that this case deserves capital punishment looking at the gravity of the offence and falls upon the category of rarest of rare cases.

Narayan Chetanram Choudhury Vs State of Maharashtra¹⁴, It involved the accused person of murder of 5 persons. Out of which one woman was pregnant woman, two were one and half years old and the rest two were just one and half years old in a most dastardly and shocking manner. The murder took place to disappear all evidence of robbery and theft. High Court dismissed the appeal and Supreme Court upheld the conviction and held that the case is one of the rarest of rare case and imposed the death penalty.

In a landmark ruling on March 27, 2023 (reported as 2023 INSC 298) a three judge Bench of the Supreme Court held that Narayan Chetanram Choudhary was a juvenile (12 years and 6 months old) at the time of the crime in 1994. Consequently, his conviction and death sentence were set aside under Section 9(2) of the Juvenile Justice Act 2015 and he was directed to be released after serving over 28 years in prison.

Conversion of Death sentence into Life Imprisonment

In **M.S. Shessappa Vs State of Karnataka¹⁵**, where the accused committed ghastly murder of four members of his family and there was no evidence of any pre-planned and absence of any mental condition, the death sentence has been converted to life imprisonment.

In **S . C. Bahri Vs State of Bihar¹⁶**, where the co-accused person committed murder of the wife and minor children of another accused person or not, there was no any Evidence of any pre-planned and absence of any mental conditions, the death sentence has been converted to life imprisonment, however the co-accused father's death sentence did not change.

State Vs Banwarilal¹⁷ Where the accused person shot dead two of his brothers on quarrel of a petty matter, and there was lack of any pre-planned murder, the death sentence as has been converted to life imprisonment.

Cases of No Leniency

Shiromoni Akali Dal (Man) Vs State of J&K¹⁸, In this Case the accused was found liable for double murder. S.C held that he donated blood and involved in several social organisation and police put him on cruelty, because of his relationship with brothel and business, are of no consideration involving in mitigating circumstances as he was found to be dreaded criminal involving in organised criminal activity. He was awarded death sentences and was informed about this execution was postponed. It was held that the pain and agony suffered by the accused after he was informed about this execution was not a ground for mitigating circumstances, this is not a ground substituting death sentences.

Arjuna Vs State of Maharashtra¹⁹...Where the accused person in an unlawful assembly, one of the accused killed three persons of a family one after another while the other accused caught hold of the

¹⁴ 2000,8 SCC,457

¹⁵ 1994 CriLJ 3372

¹⁶ 995 Supp(1) SCC 80

¹⁷ AIR 1962 SC 1198

¹⁸ 1993 Cri LJ 927(J&K)

¹⁹ 920120 5 SCC 42

victims, the High court imposed death penalty of the accused stating that the act was like a butcher in a slaughter house.

Gochipothalu Samudralu alias Sundara Vs Stae of Andhra Pradesh²⁰, It was held that the mere fact of single bullet injury by the accused and resulting death of the victim, Section 300 cannot be converted into Section 304 Partii

Enhancement Of Sentence.

In **Jodha Khoda Rabari Vs St of Gujrat**²¹, where the accused person indiscriminately killed 10 persons of a community due to enmity, the enhancement of life imprisonment to death is confirmed and other co-accused was given life imprisonment which was confirmed,

Judicial Trend in death penalty

Judges are placed on a heavy duty by Section 302 of the IPC, to choose between death and life imprisonment for the person found guilty of murder. which is now expected to be discharged in a highly responsible manner by complying with the provision contained in Section 354(3) and 235(2) of CrPC 1970 so that the principle of natural justice and fair play hold sway in the sphere of sentencing²²

Procedural safeguard and consequences of death sentence on the convict, his family, of society were considered by S.C in **Allauddin Mian Vs State of Bihar**²³

When there is a cry of the convict that 'i want to live' and prosecutor's demand 'he deserve death penalty', judiciary must show high degree of concern and sensitiveness in the choice of sentence²⁴

It was further observed by Supreme Court that the procedural provision contained in Section 354(3) of CrPc implies that the court can impose death penalty in fit cases. Section 235(2) of the code calls upon the court that the convicted accused must be given an opportunity to show his antecedents, social and economic background and all mitigating and extenuating circumstances in the court. The power to cut short a sentence by an executive clemency is not subject to judicial review. It is the exclusive domain of the executive in India and elsewhere. The controversy raised in this regard in **NanaVatis case**²⁵, has been settled in **Sarat Chandra Vs Khagendra Nath**²⁶, which affirmed that principle that sentencing power of executive and judiciary are distinguishable²⁷

In **kunju kunju Janardhanam Vs State of Andhra Pradesh**.. The accused lured by the charm of a village girl commit brutal murder of his innocent wife and his two minor children when they were asleep in dead of night. The girl on her part warned the accused not to disturb his family peace, but he did not listen to it and in diabolical and dastardly manner killed his family members. Although majority by 2:1 commuted death sentence to that of life imprisonment Mr Justice A.P, Sen in his dissenting judgement disagreed with the majority and observed "The accused who acted as a monster did not even spare his

²⁰ 1992 Cri LJ 2488(AP)

²¹ 1992 Cri LJ 3298(Guj)

²² Dr N. V. Paranjape, "Criminology and Penology" (Central Law Publication, Allahabad, 12th edition 2005)

²³ AIR 1989 SC

²⁴ ibid

²⁵ AIR 1962 SC 605

²⁶ AIR 1961 SC 334

²⁷ ibid

two innocent minor children in order to get rid of his wife and issues through her if death sentence is not awarded in a case like this i do not see type of offences which call for death sentence”²⁸

In **Rajendra Prasad Vs State of U.P**²⁹ Mr Justice Krishna Iyer of SC however made it clear that where the murder is deliberate, pre-mediated, coldblooded and gruesome and there are no mitigating and extenuating circumstances the offender must be sentenced to death as a measure of social defence.

The pros and cons of life or death sentence has been extensively dealt with by SC in Rajendra Prasad Case. The accused in this case was desperate character who had already undergone life imprisonment and was released on Gandhi Jayanti Day in 1972, a few days prior to the occurrence of the incidence. On 25 th October the accused suddenly attacked on Rambharosey and dealt several blow on the vital part of his body with knife. Rambharosey relieved himself from the grip of the accused and ran inside his house and bolted the door. The accused chased him all the way with the blood stained knife and knocked at the door asking him to open it. Meanwhile deceased Mansukh came out and tried to entreat the accused not to assault Rambharosey. Thereafter the accused struck Mansukh who tried to escape but accused chased him over a distance of 200 to 250 feet and inflicted repeated knife blow on him which resulted his death. Thus deceased was killed because he tried to prevent him from assaulting Rambharosey.

The SC in a majority of 2 to 1 and speaking through Mr Justice V.R .Krishna Iyer attributed failure of penal institution to cure the criminality within the criminal as the sole cause of this cruel murder allowed commutation of death sentence of the accused to life imprisonment. The Court inter alia observed “ A second murder is not to be confounded with the persistent potential murderous attack of the murderer. This was not a menace to social order but it was a specific family feud, here was not a youth of uncontrollable, violent propensities against the community but one whose paranoid preoccupation with family quarrel goaded him to go at the rival.

In a way Rajendra Prasad case provided an appropriate opportunity for SC to express its view on need for dilution of death penalty in the context of Indian Society.

