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**WHEN LAW PREVAILS BUT JUSTICE FALTERS - A
COMMENTARY ON THE SUPREME COURT'S CURATIVE
JUDGMENT IN**

SURENDRA KOLI v. STATE OF UTTAR PRADESH

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Introduction

The Supreme Court's ruling in Surendra Koli v. State of Uttar Pradesh brings to an end the judicial chapter of the Nithari killings.¹ The Court invoking its curative jurisdiction, nullified Koli's last conviction, thus finally closing one of the most horrific criminal cases in India's recent history.² The verdict, although constitutionally unimpeachable in its focus on Articles 14 and 21 of the Constitution, also demonstrates severe fractures in India's investigative system.³ The case raises troubling questions: Can justice prevail if the investigation itself a casualty? How does the legal system weigh procedural purity against victim suffering and public safety?

Background of the Judgment: The Echo of Justice, 19 Years After Nithari

¹ *Surendra Koli v. State of Uttar Pradesh*, 2025 LiveLaw (SC) 1091.

² "Nithari killings | Supreme Court allows Surendra Koli's curative petition; sets aside last conviction", *LiveLaw*, 11 November 2025, available at <https://www.livelaw.in/> (last visited on 12 November 2025).

³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

On 11 November 2025, a three-judge bench of the Supreme Court, Chief Justice B.R. Gavai, Justices Surya Kant, and Vikram Nath, pronounced its judgment in Surendra Koli v. State of Uttar Pradesh. Almost nineteen years since the horrendous Noida murders that appalled a nation, the court acknowledged significant investigation failures by the CBI and sadly stated that “the actual criminal may still be at large.”⁴ This judicial accountability was not exoneration on the grounds of merit, but reaffirmation of due process in Article 21 of the Constitution, underlining that constitutional due process cannot be sacrificed at the altar of public ire.⁵ The judgment ultimately reflects an unusual moment when the Supreme Court opted for fairness over finality - forcing India to confront not only an event of crime, but also the systemic degradation of its investigative system.

Facts of the Case

Between 2005 and 2006, there was a worrying rise of children and young women going missing from labour-settlement areas in the village of Nithari, Sector 31, Noida (Uttar Pradesh).⁶ On 29 December 2006, police reported the recovery of human remains - skulls, bones, and personal belongings, from a drain adjacent to the bungalow D-5 owned by Moninder Singh Pandher, identified as a businessman.⁷ The help in the bungalow-Domestic worker, Surendra Koli, was arrested soon after the receipt of information that the missing minor’s mobile phone was discovered at the

⁴ “Nithari Killings : Supreme Court Slams Botched Probe, Expresses Regret That Real Perpetrator Not Caught”, *LiveLaw*, 11 November 2025, available at <https://www.livelaw.in/> (last visited on 12 November 2025).

⁵ *The Constitution of India*, art. 21.

⁶ “Did ghost kill our children?”, mother of Nithari victim questions justice delay”, *India Today*, 12 November 2025, available at <https://www.indiatoday.in/india/story/noida-nithari-killings-victim-family-supreme-court-frees-surinder-koli-2818044-2025-11-12/> (last visited on 12 November 2025).

⁷ “Nithari killings: Supreme Court sets aside conviction of Surendra Koli, orders immediate release”, *LawBeat*, 11 November 2025, available at <https://lawbeat.in/top-stories/nithari-killings-supreme-court-sets-aside-conviction-of-surendra-koli-orders-immediate-release-1538956> (last visited on 12 November 2025).

premise (D-5) basis first information report (FIR) No. 838/2006 u/s 363/366 IPC.⁸

Koli allegedly lured children into Pandher's house to sexually assault, kill, dismember and dispose of their bodies through the intervening drain.⁵ In early 2007 the Central Bureau of Investigation took over the investigation recording 19 FIR's and filing chargesheets in respect of 16 of them. Key evidence for prosecution included:

