1. The simple answer is that courts award death sentence because they are obliged to do so by law. Courts have to follow law.

2. As per criminology, there are supposed to be three main reasons for awarding death sentence:

   - Mainly, the death sentence is awarded as retribution for a heinous crime, usually involving killing somebody. This concept is clearly reflected in the “eye for an eye” concept of the medieval days. Gandhi had this to say about it - “If we follow the axiom an eye for an eye, we would all be blind”.

   - Another reason is that the person is considered to be so dangerous to society that the society will not be safe if he is allowed to live.

   - A third reason is that death sentence given to criminals will act as a deterrent for others in the society.

3. Arguments against death penalty are as follows:

   - Moral argument - There is a reasoned view that when man cannot give life, he has no right to take away life. Man should not interfere in god's domain.

   - There are often no clear cut guidelines regarding whom to award death sentence. As per Indian law, it has to be given in rarest of rare cases. In practice, it is not defined what is “rarest of the rare”. Courts act rather arbitrarily in arriving at such decision.

   - Court verdicts are not fool-proof. Innocents may be given death penalty by the courts. Death sentence given by a lower court may be dispended with by a higher court. However, innocence may be discovered after a long time. If the person has already been hanged, he can’t be brought back to life even if proved innocent. There are several examples of this happening. A well-known example is that of Dr Hawley Crippen who was hanged in 1910, after an Old Bailey jury took just 27 minutes to find him guilty of murdering his wife, Cora, who had vanished earlier that year. A hundred years later, DNA studies revealed that the corpse found in his cellar could not have been that of Cora. Dr Crippen maintained till the end that he was innocent. http://www.guardian.co.uk/uk/2007/oct/17/ukcrime.science

   - The legal defense available to the accused/defendant, especially when he is from a low socioeconomic background, is often of poor quality and hence acts against him. It has been said that the competence of the defense attorney “is a better predictor of whether or not someone will be sentenced to death than the facts of the crime themselves”. It is well-proven by data that the proportion of adult US population in jails, including those condemned to death, is much higher in case of blacks and Hispanics.

   - The individual who is executed may not be himself responsible for his deed. The real culprits are the society and the social circumstances that made a criminal out of him. There might even be genetic factors at work.

   - With increased use of laboratory investigative techniques, punishment is often awarded on the basis of laboratory reports. Such reports may be faulty. Examples are as follows:

     - In West Virginia, a serologist falsified test results in hundreds of cases over a 10-year period, sentencing hundreds of defendants to lengthy prison terms.

     - In Texas, a pathologist faked autopsy results, resulting in as many as 20 death penalty verdicts.

     - A police chemist elsewhere falsified reports and sent hundreds of innocent people away to jail on rape charges.

     - According to one report, 123 people were
released from death row between 1973 and 2005 in 25 states of USA when new evidence of their innocence emerged.

The above aspect has been discussed in—
http://www.apsu.edu/oconnort/3210/3210lect01a.htm

It may be mentioned that the maximum misuse of scientific evidence is prosecution.

- Laws differ from country to country. They are unreasonably stringent in some countries. The result is that the same person would be given death punishment in one country and not in another even when death penalty is permissible in both.

Amnesty International has given the example of Singapore whose “Misuse of Drugs Act” contains a series of presumptions, which shift the burden of proof from the prosecution to the accused. This is in conflict with the general legal principle that accused should be “presumed innocent until proven guilty”.

- Some countries still retain death penalty. Death penalty is allowed in some states of USA and not in others. A study of crime rates in relation to death penalty does not reveal an association. Crime rates have not increased after abolition of death penalty. Crime rates continue to increase in countries where death penalty is given.

- Death penalty does not act as deterrent for serious crime as per the following evidence:
  
  ● John J. Donohue III, a law professor at Yale with a doctorate in economics, and Justin Wolfers, an economist at the University of Pennsylvania, published an article in 2005 in the Stanford Law Review regarding the deterrent effect of death penalty. They observed that death penalty is applied so rarely that the number of homicides it can plausibly have caused or deterred cannot reliably be disentangled from the large year-to-year changes in the homicide rates caused by other factors. They concluded that the evidence for death penalty having a deterrent effect was surprisingly fragile.

  ● As per the opinion of psychologists regarding whether murderers think about the consequences of their actions before they commit a crime, the general opinion is that most homicides are spur-of-the-moment, spontaneous, emotionally impulsive acts and, in this type of setting, murderers do not weigh their options very carefully. It is very doubtful that killers give much thought to punishment before they kill. On the other hand, the terrorists who kill are already prepared mentally to die (“martyr to the cause”) in the course of committing their heinous deeds. In such a situation, death penalty is unlikely to have any deterrent effect on them.

  ● The rate of homicide rate per 1,00,000 population in Canada was 3.09 in 1975. Capital punishment was abolished in 1976 and the homicide rate dropped to 1.8 by 2000. The reasons for the fall were attributed to better policing and social factors.

  ● On the other hand, capital punishment for nonhomicidal crimes like rape may actually provide an incentive to the rapist to murder the victim in order to avoid identification.