The ruling of Rajendra Prasad case has been followed in two subsequent cases decided by S.C in the same year. In one case **Guruswami Vs State of Tamil Nadu**³⁰, the accused was sentenced to death by High Court but on appeal this sentence was commuted to life imprisonment because of the murder arose out of a family quarrel relating to diversion of land and the fact that the appellants were under the sentence of death for 6 years was itself enough to justify mitigation of sentence.

In another case **Dalbir Singh Vs State of U.P**³¹, although the accused was convicted for quadruple murder and sentenced to death but the SC in appeal reduced it to life imprisonment on the ground that dispute related to regulating “turns” for taking irrigation water for agricultural purpose and the earlier provocation comes from the deceased side by beating the accused.

A year after SC again was again called upon to settle the controversy over the choice between death penalty and life imprisonment, but this time by a larger bench of 5 judges, overruling its earlier decision in Rajendra Prasad Case, the court by a majority of 4:1 (Majority view taken by Mr Justice Y.V. Chandrachud, O.J . Sarkaria, Gupta and Untavallia JJ While Bhagavati J dissenting) expressed a view that death sentence as an alternative punishment for murder is not unreasonable and hence not violative

²⁸ Supra note 140 at 257

²⁹ AIR 1979 SC 916

³⁰ AIR 1979 SC 1177

³¹ AIR 1979,SC 1384

of Art 14, 19 and 21 of the constitution, because the public order contemplated by clause (2) to (4) of Article 19 is different from law and order. Justifying retention of death penalty as an alternative punishment in reference to Section 354(3) of CrPc 1973 the court inter alia observed .

“ The question whether or not death penalty serves any penological purpose is different complex and intricate issues. It has evoked strong divergent view, notwithstanding the view of the abolitionists to the contrary., a very large segment of the people , the world over , including sociologist , Jurist , Judges and administrators still firmly believe in the worth and necessity of capital punishment for protection of the society”

The court further observed , “ the S C should not venture to formulate rigid standard in an area in which legislators so wearily tread, only broad guidelines consistent with the policy indicated by the legislator can be laid down in Bachan singh, Jagmohan case. The majority emphasised on the liberation of the mitigating factors in case of death penalty and held that dignity of human life through instrumentality that ought not to be done save in rarest of rare cases unless alternative option is not available or is foreclosed.³²

In another case , **Javed Ahmed Abdulla amid Pawalah Vs St of Maharashtra**³³ the SC upheld the sentence of death for a gruesome and brutal murder. In this case the appellant was convicted for multiple murder .He killed his sister in law aged 23years his little niece aged 3 years, his baby nephew aged one and half year and the minor servant aged about 8 years. The motive of the murder was golden ear ring and bangles of the deceased. The sister –in- law sustained 20 stab injuries, niece 13 stab wounds and servant 8 incised wound and baby niece 3 injuries. The accused convicted for murder and sentenced to death. High Court upheld his conviction and thereupon moved an appeal to SC on the question of sentence. Dismissing the appeal the SC inter alia observed, “ The appellants acted like a demon showing no mercy to his helpless victim , three of whom were little children and one a woman. The murder was perpetrated in a cruel ,callous and fiendish fashion. Although the appellant was 22 years of age and the case rested upon circumstantial evidence ,the court were unable to refuse to pass the sentence of death as it would stultifying course of law and justice. It was truly rarest of the rare cases, the court had no option but to confirm the sentence of death.

In a notorious **Joshi Abhiyunkar murder case, Munuwar Harun Shah Vs State of Maharashtra**³⁴ , the accused committed a series of gruesome murder during January 1976 and March 1977 . They were sentenced to death by trial court which was confirmed by Bombay High Court on 6/4/1979. The appellants thereupon filed SLP before the Supreme Court for commutation of death sentence to life as death was hovering over their minds for five years. Two of the petitioners namely Shanta Ram Jagtop and Munawar Shah pleaded that during this period they had written a book entitled “Kalyan Marg” in Marathi and translated “Sukshama Vyayam” written in English by Dhuendra Brahmachari into Marathi. Dismissing the petition the SC observed that the book writing and translation work of the petitioners belied that any spectre of death penalty was hovering over their minds during the period they have been in jail. Therefore any mercy shown in matter of sentence would not only be misplaced but will certainly give rise to and faster a feeling of private vengeance among the people leading to destabilisation of society.

³² Supra Note 138 at p 260

³³ AIR 1983, SC 465

³⁴ AIR 1983, SC 585

The Supreme Court in **Ranjit Singh Vs Union territory of Chandigarh**³⁵ was once again called upon to decide an appeal relating to question of sentence. In this case, murder was committed by appellant a life convict during parole. The accused was sentenced to death on conviction under Section 303 of IPC and the co-accused was awarded life imprisonment. Agreeing with this contention of deceased's Counsel the SC commuted the sentence of death to life imprisonment as section 303 IPC had been declared unconstitutional in **Mithu Vs State of Punjab**³⁶. The Court held that during parole appellant should have behaved like a law abiding citizen but instead he indulged into heinous crime of murder, hence the case falls within the category of rarest of rare case.

Again in **Mahesh etc Vs State of MP**³⁷, SC maintaining the sentence of death passed by HC observed "It would be mockery of justice to permit the appellant to escape the extreme penalty of law to give lesser punishment for appellants would be to render justice system of this Country suspect, the common men would lose faith in Courts"

In the instant case father and son had axed a person and three members of his family and his neighbour who intervened merely because daughter of that person married a harijon. The Supreme Court held that interference with the sentence was not called for because the act of appellants were extremely brutal, revolting and gruesome which shocks the Judicial conscience.. Therefore the deterrence punishment was a social necessity in this case

The Supreme Court in its decision in **Asharfi Lal and son Vs State of U.P**³⁸ once again upheld the death sentence of the accused who committed reprehensible and gruesome murder of two innocent girls on 14/8/1984 to wreck their personal vengeance over the dispute they had with regard to property with the mother of the victim and commented that "the only punishment the accused deserved was nothing but death". Commenting on the desirability of death sentence the Court further observed "Failure to impose a death sentence in grave cases where it is a crime against society, particularly in cases of murder committed with extreme brutality will bring naught the sentence of death u/s 302 IPC. It is the duty of the Court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment".

In **Lachman Devi Vs State of Rajasthan**³⁹, the SC stated that execution of death sentence by public hanging was barbaric and violative of Article 21 of the Constitution. Even if jail manual was to provide public hanging, it would be declared unconstitutional.

In **Kamta Tiwari Vs State of MP**⁴⁰, the accused committed rape on a seven years old girl and strangled her to death. He threw her body in a well and caused disappearance of evidence. The accused was convicted for the U/S 363, 376, 302 & 201 of IPC and was sentenced to death by trial court & the sentence was maintained by H.C also in appeal. S.C upheld the decision of lower court and held that this is the rarest of rare case" where sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crime. The Court inter alia observed

"before opting for death penalty the circumstances of the offender also require to be taken into consideration along with circumstances of the crime. A balance sheet of aggravating & mitigating

³⁵ AIR 1984 SC 45

³⁶ (1983) 2 SCC 277

³⁷ AIR 1987 SC 1346

³⁸ AIR 1987 SC 172

³⁹ AIR 1991 SC 1618

⁴⁰ AIR 1996, SC 280

circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating & mitigating circumstances before the option is exercised.”