- *A confession of Koli recorded on 1 March 2007 under Section 164 of CrPC, in which he allegedly confessed to allegations of abductions, killings and dismemberments.⁹*
- *Section 27 Evidence Act- pointing-out recoveries: for example, a large kitchen knife, bone remains and skulls were found behind D-5.¹⁰*
- *Narco-analysis, polygraph and brain-mapping tests conducted in January 2007 (though, there later arose dispute regarding whether or not they were conducted consensually and whether they were substantively admissible).¹¹*

However, from the start, the investigation was improperly executed, with serious procedural mistakes: it did not secure the crime-scene prior to excavation; forensic samples (blood, tissue, transfer marks) were not adequately preserved or could have

⁸ "Nithari serial killings case: Allahabad High Court acquits Koli in 12 cases, Pandher in 2", *New Indian Express*, 16 October 2023, available at <https://www.newindianexpress.com/nation/2023/oct/15/nithari-serial-killings-case-allahabad-hc-acquitskoli-in-12-cases-pandher-in-2-2624415.html> (last visited on 12 November 2025).

⁹ "Nithari killings: SC acquits Surendra Koli in last case, orders his release", *NDTV*, 11 November 2025, available at <https://www.ndtv.com/india-news/nithari-monster-acquitted-19-years-after-kids-bones-found-in-noida-drain-9621012> (last visited on 12 November 2025).

¹⁰ "Nithari killings: SC acquits Surendra Koli in last case, orders his release", *NDTV*, 11 November 2025, available at <https://www.ndtv.com/india-news/nithari-monster-acquitted-19-years-after-kids-bones-found-in-noida-drain-9621012> (last visited on 12 November 2025).

¹¹ "Nithari killings: 'Mere andar ka shaitan...' , chilling details revealed in Narco tests of Surendra Koli, Mohinder Pandher", *Mint*, 16 October 2023, available at <https://www.livemint.com/news/india/nithari-killings-mere-andar-ka-shaitan-chilling-details-revealed-in-narco-tests-of-surendra-koli-mohinder-pandher/amp-11697454847062.html> (last visited on 12 November 2025).

been compromised; remand and custody papers reflected conflicting versions of what actually took place; and multiple recoveries were made in publicly accessible locations, compromising any chain of custody. In February 2009, the Ghaziabad Special CBI Court convicted Koli (and Pandher) in Trial No. 611/2007 under Sections 302/364/376 IPC, with Koli receiving a death sentence.¹² The years ahead were filled with appeal, mercy-petitions and review requests. In October 2023 the Allahabad High Court acquitted Koli (and Pandher) in twelve of the matters, calling the evidence “botched-up” and unreliable except one. After completing the appellate and review system, Surendra Koli lodged a curative petition with the Supreme Court asking to challenge the remaining conviction, saying that the evidentiary basis, including confessions and scientific tests, had procedural flaws and was not enough to support a conviction beyond a reasonable doubt.

Issues

During the hearing of Surendra Koli’s curative petition, the Supreme Court carefully considered whether the conviction in his last live case could be reexamined in light of the co-defendants’ exoneration, procedural irregularities, and weaknesses in the evidence and the following issues were discussed,

- 1. Whether a conviction can stand when co-defendants, charging the same factual narrative (confession, pointing-out, recoveries) have been acquitted, that is whether there is an unreasonable difference in judgements which amounts to a violation of Article 14 of the Constitution.*
- 2. Whether the confession in this case under Section 164 of the CrPC, as well as the recoveries in this case, under Section 27 of the Evidence Act, was admissible and/or reliable given the investigatory and procedural flaws identified (long*

¹² *Surendra Koli v. State of Uttar Pradesh*, Special Sessions Trial No. 611 of 2007 (Additional Sessions Judge, Ghaziabad) (judgment dated 13 February 2009).