- Award of death penalty by law conflicts with the law/ethics related to the working of a physician. In India, the death penalty implies hanging; some jail manuals specify for half an hour after which a doctor must certify death. In 1995, disposing of a petition, the Supreme Court agreed that keeping the body hanging for half an hour was barbarous and ruled that “a convict shall remain hanging only till he is declared dead by a medical officer”. This assumes an examination by a doctor every minute or so in the hanging position, and if found alive, advise the jail authorities to continue the hanging. No resuscitation or attempts to provide relief to the victim are permitted. This strikes at the very core of the Hippocratic Oath by which a doctor is committed to preserving life. The process of death is often so gory that it crosses all limits of medical ethics, and violates the precepts of beneficence and nonmalefeasance. It contradicts the Supreme Courts’ own ruling in “Deena vs Union of India” 1983, that the death should be “quick,
simple, decent and without mutilation, causing immediate unconsciousness passing to death”.

4. Arguments in favor of death penalty are as follows:
   - The society wants it. Law reflects public opinion. Death penalty has been abolished in most countries of the world but continues in the most populous countries like China, India, USA and Pakistan. It is banned in the whole of the European Union.
   - Death penalty has been challenged in courts but held to be legal by the SC. In democracies, we need to accept a situation whereby peoples’ representatives make differential laws for the people for their benefit.
   - The cost of maintaining a prisoner in a high security prison with facilities compatible with human rights requirements for the whole of life can be very high. The society may legitimately think, especially in countries with high poverty rates, that proper allocation of resources necessitates death penalty so that innocent children and others do not die of starvation while the dreaded criminals are looked after and fed properly.

5. The number of executions per year is much more in USA than the number of people executed in India since independence. In spite of this, the following is quite revealing as regards the effect of death penalty as a deterrent in the perception of US police. In a 1995 poll of randomly selected police chiefs from across the US, the officers were asked to rank the efficacy of death penalty in deterring or preventing violent crimes in comparison to other approaches, such as: Reduction in use/abuse of drugs; lowering technical barriers to prosecution; Putting more officers on the streets; and, making prison sentences longer. They responded that a better economy with more jobs would lessen crime rates more than the death penalty. In fact, only one percent of the police chiefs surveyed thought that the death penalty should be the primary focus for reducing crime.

6. Section 354(5) of the Code of Criminal Procedure, 1973, provides that a person condemned to death shall be hanged by the neck till he is dead.

7. Supreme Court has looked into the constitutionality of Section 354(5). While doing so, it referred to the findings of the British Royal Commission’s report on various methods of capital punishment and approved the method in vogue in India, i.e., hanging till dead.

8. The Royal Commission on Capital Punishment (1949-1953) had the following terms of reference:
   “To consider and report whether liability under the criminal law in Great Britain to suffer capital punishment for murder should be limited or modified, and if so, to what extent and by what means, for how long and under what conditions persons who would otherwise have been liable to suffer capital punishment should be detained, and what changes in the existing law and the prison system would be required; and to inquire into and take account of the position in those countries whose experience and practice may throw light on these questions.”

It should be noted the Commission was not asked to decide whether the death penalty should be abolished.

The Commission, comprising 10 men and two women had 63 meetings over the next four years at Carlton House Terrace in London and took evidence from a wide range of people with expertise in the field, including judges, prison governors and chaplains, medical officers and staff and also hangman, Albert Pierrepoint. It also visited ten British prisons, plus Broadmoor and prisons in various European countries and the USA to examine their practices.

Their 506 page report (often referred to as the Gowers report) was published in September 1953.

http://www.capitalpunishmentuk.org/gowers.html

The Commission examined the various methods of execution as an alternative to hanging, including the guillotine, shooting, electrocution, gassing and lethal injection. The last was opposed by the British Medical Association on the grounds that its members would have to be involved in carrying out executions, rather than in just certifying death and was considered as impractical and not necessarily humane by the Commission. Shooting was rejected on the grounds that “it does not possess even the first requisite of an efficient method, the certainty of causing immediate death.” This was interesting in the light of the then recent firing squad execution of Josef Jakobs in 1941. The guillotine was dismissed on the grounds of the unacceptable mutilation of the criminal’s body.

The Commission visited prisons in the USA and examined electrocution and lethal gas in depth but did not conclude that these methods offered any significant advantage over hanging.

It looked into the following 5 methods of capital punishment in various countries:
Electrocution: In 23 states of USA
Guillotine: In France and Belgium
Hanging: In England, Scotland, Commonwealth countries and 10 states of USA
Lethal gas: In 8 states of USA
Shooting: In the state of Utah in US and in almost all countries when ordained by Court Martial.

It also studied the practice of lethal injection. It may be noted that this practice has been criticized because it compels a doctor to act in violation of Hippocratic Oath.

9. Hanging is supposed to precipitate immediate death by causing a specific type of fracture of the second cervical vertebra known as the “hangmans’ fracture”. However, this occurs in only a small proportion of cases. In one study only six out of 34 cases had neck fractures, and of these only three had the classical hangmans’ fracture.

10. More commonly, death occurs by strangulation. It is relatively painful, prolonged and gruesome, with the victim thrashing about for 20 minutes or so. The tongue swells and protrudes from the mouth, the eyes pop out of the head, with severe congestion of the head and neck veins. There is bowel and bladder incontinence, sometimes terminal ejaculation. The skin of the neck is often ripped off by the rope; sometimes causing decapitation.