In another case **Ravji alias Ram Chandra Vs State of Rajasthan**⁴¹, the SC found no justification in commuting the death penalty to imprisonment for life. In this case, the accused had committed murder of five persons including his wife, & 3 minor children & attempted to commit murder of two others. The act was committed in cold and calculated manner while victims were asleep. There was absence of provocation or psychic disorder which could be attributed to these brutal and heinous murders. There the court found no justification to commute the death penalty to imprisonment for life and dismissed the appeal.

In **Geneta Vijavardhan Rao & another Vs State of Andhra Pradesh**⁴², the two appellants were accused of setting up a super express bus on fire by sprinkling petrol with the motive of plundering of passengers. This resulted into roasting 23 passengers to death, besides numbers of passengers sustained serious injuries. The defence pleas was that the accused were young and their prime motive was not murder but plundering property and wealth was not considered sufficient enough to constitute mitigating circumstances warranting commutation of death sentence to that of imprisonment of life. The apex Court ruled that considering the overall picture, the case was one of the rarest of rare cases not merely because of record numbers of innocent human beings roasted alive but the inhuman manner in which the scheme of crime was plotted and executed.

In **Manohar Lal alias Munna & anr Vs State of Delhi**⁴³, the two accused killed four sons in presence of the sole eye witness, the mother by setting them ablaze. The incident was the result of the carnage fuelled by the assassination of Mrs Indira Gsandhi which scored a heavy toll on Sikh community in Delhi. The accused were convicted for offences under Section 302 & 396 read with Sec 149 of IPC by Session Court and sentenced to death on the first count and life imprisonment on the other. The High Cort of Delhi confirmed the conviction and sentence. Thereupon the appellants filed the criminal appeal by special leave. The Supreme Court held that the accused though committed gruesome murder, they had no special or personal enmity towards the deceased persons. It was the assassination of Prime minister Indira Gandhi which had blind folded the accused. It could be said that the act of mob of which the appellant were the members was only the result of a temporary “frenzy”. Therefore sentencing death sentence would not be proper in thre instant case and as such it is altered to life imprisonment.

In **Kishorilal Vs State Of Delhi**⁴⁴ AIR 1999 SC 382, after the assassination of Indira Gandhi rioting took place in large scale and arson took place in different parts of Delhi on 1st & 2nd November 1984. Many persons werev burnt alive. The charges against four accused persons namely Kishore(appellant) Rampal, Saroj & Shabnam were framed U/S 148,183,302,307 R/W 149 IPC. Having been sentenced to death by trial court and confirmed by HC of Delhi, the appellant Kishori filed SLP in SC challenging the judgement of H.C. During hearing hearing, it was stated that kishori was allegedly involved in several incidents which gave rise to seven cases, four of ended in his acquittal & in three cases he was sentenced to death. The S.C observed “ the law is well settled by reason of decision of the Court that capital punishment can be imposed in rarest oif rare cases and if there are aggravating circumstances. Experts in criminology often express a view that where there is mob violence as in the instant case, there

⁴¹ AIR 1996,SC 787

⁴² AIR 1996, SC 2791

⁴³ AIR 2000 SC 420

⁴⁴ AIR 1999 SC 382

is diminished individual responsibility unless there are special circumstances indicating that a particular person had acted with any pre-determined motive such as use of weapon not normally found”

In the instant case, all the witnesses speak that there was a mob attack resulting in the death of three persons. Though the appellants are stated to be responsible for inflicting certain knife injuries, yet it is not clear whether those injuries resulted in the death of the person. The act of mob of which the appellants were members cannot be said to be the result of an organization or group indulging in planned violent activities formed with any purpose or scheme which can be called as an organised activity. S.C. therefore decided that on totality of the circumstances this is not a case which can be called a rarest of rare case which warrants imposition of maximum sentence of death. Hence while confirming the conviction of the appellants on charges framed against them the sentence is reduced from capital punishment to life imprisonment and with this modification, their appeal stands dismissed.

In the case of **Nirmal Singh & another Vs State of Haryana**⁴⁵, the two accused Dharampal and Nirmal were convicted for murder of 5 persons on the evidence of eye witnesses corroborated by evidence of other witnesses and medical evidence. Accused Dharampal was already convicted in a rape case on the testimony of close in-laws of the deceased. He was sentenced to 10 years of imprisonment and preferred an appeal and obtained a bail from H.C. He had given a threat to deceased person on previous conviction that if any body gives evidence in rape case, the whole family will be wiped off. He has misused the privilege of bail and killed 5 persons who were all members of the family of Punam (rape Victim) whose deposition was responsible for Dharampal conviction. He had killed 5 persons with kulhari which indicated a depraved mind. The apex court held that the brutal and merciless killing by the accused was certainly a case which fell within the category of rarest of rare cases and deserved the sentence of death by hanging till death.

In **Md Chaman Vs State of Delhi**⁴⁶, the accused had committed rape on minor girl Ritu aged one and half year when her parents and two sisters were away from home. As a result of this brutal and ghastly act the child suffered several injuries and died. The trial court convicted the accused u/s 302 and 376 of IPC & sentenced him to death which was confirmed by the High Court. On appeal S.C. held that when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner, so as to arouse intense and extreme indignation of community, these should be construed as aggravating circumstances for imposition of death sentences. In the instant case the crime committed is undoubtedly serious and heinous and reveals a dirty and perverted mind of a person who has no control over his carnal desire. But taking guidelines in **Bechan Singh** case is one which deserves humanist approach and therefore capital sentence imposed against appellants is commuted to imprisonment for life.

In **Dhananjay Chatterjee alias Dhana Vs- State of West Bengal** CrL appl no 393-394 of 2004 decided on 26/3/04 appellants were found guilty of committing rape and murder of a school going 18 year old girl in retaliation for his transfer as a security guard to some other building complex on the complaint by the deceased girl to her parents that the appellants were teasing and harassing her. His appeal having failed in High Court and Supreme Court and the mercy appeal being rejected by the Governor of West Bengal and the President of India. He was finally hanged till death on 14th August 2004 in Alipore Jail of W.B. in execution of his death sentence.

The Court observed “in our opinion the means of punishment in the given case must depend upon the atrocity of crime, the conduct of the criminal and the defenceless and unprotected state of the Victim.

⁴⁵ AIR 1999, SC 1221

⁴⁶ 2001, (1) CrLJ 1215

Imposition of appropriate punishment is the manner in which the court respond to society's cry for justice against criminals justice demands that court should impose punishment befitting the crime so that the court reflect public abhorrence of the Court. The Court must not only keep in view of the right of the criminal but also the right of the victim of the crime and society at large while considering imposition of appropriate punishment⁴⁷

Dhananjay's case is undoubtedly a trend setter in the history of capital punishment in India and clearly indicate that the principle laid down in Bachan Singh case i.e rarest of rare case is best suited to the socio milieu of Indian society even in present 21st century.