*detention period, no independent legal aid, failure to secure the scene if the crime).*¹³

3. *Whether the investigatory/forensic failings associated (delay, negligence, unsecured scene, failure to contain the forensic material) adversely affected the fact-finding process to the extent there was no longer a conviction available in this case under Article 21 (right to life and personal liberty) as it was not 'fair, just, or reasonable'.*
4. *Whether a curative petition should be allowed in this case where the integrity of the adjudicatory process was under jeopardy in light of the above, and whether a curative jurisdiction threshold was reached (manifest miscarriage of justice, breach of basic norms).*
5. *Whether even in regard to serious crimes, "beyond reasonable doubt" is the standard, and whether a conviction based on conjecture or suspicion violates fundamental rights.*

Legal Analysis

When reviewing Surendra Koli's curative petition, the Supreme Court placed importance on the idea that "justice cannot be compromised, even for the worst of crimes". In its review of cases, the Court noted that Koli's most recent conviction was part of a large matrix of cases with companion trials that resulted in acquittals on the bases of similar evidence. The judgment explained that maintaining one conviction while these complete evidentiary failures to prove guilt created an arbitrary difference between cases and equality contrary to Article 14.¹⁴ The Court restated a

¹³ *Surendra Koli v. State of Uttar Pradesh*, 2025 LiveLaw (SC) 1091, para 6.

¹⁴ "Nithari killings: Letting Surendra Koli's conviction stand on subsequently rejected evidence would breach Articles 14 and 21", *LiveLaw*, 11 November 2025, available at <https://www.livelaw.in/amp/top-stories/nithari-killings-letting-surendra-kolis-conviction-stand-on-subsequently-rejected-evidence-would-breach-articles-14-and-21-supreme-court-309592> (last visited on 12 November 2025).

foundational idea, which has been reiterated in Indian jurisprudence repeatedly, that suspicion, however grave, cannot substitute for proof beyond reasonable doubt. The Court analyzed evidence, citing earlier reasoning in Sharad Birdhichand Sarda v. State of Maharashtra that a chain of circumstantial evidence must be completely connected and not leave room for a reasonable hypothesis other than guilt.¹⁵ The Court found procedural lapses and lack of investigative work to connect the chain that made Koli's conviction impossible to sustain.

The Court remarked that while Koli's statements were recorded under Section 164 CrPC, their reliability was compromised by prolonged police custody and lack of access to independent legal advice. The Court referenced the requirements outlined in State of Punjab v. Harjagdev Singh, advising that any confession must be free and voluntary, clear from external influence or pressure in order to be considered a valid confession.¹⁶ Recoveries admitted pursuant to Section 27 of the Evidence Act were examined; the Court explained that Koli's familiarity with the crime scene and the fact that locations of the recovered items were viewable by the public limited the evidential value. The Court pointed out, "once contradictions infect the record, Section 27 of the Evidence Act no longer operates," indicating that procedural or factual irregularities had a direct import on the admissibility and weight of such evidence.

There were findings related to more systemic investigatory failures, including an unreasonable period before forensic examination, the crime scenes were not preserved, and inconsistent remand procedures. The Court noted, these failures impacted reliability in the fact-finding, and as required by Article 21, fairness in socio-legal processes was not ensured. Linking fairness and due process to the investigative rigour, the Court noted that fairness and due process are all unavoidable principles, even in cases which elicit public outrage. It further stated that

¹⁵ *Sharad Birdhichand Sarda v. State of Maharashtra*, 1984 4 SCC 116.

¹⁶ **State of Punjab v. Harjagdev Singh, 2009 INSC 581.**

no conviction can be based only heinous nature of the crime but has to meet constitutional due process.

When exercising its curative jurisdiction, the Court highlighted that its curative jurisdiction serves not as a disguised appeal, jurisprudentially, nor is it simply to give effect to justice in the abstract, but it is a constitutional bulwark against serious or gross miscarriage of justice which requires intervention by the Supreme Court. The Supreme Court aligned itself to the principles in Rupa Ashok Hurra v. Ashok Hurra and asserted that the Supreme Court will intervene, only when there is a serious and conscious risk of a miscarriage of justice on the part of the lower courts arising from certain judicial errors or procedural unfairness.¹⁷ In respect to Koli's case, the Court determined that the inadvertent continuation of Koli's last conviction would amount to such a gross miscarriage of justice especially considering the serious flaws in the investigation apart from an acquittal, and to allow Koli to remain jailed would allow a gross miscarriage of justice to continue. The Court articulated its role as a duty ex debito justitiae, reinforcing the notion that a Court must insist on fairness and integrity to uphold the rule of law.

