



### DEATH PENALTY AWARD IN RAREST RARE CASE

- There is no statutory definition of rarest of rare.
- It depends upon facts and circumstances of a particular case, brutality of the crime, conduct of the offender, previous history of his/her involvement in crime.
- Aggravating factors includes the brutality of the crime, the impact on the victim and society, and the criminal's prior record.
- Mitigating factors includes the accused age, mental health, and potential for rehabilitation.

The expression rarest of rare cases was coined by the Supreme Court in the case of **Bachan Singh Vs. State of Punjab**, (1980) and since then, life imprisonment is the rule and death penalty the exception, as in India it is awarded only in the gravest of cases.

The principles laid down in Bachan Singh were summarized by a three Judge Bench of the Supreme Court later in the case of **Machhi Singh Vs. State of Punjab**, (1983). The following propositions emerge from Bachan Singh case:

- The **extreme penalty** of death need not be inflicted except in gravest cases of extreme culpability.
- Before opting for the death penalty, the **circumstances of the offender** also require to be taken into consideration along with the circumstances of the crime.
- Life imprisonment is the **rule and death sentence is an exception**. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided,

and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

- A **balance sheet** of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

**Following factors may be taken into consideration** while deciding whether the case falls in rarest of the rare category or not:-

**Dimensions of rarest rare test:**

1. **Manner of commission of crime:** When the offence is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

2. **Motive for commission of crime:** When the offence is committed for: a motive which evinces total depravity and meanness. For instance, when a hired assassin commits murder for the sake of money or reward or a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust etc.

3. **Anti-social or socially abhorrent (disgusting) nature of the crime:** When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance, when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance. In cases of

'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

4. **Magnitude of crime:** When the crime is enormous in proportion. For instance, multiple murders etc.

5. **Personality of victim of murder:** When the victim of murder is an innocent child or a helpless woman or a person rendered helpless by old age or infirmity or when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust or when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

#### **Scope of the Rarest of Rare Test:**

In **Jagmohan Singh Vs. State of U.P** (1973), the Supreme Court upheld the constitutionality of the death penalty, holding that it is not merely a deterrent but marks the rejection of the crime on the part of the society.

The Supreme Court held that according to Article 21 of the Constitution of India, 1950 (COI) deprivation of life is constitutionally permissible if that is done according to the procedure established by law. Thus, the death sentence imposed after a trial in accordance with legally established procedures is not unconstitutional under Article 21.

**Gurmukh Singh Vs State Of Haryana**, it was laid down by the Hon'ble Supreme Court that the following aspects could be considered while awarding punishment to the convicted person. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- a) Motive or previous enmity;
- b) Whether the incident had taken place on the spur of the moment;
- c) The intention/knowledge of the accused while inflicting the blow or injury;
- d) Whether the death ensued instantaneously or the victim died after several days;
- e) The gravity, dimension and nature of injury;
- f) The age and general health condition of the accused;
- g) Whether the injury was caused without pre-meditation in a sudden fight;
- h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- i) The criminal background and adverse history of the accused;
- j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- k) Number of other criminal cases pending against the accused;
- l) Incident occurred within the family members or close relations;
- M) Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of

the relevant factors which are required to be kept in view while convicting and sentencing the accused.”