The S.C in **Krishnan Vs State of Haryana**⁴⁸, declined to hold that the appellant's case fell in the category of 'Rarest of rare case' and therefore commuted death sentences to one of life imprisonment. In this case the accused was already serving a sentence of life imprisonment for a murder and he was found guilty of committing another murder of a person with whom he had a property dispute while he was released on parole. The Court ruled that undoubtedly felonious propensity of offender is a factor which requires consideration for the sentence of death but that cannot be made the sole basis for award of death sentence as well as all other factors such as motive, manner and magnitude should also be taken in to consideration.

In **Raja Ram Yadav Vs State of Bihar**⁴⁹, the appellant (eight in number) were charged for committing premeditated murder of six persons in a cool and calculated manner with extreme cruelty and brutality under Section 302, 436 read with Sec 148, 120-B, IPC. The incident occurred when a group of persons committed mass massacre of 26 persons out of which 25 belong to one community & 20 of them also belonged to the same family in the village Bhogora, Police Station Madanpur, Dist Aurangabad on the night of 30th May 1987. The conviction was based on the testimony of solitary child witness who was five years old son of one of the deceased. This deposition was held convincing and reliable. The SC ruled that normally sentence of death was wholly justified keeping in view the special facts of the case but it will not be proper to award extreme sentence of death on the appellant hence it would be proper to commute the death sentence to life imprisonment.

In **Ashok Kumar Vs State of Delhi**⁵⁰ administration, the allegations against the accused were that he was having illicit relations with co-accused and killed her husband in a room of Hotel by striking him with a stone. The High Court enumerated as many as eleven circumstantial evidence against the appellant and spelt out the case to be arrest of rare case. The SC held the view that appellant was rightly convicted of the offence u/s 302 IPC as the chain of circumstances fully established the guilt of the accused. However on the point of sentence the apex court observed that the act of striking the deceased with a handy stone and causing the death cannot be said to be so cruel, unusual or diabolic which would warrant death penalty. Therefore court commuted the death sentence of appellant to that of imprisonment for life.

In **Mahendra Nath Das Vs St Of Assam**⁵¹, the appellant (accused) was a young man who killed the deceased and chopped off the hands and head of the dead body. Thereafter he came to the police station along with the chopped hands and head of the deceased to make a confession of his offence. The SC considered the murder as the rarest of rare case and upheld the death sentence of the accused. The

⁴⁷ Dr. N.V. Paranjape, "Criminology & Penology", (Central Law publications, Allahabad, 17th edition, 2026)

⁴⁸ AIR 1997, SC 2598

⁴⁹ AIR 1996, SC 1613

⁵⁰ (1982) 2 SCC 403

⁵¹ 1995, 5 SCR, 102

Court rejected the plea that the accused was a young Man having liability of his three young unmarried sisters and aged parents who were solely dependent on him.

In **Saytendra Vs State of U.P**⁵² the accused persons who were variously armed came in group by using cars and motor cycles and intercepted a bus knowingly fully well that deceased were travelling in that bus. They entered the bus from both doors without giving an opportunity to deceased persons to escape and killed them on the spot. Two deceased who tried to escape from the bus were chased by accused and killed. The medical reports testified death by gun fires. The accused were convicted u/s 302 /149 and sentenced to death by the trial court, which was confirmed by the High court. In appeal the S.C held that sentencing the accused to death was not proper because various overt act of individual accused persons were not established. The death sentence was converted to life imprisonment.

In **Jay Kumar Vs State of M.P**⁵³, the accused was a young man of 22 years of age who attempted to rape his sister-in-law but having failed in his attempt, he murdered her and hanged her mutilated head on a tree. He also murdered the 8 year old daughter of the deceased who was the sole witness of the incident. The S.C rejected the appeal and upheld the death sentence on the ground that the double murder was committed in a brutal and gruesome manner and deserved no leniency in the award of death sentence.

In **Ram Deo Chouhan Vs St of Assam**⁵⁴, SC reiterated that commission of murder in a brutal manner on a helpless child or the woman in a pre-planned manner justify the imposition of a maximum penalty of death sentence. In this case the accused caused death of four persons of a family in a very cruel, heinous and dastardly manner. His confessional statement showed that he committed these murders after previous planning which involved extreme brutality. Under the circumstances, the court held that the plea that the accused was a young person at the time of occurrence cannot be considered as mitigating circumstances and therefore the death sentence of the accused cannot be interfered with. The court further observed "It is true that in a civilised society a tooth for tooth

And nail for nail or death for death is not the rule but it is equally true that when a man become a beast and menace to the society, he can be deprived of his life according to the procedure established by law, as constitution itself recognised the death sentence as a permissible punishment.

The apex court reiterated that in offence punishable with death, life sentence is the rule and death sentence is the exception, but the present case an exceptional one which warrants the award of death sentence to the accused. The appeal therefore stands dismissed.

In **Govindaswami Vs State of Tamil Nadu**⁵⁵, the SC speaking through Mukherjee J, observed that in case of murder committed in a gruesome, brutal and calculated manner, declining to confirm death sentence will stupefy the cause of law and justice. The commutation of death sentence to life imprisonment in such case will be yielding to spasmodic sentiment, unregulated, benevolence and misplaced sympathy.

Delay in execution of death sentence....In **Madhu Mehta Vs U.O.I**⁵⁶, the SC held that a delay of 8 years in the disposal of mercy petition would be sufficient to justify commutation of death sentence to life imprisonment since right to speedy trial is implicit in Art 21 of Constitution which operated through all stages of sentencing including mercy petition to the president.

⁵² AIR 2004, SC 3508

⁵³ 1999, 5 SCC

⁵⁴ AIR 2005, SC, 2676

⁵⁵ AIR 1998, SC 1933

⁵⁶ 1989, CrLJ 2321

In State of U.P Vs Ramesh Prasad Misra⁵⁷, the SC reduced the death sentence of accused to one of imprisonment for life in view of long lapse of time from the date of commission of crime. The incident had happened on the intervening night of Sept 26/27, 1985 in Karwi Town of Baroda District, U.P. who had committed horrendous bed room murder of his 28 years old wife whom he married only 5 months ago. He was found guilty of offence u/s 300 and 498-A and his plea of alibi was not established hence he was convicted on the basis of circumstantial evidence and sentenced to death.

Role of Higher Courts in Shaping Homicide Jurisprudence

Higher Courts interpret statutory provisions and resolve ambiguities between codification and the time demand for bridging the gap between substantive law and trial process practice. There is a transition of homicide provisions (traditionally Sec 299 to 304 of IPC and their modern equivalent under BNS).⁵⁸

In procedural milestones, it involves covering charge framing, bail considerations, examination of witnesses, expert medical evidence, and appellate standards under the CrPC (CrPC/BNSS) and Evidence Law (IEA/BSA). Precedential authority emphasizes that as trial courts are bound by Article 141 of the Constitution, the operational boundaries of murder trials—such as the standard of proof, evidentiary thresholds, and defense—are almost entirely dictated by Supreme Court precedent. Appellate rulings have molded murder jurisprudence in several key operational areas, which are:⁵⁹

Distinguishing Culpable Homicide from Murder

Statutory provisions define culpable homicide (IPC 299 / BNS Equivalent) and murder (IPC 300 / BNS Equivalent) with subtle distinctions in *mens rea* and degree of bodily injury. Higher Court decisions created workable legal tests to categorize killings.