Judgement

The Supreme Court allowed the curative petition against the 2011 SC judgement, noting that the Nithari killings investigation was severely flawed and was not able to demonstrate his guilt beyond a reasonable doubt. The Bench expressed significant concern that the investigation "was botched from the very beginning," while also observing the unlikelihood that "the real perpetrator may ever come to justice." The Court also pointed out that circumstantial evidence adduced by the prosecution had "several inconsistencies," the evidence chain was incomplete, and the alleged

¹⁷ Rupa Ashok Hurra v. Ashok Hurra, 2002 4 SCC 388.

confessions were made under duress. The Court stated that while the presumption of innocence is always preeminent, a conviction cannot be based on “suspicions, however grave.” Underlining that the burden of proof is squarely on the prosecution, the Court commuted Koli’s conviction and ordered his release, while encouraging either a reconsideration of the standards of investigation and prosecution in cases of this magnitude or preventing miscarriages of justice in cases of this magnitude.

Comment - Reflections on the Nithari Judgment

Upon revisiting the Nithari case with this recent judgement, I felt the same disturbing sensation that I experienced upon first reading about the case years before. Then, it was nothing more than a story of horror, but it was also evidence of systemic failure, a damning indication that sometimes justice does not fail due to deliberate malfeasance, but out of negligence. The issues brought up by the Supreme Court’s recent order in Surendra Koli v. State of Uttar Pradesh opened that wound again. The Bench, in which Justice B.R. Gavai presided, was not simply acquitting Koli; it was holding a mirror to the criminal justice machinery itself. The judges stated explicitly that “the real perpetrator of the Nithari killings has not been caught,” and expressed sorrow that the very foundation of the prosecution’s case had eroded due to investigatory failure.¹⁸ This order was not a technical acquittal; it was a condemnation of procedure, a conclusion that justice cannot endure when the truth is lost in the shuffle of a poorly handled investigation.

The Court’s reasoning provides a powerful reaffirmation of the principle that due process under Articles 14 and 21 of The Constitution of India requires something more than conviction - it necessitates fairness. Based on the evidence alone, one wonders if the balance between procedural rectitude and moral justice tipped too far towards the former. Koli’s confessions, gathered during custodial interrogation and

¹⁸ Surendra Koli v. State of Uttar Pradesh, 2025 LiveLaw (SC) 1091.

later reexamined with the narco-analysis, were deemed inadmissible, a legal conclusion that is easy to understand and difficult to accept because one considers the seriousness of the crime. The Court reiterated the constitutional ban of Article 20(3), citing Selvi v. State of Karnataka, which determined that, apart from a voluntary consent, narco-analysis, brain-mapping and polygraph examinations constitute testimonial compulsion.¹⁹ The reasoning appears strong jurisprudentially- but again reignites the debate on whether law can expand and adapt to include scientifically-assisted ethical regulated methods in a context where the cost of a procedural failure is irreplaceable human cost.

In addition to a legal doctrine, the human aspect of this tragedy at Nithari will continue to loom over this case. For the families of the victims, this judgment will reopen wounds that have never properly healed. Each procedural failure signifies a lifetime of uncertainty and lifelong questioning whether justice can ever be attained by the weak.

The ultimate lesson of this ruling is not just Koli or the Nithari horror, it is that the judgment of fellow human beings, applying the criminal process, is only as good as its from the first step. From the first officer to arrive on scene to the very last one involved, everyone at every step in a process owe their sincerity not only to the law but also the victims. Thus the obligation to protect and serve justice must be initiated at the bottom, in the heart and minds of every investigative agency.

¹⁹ Selvi v. State of Karnataka, (2010) 7 SCC 263.