Reg vs. Govinda and Rayavarapu Punnayya Frameworks: The Supreme Court established a step-by-step judicial mechanism to evaluate whether a bodily injury inflicted was "likely to cause death" (culpable homicide) versus "sufficient in the ordinary course of nature to cause death" (murder).

Intent vs. Knowledge: Appellate decisions clarify the mental thresholds, establishing that where intent to cause specific fatal injury is absent, higher courts reduce convictions from murder to culpable homicide not amounting to murder.

Exceptions to Murder

Higher Courts have prevented rigid statutory language from doing injustice by judicial interpretation of the exceptions to murder:

Grave and Sudden Provocation (Exception 1): Through landmark judgments (such as *K.M. Nanavati v. State of Maharashtra*), appellate courts defined the "test of a reasonable man" and ruled that provocation must be both grave and sudden enough to deprive the accused of self-control.

Right of Private Defense (Exception 2): Supreme Court guidelines dictate when the right of private defense commences, its proportional limits, and at what point exceeding this right mitigates a charge from murder to culpable homicide.

Sudden Fights (Exception 4): Case law delineates the elements of premeditation, undue advantage, and cruel/unusual manner during mutual combat.

⁵⁷ AIR 1997, SC 2766

⁵⁸ M.L. Bhargava, "Law of murder trial", (Published by Kamal Publishers, New Delhi, 2025, 2nd edition)

⁵⁹ *ibid*

Evidentiary Standards & Judicial Scrutiny

In capital trials, Higher Court jurisprudence imposes a rigorous standard of proof requirement. In circumstantial evidence, the treatise relies heavily on the "5 Golden Principles" (*Panchsheel*) laid down in *Sharad Birdhichand Sarda v. State of Maharashtra*. The Chain of evidence must be complete leaving no reasonable ground consistent with the innocence of the accused.

Appreciation of eye witnesses and medical evidence---There are appellate guidelines to resolve disputes between ocular testimony and forensic /medical evidence (e.g, post mortem reports) which establishes that ocular testimony generally prevails under medical evidence completely rules out the witness version. In case of dying declaration SC ruling dictate when an uncorroborated dying declaration is sufficient to convict establishing strict test regarding the mental fitness of declarant and freedom from tutoring.

Sentencing Standard and judicial discretion-----Higher Courts have fundamentally reshaped sentencing in homicide trials. Rarest of Rare doctrine---In *Bachan Singh Vs State of Punjab & Machhi Singh Vs State of Punjab*, the supreme Court curtailed unfettered judicial discretion in imposing death penalty by balancing aggravating and mitigating circumstances

In alternative life sentence Supreme Court jurisprudence authorizes special fixed-term sentences (e.g., 20 or 25 years without remission) as a middle ground between life imprisonment with early remission and capital punishment.

There are foundational concepts such as *actus reus* non facit reum nisi mens sit rea, strict liability, causation and corporate criminal responsibility, through the lens of constitutional values and human rights. Substantive provision intersect with procedural rules and evidentiary requirement. Statutory penal provision are mere outlines, the true contour of criminal liability have been sculptured by the appellate jurisprudence of S.C of India and State High courts.

Higher courts decision have resolved statutory ambiguities, developed test for varying degrees of culpability and controlled trial discretion. The statutory overlap between culpable homicide(299/100) and murder(300/101) is historically complex. Higher Courts introduced mathematical precision to differentiate between the two.

Reg Vs Govinda(1876)---Melvill J's classic formulation laid the groundwork for distinguishing probability of death from practical certainty.

Rayavarapu Punneyya(1976)---SC's three tier analysis involves

First Stage--- To determine if the accused caused the death of a human being.

Second Stage--- To determine whether the act constitutes culpable homicide under Section 299.

Third Stage – To evaluate whether the act falls under any of the four clauses of Section 300(murder) or qualifies for an exception.

Degree of probability--- Higher Courts established that clause(b) of Section 299 requires "likelihood of death", whereas clause(3) of Section 300 requires the injury to be "sufficient in the ordinary course of nature to cause death"—a threshold of higher certainty, defined purely through judicial interpretation.

Judicial construction of mental elements(mens rea)---Appellate Courts prevented strict or literal interpretation from causing injustice .Higher courts have delineated the fine line boundary between acting with intent versus acting with knowledge of fatal consequences, particularly in cases involving group attacks or single blow injuries.

In case of transferred malice the judiciary applied the doctrine of transferred of malice to ensure that unintended victims of intentional deadly acts receive equal legal protection.

Modern Restructuring of exception(Defences)-----Statutory exception mitigating murder to culpable homicide not amounting to murder are largely shaped by judicial policy.

Grave and sudden provocation(exception1)---SC's seminal ruling in K.M. Nanavate Vs State of Maharashtra which established that –The test of provocation is whether a reasonable man belonging to the same class of society would loss self control.Mental backward /sustained provocation over time can culminate in a sudden loss of control.

Exceeding private defence(Exception2) –The appellate court created the standard of “proportionality”and imminent apprehension holding that where a party exceeds their lawful right of defense without premeditation, the charge must be mitigated from murder.

Constitutionalising Capital punishment and Sentencing-----Judiciary role in regulating death penalty -----The rarest of rare standard ---SC in Bachan Singh Vs State of Punjab (1980) and Machi Singh Vs State of Punjab (1983) limited judicial discretion by instituting the balancing sheet of aggravating vs Mitigating circumstances.⁶⁰

Appellate and Supreme Court doesnot merely interpret statutory texts, they serve as the primary architect of moral and conceptual boundaries in homicide law. Higher judicial decision shape homicide jurisprudence through several key mechanisms. These are

Refining the limits of self defence.-Higher Courts establish the normative boundaries of proportional force , duty to retreat and reasonable perception of imminent harm. Appellate decisions operationalize justification Vs Excuse –determining whether a killing in self defense is affirmed as a right or merely for given under psychological stress.

Demarcating degree of culpability----Jurisprudence from higher courts continuously refines the boundaries separating intent , knowledge, recklessness and negligence. By defining concepts like “depraved hearts” murder or heat of passion provocation , appellate courts standardized the moral gradation of intentional and unintentional killing.

Judicial non creation in provocation and excuses-----Higher courts serves as societal arbiters when deciding which external pressures (extreme mental disturbances or systematic abuse) lower and offences from murder to manslaughter shifting homicide law from rigid statutory definitions to moral culpability assessments.⁶¹

“Rarest Of Rare”Capital punishment Doctrine-----Tracking the evolution sentencing jurisprudence under Section 302 can be done through landmark decision like Bachan Singh Vs State of Punjab and Machi Sing Vs State of Punjab , the SC restricted death penalty by introducing ---the balancing matrix – trial courts must weigh aggravating circumstances (brutality, vulnerability of victim, premeditation) against mitigating circumstances (age,chance of rehabilitation, lack of prior record). Death sentences are upheld by higher courts only when the option of life imprisonment unquestionably foreclosed. Homicidal jurisprudence in India is largely judge made application of statutory text, while statutory law gives the definition , it is the higher judiciary that determines whether an act like a fatal knife strike during a pre quarrel constitute premeditated murder under Section 304⁶²

Judicial Construction of Culpability;Culpable homicide and murder---Law must apply distinct legal titles to offences to accurately reflect the degree of moral wrongdoing and blameworthiness.

⁶⁰ P.S.A Pillai's Criminal Law ,(Published by Lexis Nexis, Place of Publication –Delhi,16th edition,2025)

⁶¹ George P Fletcher,“Rethinking criminal Law”,(Published by Little,Brown and Company,Place of Publication-Macssachusetts,USA,1st edition,1987)

⁶² R.P.Kathuria, “Supreme Court on Criminal Law”, (Publuished By Lexis Nexis, Place of Publication—new Delhi,11th Edition,2023)

Murder carries the maximum moral stigma and mandatory punishment, therefore its legal boundary should be narrow and strictly defined. Manslaughter / and lesser degree of homicide) should absorb lower levels of fault to preserve the integrity of murder label. Liability for causing death must be proportionate to the fault (mens rea) established relative to that death, rather than transferred from an underlying lesser offence.

Common law system constructs the fault element for murder based on the intent to kill Vs intent to cause grievous harm. An intention to cause serious bodily harm is sufficient mens rea for murder. It is argued that the grievous bodily harm rule violates the principle of maximum certainty and fair labelling. An individual who intends only to break a limb or cause non fatal harm lacks the moral blameworthiness of someone who actively intends to end a human life. Murder should strictly be confined to intentional killing. There is an advocacy for strict subjectivism culpability for murder requires demonstrating what the accused actually foresaw or intended, rejecting objective tests that measure fault against what a “reasonable person ought to have known. Non murder homicides are structured across two main branches (i) Voluntary manslaughter And (ii) Involuntary manslaughter. In Voluntary manslaughter, the act satisfies the mens rea and actus reus of murder, but specific mitigating circumstances reduce culpability. It includes loss of control/ provocation and diminished responsibility. In Involuntary manslaughter involves unlawful and dangerous act manslaughter, gross negligent manslaughter and reckless manslaughter⁶³

Causation in Law-----Necessary conditions are required for death to occur, but for causation is to breed for criminal liability. Out of all necessary conditions, ordinary people, court select as the cause the event that represents as abnormal deviation from the normal state of affairs, or a free human intervention. The causal chain linking the defendant's act to the victim's death remains intact unless broken by a superseding event. There are two primary category breakers (i) Voluntary human action (ii) abnormal natural events. In voluntary human action, a free deliberate and informed act by a third party or the victim's break the causal chain. If A wounds B, but C independently executes B before the wound kills them, C's voluntary act severs A's causal responsibility for the death. In abnormal natural events, an unexpected, extraordinary conjunction of natural forces breaks causation. If A minorly assaults B, leaves B on a beach, and an unprecedented tsunami strikes B, the tsunami is an intervening cause.⁶⁴

All murders are culpable homicide but all culpable homicides are not murder. Culpable homicide is the genus and is the broader category encompassing every unlawful killing of a human being. Murder is the species. It is an aggravated form of culpable homicide characterised by a higher degree of probability of causing death. Whenever a court evaluates unlawful death, it must first establish whether the act amounts to culpable homicide under Section 299. Only if Section 299 is satisfied does the court move to Section 300 to determine if it elevates to murder. Section 299 involves distinct mental states required to establish culpable homicide. These are (i) Intention to cause death, (ii) Intention to cause bodily injury likely to cause death and knowledge of likelihood of causing death.

In **Reg Vs Govinda** (1876) –Melville J's foundational distinction –“likely” implies a probability, whereas “sufficient in the ordinary course of nature” implies a high degree of certainty. In *State of A.P*

⁶³ Jeremy Horder, “Judicial Construction Of culpability; Culpable homicide and murder”, (Published by—Oxford University Press, Place of Publication—Oxford, United Kingdom, 10th edition, 2022)

⁶⁴ H.L.A Hart, & Tony Honore, “Causation in Law”, (Published By Clarendon Press (Oxford University Press), Place of Publication—Oxford, U.K, 2nd edition, 1985)

Vs Royavarapu Punnayya,(1976), involves the Supreme Court's three step test for determining liability by moving sequentially from Section 299 to Section 300 and finally checking for exception. In *Virsa Singh Vs State of Punjab*(1958), Vivian Bose J's landmark formulation of the four part test under Section 300(3) proving that the injury was intentionally inflicted and objectively sufficient to cause death⁶⁵

How Courts infer knowledge,Intention Vs Knowledge from injuries , weapon selection and conduct-----Law of evidence addresses the evidentiary bridge between objective facts and subjective mens rea through Section 8(conduct), section 14(State of mind) and Section 114 (judicial presumption) of Evidence Act. Because intention and knowledge are internal mental states , court must deduce the circumstances by examining the objective triad; Injuries, weapon selection and conduct. Intention involves a conscious design to bring about a specific outcome(e.g, death or a fatal injury). Intention requires a high degree of control, choice and foresight. Knowledge involves awareness or foresight that a certain result is likely to follow an act , even if that outcome is not actively desired or targeted. By rule of presumption , the courts apply the maxim that a person is presumed to intend the natural and probable consequences of their acts.

Deduction from nature and seat of injuries----Physical injuries can be categorised to distinguish between direct purpose and mere awareness of risk. Inflicting severe trauma on vital body regions (head, neck, chest, abdomen) creates a strong presumption of intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death(*Virsa Singh Principle*). Strike directed at non-vital parts(arms, legs, lower limbs) generally negates an inference of direct intention to kill , leaning instead towards knowledge that excessive bleeding or injury might endanger life. Multiple persistent forceful stabs or repeated heavy blows demonstrate a deliberate design to destroy life. A single strike delivered during a sudden altercation without deliberate repetition often tilts the court's inference from intention to knowledge of likelihood under Section 304 part ii IPC/Section 105 B.N.S.

Deductions from antecedent , attendant and subsequent conduct(Section 8)----Section 8 of Evidence Act establishes how a course of human behaviour reveals the actor's state of mind. Antecedent conduct involves laying an ambush, stalking , lying in wait, or issuing prior specific threats indicates premeditated intention. Attendant conduct involves disproportionate advantage "taking" cruel and unusual advantage of an unarmed or defenceless victim demonstrates intention. Stopping the assault after the single strike or attempting to prevent further harm indicates a lack of intent to kill , shifting the inference towards knowledge. In sufficient conduct, (Post incident) involves intention , chasing the victim after they flee ensuring destruction of evidence or fleeing the scene without remorse knowledge involves immediate expression of shock, helping transport the victim, to a medical facility or surrendering voluntarily without concealing the weapons⁶⁶

List of Reported murder cases (section 302 IPC/Sec 103 BNS) of Supreme Court of India during 2005-2026

Bhagwan Das Vs St(NCT of Delhi)⁶⁷---- Zero tolerance for Honour Killing—The Supreme court strongly condemned "honour killing" declaring them as planned, barbaric and feudal acts. The Court

⁶⁵ K.D.Gaur,"A Text Book on IPC", (Published By Lexis Nexis, new Delhi, 2023)

⁶⁶ Sarkar S.C,"Law Of evidence",

⁶⁷ 2011, 6 SCC, 396

observed that such acts fall into the rarest of rare category, making perpetrators eligible for the death penalty to send a strong deterrent message. In homicides taking place inside a home, the non-explanation or false explanation by family members U/S 106 of Evidence Act acts as an essential link in the chain of circumstantial evidence. In Case of hostile witness the Court reaffirmed that the court can accept reliable portions of testimony given by a hostile witness if corroborated by other physical evidence.

Mohd Ajmal Keshab Vs State of Maharashtra⁶⁸ about the Right to Legal representation the Court held that access to legal counsel (and free legal aid) U/A 22(1) And Art 21 is a fundamental duty that begins at the first moment of production before a magistrate; not merely when the trial starts. However non provision does not automatically invalidate a trial unless actual prejudice is shown. Validated the extensive reliance on digital intercepts, VOIP records and CCTV footage when properly authenticated, laying modern benchmarks for providing multi-jurisdictional criminal conspiracies u/s 302 IPC. Confirmed the death sentence by ruling that waging war against the nation combined with mass homicides leaves no scope for reformation, fulfilling the Bachan Singh test for rarest of rare cases.

State of Rajasthan Vs Shera Ram⁶⁹, In Legal insanity Vs medical insanity the Supreme Court Clarified that U/S 84 IPC the crucial factor is whether the accused was incapable of knowing the nature of the act or that it was wrong at the exact time of committing the offence. Medical insanity alone does not grant exemption unless it translates into legal insanity.

Reaffirmed that an appellate Court should be extremely cautious when reversing an acquittal. The double presumption of innocence stays intact unless the trial Court's view is patently perverse, unreasonable or based on a misreading of material evidence.

State of Rajasthan vs. Hanuman⁷⁰ — The Supreme Court Reaffirmed that the mere recovery of a blood-stained weapon matching the victim's blood group is insufficient on its own to sustain a murder conviction without a complete, unbroken chain of circumstantial evidence.

Vaibhav vs. State of Maharashtra⁷¹ — Addressed gunshot injury mechanics and trajectory; the court held that where medical evidence and weapon trajectory indicate a plausible alternative theory (accidental discharge during sudden dispute) vs. homicidal intent, the benefit of doubt must go to the accused, setting aside the Sec 302 conviction.

Raja Naykar vs State of Chhattisgarh⁷² - Restated the law on extra-judicial confession and recovery of weapons U/S 27 EA, emphasizing that discovery of an object alone without corroborative links does not establish intent or execution of murder.

Balbir Singh vs State of Uttarakhand⁷³ — Clarified the scope of Sec 106 of IE Act (facts especially within the knowledge). Held that Section 106 cannot be used by the prosecution to relieve itself of its primary burden of proving murder beyond reasonable doubt.

Nandu Singh vs State of MP⁷⁴, — Dealt with the absence of motive in circumstantial murder cases, holding that where the prosecution fails to establish a clear motive, the threshold of proof for other circumstantial links becomes significantly higher.

⁶⁸ 2012,9 SCC

⁶⁹ 2012,1 SCC,602

⁷⁰ 2025,Sc,1024(Criminal Appeal No.631 of 2017)

⁷¹ 2025,INSC 800(criminal appeal no. 1643 of 2012)

⁷² 2024,3 SCC 481

⁷³ 2023,11 SCC 1

⁷⁴ 2023,12 SCC 222

Ramanand @ Nandlal Bharti vs State of UP⁷⁵ — A detailed landmark judgement laying down comprehensive guidelines on circumstantial evidence, last seen theory, scientific / FSL evidence, and the evidentiary value of weapon recovery u/s 27 Evidence Act.

Nagendra Shah vs State of Bihar⁷⁶ — Addressed custodial and household deaths, holding that when an offense takes place inside a dwelling, the failure of the accused to offer a reasonable explanation u/s 106 of IE Act can serve as a strong link to establish murder.

Anwar Ali Vs State of Himachal Pradesh⁷⁷ — Examined the evidentiary weight of motive and witness inconsistencies in murder trials, holding that serious contradiction in eye-witness testimony regarding weapon usage directly benefits the accused.

Chhithoo vs State of Madhya Pradesh⁷⁸ -- Analyzed the distinction between Section 302 (murder) and Section 304 Part I/II (culpable homicide) based on weapon choice (lathi vs. sharp weapon) and seat of injury during a sudden unmediated quarrel.

Sharad Birdhichand Sarda vs State of Maharashtra principles (reaffirmed in 2015–2020)⁷⁹ — The SC reiterated that in murder cases resting purely on circumstantial evidence, every link in the chain of circumstances must be proved beyond reasonable doubt to exclude every hypothesis except the guilt of the accused.

Navaneethakrishnan Vs St⁸⁰. — Examined the last seen together doctrine alongside call detail records (CDR) and Sec/EA weapon recovery u/s 27 EA. Held that, last seen evidence alone, without proximate time-gap proof, cannot sustain a Section 302 conviction.

Asar Mohammad Vs St. of Uttar Pradesh⁸¹ — Dealt with motives, weapon discovery and recovery u/s 27. The Court emphasized that a failure to establish motive in an eye-witness case is not fatal, but where eye-witnesses are doubtful the absence of motive weakens the murder charge.

Surinder Kumar Vs St of UT of Chandigarh⁸² — The accused inflicted a single knife blow during a sudden quarrel in the heat of passion. The SC converted the conviction from Sec 302 (murder) to Sec 304 part 1 (culpable homicide not amounting to murder), reaffirming that an opportunistic single blow without premeditation negates the inference of murder intent.

Arjun vs St of Chhattisgarh⁸³ — Analyzed Exception 4 to Section 300 IPC (sudden fight). The Court evaluated weapon choice (lathi) and injury locations, holding that when a sudden altercation escalates without the accused taking undue advantage, the conviction should be altered from Section 302 to Sec 304 part 1.

Giriraj vs St of Haryana⁸⁴ — Examined the force of blow and seat of injury. The Court reiterated that where an attack is launched on a non-vital organ with a non-deadly weapon, knowledge or likelihood of death can be presumed, but direct murder intent u/s 300 cannot be mechanically inferred.

⁷⁵ 2022, 16 SCC 12

⁷⁶ 2021,10 SCC 725

⁷⁷ 2020,10 SCC,166

⁷⁸ 2020 11 SCC, 693

⁷⁹ 1985 SCR(1) 88

⁸⁰ 2018,16 SCC 161

⁸¹ 2019,12 SC,253

⁸² 2020,2 SCC 563

⁸³ 2017,9 SCC 247

⁸⁴ 2015,11 SCC 702

St of A.P vs. M. Sohandal⁸⁵ — Addressed conflict between direct ocular testimony and forensic evidence regarding weapon dimensions, gunshot trajectory, and injury mechanism. Reaffirmed that ocular evidence prevails unless medical evidence completely rules out the eye-witness version.

Pappu vs St. of U.P⁸⁶. — Dealt with firearm injuries, fatal entry/exit wound dynamics, and ballistics expert corroboration in sustaining life sentences u/s 302 IPC.

Subed Ali vs St. of Assam⁸⁷ — Examined common intention (Sec 34) in group murder attacks. Held that sharing a common intention to commit murder does not require long-standing premeditation; it can develop on the spot, as inferred from weapon carrying, positioning, and joint execution of blows.

Moothedath Thyagajan vs St of Kerala⁸⁸ — 2015, Clarified constructive liability u/s 149 in an unlawful assembly where specific fatal blow cannot be individually attributed, but weapon selection and collective conduct manifest a shared unlawful object to cause death.

M.A Antony vs St of Kerala⁸⁹ — A landmark review petition judgement where the SC commuted the death sentence u/s 302 IPC to life imprisonment, analyzing the balance sheet of aggravation (brutality, multiple homicide) versus mitigating (possibility of reforms) circumstances.

Kushwinder Singh vs St of Punjab⁹⁰ — Confirmed the death sentence for a multiple murder case, evaluating premeditated execution, weapon selection and total lack of provocation under the Bachan Singh / Machhi Singh doctrine.

Sidharth Vashisht @ Manu Sharma vs. St. (NCT of Delhi) (Jessica Lal murder case)⁹¹

Upheld the reversal of an acquittal, emphasizing that when circumstantial evidence forms an unbroken chain pointing solely to the guilt of the accused, conviction under section 302 IPC is fully justified. The court ruled that even if a prosecution witness turns hostile, their entire testimony is not automatically discarded. The credible portion of a hostile witness's statement that supports either the prosecution or the defence can still be relied upon. While acknowledging intense public and media scrutiny, the court held that media coverage alone does not prejudice a judicial mind, provided the conviction is grounded strictly on admissible evidence.

Santosh Kumar Singh vs. State through CBI⁹² — DNA evidence, last seen theory, & mitigating factors in capital punishment. The judgment firmly established that expert DNA evidence, if handled without contamination and corroborated by chain of custody, carries high probative value under Section 45 of the Indian Evidence Act. The apex court laid down that while reversing an acquittal on circumstantial evidence, the appellate court must take into account mitigating factors (such as the young age of the offender, lack of prior criminal antecedents, and steps for reformation) before imposing death penalty. Commuted death sentence to life imprisonment on this balancing test.

Swami Shraddhananda (2) vs. St. of Karnataka⁹³ ,The Supreme Court created a formal judicial alternative between standard life imprisonment and the death penalty. To ensure proportionate punishment in extremely heinous murders without executing the convict, the High Courts and the

⁸⁵ 2017,11 SCC 771

⁸⁶ 2020,10 SCC 789

⁸⁷ 2020,10 SCC 517

⁸⁸ 2015 ,3 SCC 501

⁸⁹ 219 ,17 SCC 136

⁹⁰ 2019, 4 SCC 415

⁹¹ 2010, 6 SCC 1

⁹² 2010,9 SCC,747

⁹³ 2008,13 SCC,767

Supreme Court have the power to direct that an accused shall serve life imprisonment without the benefit of remission for a fixed term (e.g., 20, 25 or 30 years) or for the remainder of their natural life.

Trimukh Maroti Kirkan vs. St. of Maharashtra⁹⁴, In cases of homicidal death occurring within the privacy of a shared matrimonial home, the prosecution must last seen alive in the company of the spouse or that the death occurred under unnatural circumstances inside the dwelling. Under Section 106 of the Evidence Act, the facts as to how the death occurred fall within the special knowledge of the occupants, if the spouse/accused fleas a false explanation or remain silent, it supplies an additional link in the chain of circumstantial evidence against them.

State of U.P. vs. Ram Awrey⁹⁵ Distinction between Murder and Culpable Homicide — To claim the benefit of exception 4 to section 300 IPC (sudden fight without premeditation), four conditions must co-exist: a sudden quarrel, lack of premeditation, an act done in heat of passion, and the offender not taking undue advantage or acting in a cruel/unusual manner. If an accused uses a lethal weapon during a minor altercation and inflicts injuries on vital parts of the body, they act in a cruel manner, thereby disentitling them from exception 4 and attracting conviction for murder under Section 302 IPC.

Bhagwan Dass vs St. (NCT of Delhi)⁹⁶ Zero tolerance for honour killing — The Supreme Court strongly condemned "honour killing" declaring them as planned, barbaric and feudal acts. The Court observed that such acts fall into the rarest of rare category, making perpetrators eligible for the death penalty to send a strong deterrent message. In homicides taking place inside a home, the non-explanation or false explanation by family members u/s 106 of Evidence Act acts as an essential link in the chain of circumstantial evidence.

Hostile witnesses — Reaffirmed that the Court can accept reliable portions of testimony given by a hostile witness if corroborated by other physical evidence.

Mohd Ajmal Amir Kasab vs. St. of Maharashtra⁹⁷, Right to legal representation — The Court held that access to legal counsel (and free legal aid) u/A 22(1) and Art 21 is a fundamental duty that begins at the first moment of production before a magistrate, not merely when the trial starts. However, non-provision does not automatically invalidate a trial unless actual prejudice is shown. Validated the extensive reliance on digital intercepts, VoIP records and CCTV footage when properly authenticated, laying modern benchmarks for proving multi-jurisdictional criminal conspiracies u/s 302 IPC. Confirmed the death sentence, by ruling that waging war against the nation combined with nan homicides leaves no scope for reformation, fulfilling the Bachan Singh test for the rarest of rare cases.

State of Rajasthan vs. Shera Ram,⁹⁸ Legal insanity vs. Medical insanity — Clarified that u/s 84 IPC the crucial factor is whether the accused was incapable of knowing the nature of the act or that it was wrong at the exact time of committing the offense. Medical insanity alone does not grant exemption unless it translates into legal insanity. Reaffirmed that an appellate court should be extremely cautious when reversing an acquittal. The double presumption of innocence stays intact unless the trial court's view is patently perverse, unreasonable or based on a misreading of material evidence.

Shatrughan Chauhan vs. Union of India⁹⁹ Execution delay as ground for commutation — Held that inordinate, unexplained and unreasonable delay by the executive in deciding a mercy petition u/A

⁹⁴ 2006,10 SCC, 681

⁹⁵ 2008,8 SCC 191

⁹⁶ 2011,6 SCC 396

⁹⁷ 2012, 9 SCC ,1

⁹⁸ 2012, 1 SCC, 602

⁹⁹ 2014,3 SCC, 1

72/161 constitutes supervening circumstances that violate the convict's right to life u/A 21. Undue delay causes severe torture and agony ("death row syndrome") entitling the murder convict to have their death sentence commuted to life imprisonment. Laid down mandatory guidelines prior to execution: minimum 14 day gap between rejection of mercy petition and execution date, mandatory legal aid and family visitation rights, and post-mortem examination.

Subramaniam -VS- State of Tamil Nadu¹⁰⁰ Role of motive in circumstantial evidence — Here the apex court reaffirmed that while motive may take a backseat in cases with direct eyewitness testimony, it assumes crucial importance when the case rests entirely on circumstantial evidence. Last seen theory boundaries — Held that a "last seen together" doctrine cannot be the sole basis for a murder conviction u/s 302 IPC. The time gap between the accused and the victim's death must be so narrow as to rule out the possibility of any third person committing the crime.

Mukesh Singh Vs State (NCT of Delhi) Nirbhaya Case¹⁰¹ This case is a refinement of the “Rarest of Rare” doctrine. Reaffirming the framework from Bachan Singh vs State of Punjab (1980) and Machi Singh Vs State of Punjab (1983), the court ruled that extreme brutalization, sexual violence, and shocking cruelty against a helpless victim satisfy the test where the crime shatters the collective conscience of society. Factors like young age, socio economic background or lack of prior criminal history are completely outweighed when the act demonstrates extreme depravity, making rehabilitation impossible.

¹⁰⁰ 2009, 14 SCC 415

¹⁰¹ 2020, 3 SCC 717