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CASE COMMENTARY- SURENDER KOLI V/S STATE THROUGH CBI (NITHARI CASE)

~ Priyanshu Sahu

BACKGROUND

Nithari is a village abutting Sector-31 of NOIDA, in District Gautam Buddh Nagar of Uttar Pradesh. It suddenly became infamous for its missing children and caused massive uproar in the country. The Nithari case involved the brutal murders and disappearances of children and young adults, primarily from marginalized backgrounds, in Noida, Uttar Pradesh. The bungalow of Moninder Singh Pandher and his servant Surinder Koli became the horrific center of these crimes. The sheer number of victims (estimates range in the dozens) and the depravity of the acts sent shockwaves through the nation.¹ There were several cases in which small children's and young adults went missing till 2006.

FACTS OF THE CASE

In December 2006, two villagers of Nithari village claimed to have located the bodies of two missing children: the municipal water tank located behind home D5, Sector-31, Noida. They both suspected Surinder Koli, the domestic help at D5, of being complicit in the disappearances as they both had daughters who went missing. Former Resident Welfare Association (RWA) President S C Mishra was consulted by the people, who said local officials had neglected them time and time again. After Mishra and the two residents investigated one of the residents that morning and claimed to have discovered a decomposing hand, they called the police. The police detained Koli and his boss, Moninder Singh Pandher, on December 26 and 27, respectively, in relation to "Payal's" disappearance. Following Koli's admission, the authorities began excavating the surrounding area and found the children's bodies. On 1 January 2007,

¹ Surender Koli V/s State through CBI

the remand magistrate granted the police custody of Pandher and Koli until 10 January 2007, as the investigators said that further interrogation was required to complete the recovery of victims' remains. The case was later handed over to CBI for further Smooth investigation as this case became a very high-profile case.

CBI INVESTIGATION

After four days of discourse and mounting pressure from the Government of India, the Uttar Pradesh Government decided to hand over the inquiry to the Central Bureau of Investigation. The notification came after the Department of Personnel and Training, which governs the CBI, sent a letter to the state government making a proper request for a probe by the agency in line with the prescribed norms. The two accused were taken to the CBI headquarters in Mumbai Jail on the night of 11 January 2007, a day before the investigation was to be transferred to the Central Bureau of Investigation. The CBI continued its investigation and discovered three more skulls and human remains at the site of the serial killings. The investigators searched the drains outside the house and found three skulls, believed to be of the children, and several body parts, including parts of legs, bones, and torso. Several objects were found that are believed to belong to the victims. The exhibits were sealed and forwarded to forensic labs.

The discovery of several polythene bags containing parts of human torsos led the investigators to conclude that it was unlikely that the accused had links to illegal organ trade. The CBI team discovered the bags in the drains outside the Pandher residence. After interrogating Surinder Koli, they came to a *prima facie* conclusion that "he is a psychopath used to carry out the killings". Interrogators also said that it was possible that Pandher had no role to play in the murders. The seized materials were sent to the laboratory for post-mortem, individualization, and DNA extraction. The materials received from the Uttar Pradesh police were also forwarded for forensic examination. Some liquor bottles, a double-barreled gun, cartridges, mobile phones, photographs, photo albums and a blood-stained grill were handed over to the CBI for extensive examination. Preliminary investigations revealed that the bones were not more than two years old. The CBI also revealed that only fifteen skulls had been found thus far, and not seventeen as claimed by the state police.

COURT PROCEEDINGS

On 12 February 2009, both the accused—Moninder Singh Pandher and his domestic servant Surinder Koli were found guilty of the 8 February 2005 murder of Rimpa Holder, by a special sessions court in Ghaziabad. This verdict left the Central Bureau of Investigation (CBI) red-faced, as the CBI had earlier given a clean chit to Moninder Singh Pandher in all its chargesheets. Both the accused Moninder Singh Pandher and Surinder Koli were given the death sentence on 13 February 2009, as the case was classified as "rarest of rare".

- On 4 May 2010, Koli was found guilty of the 25 October 2006 murder of Arti Prasad and given a second death sentence eight days later.
- On 27 September 2010, Koli was found guilty of the 10 April 2006 murder of Rachna Lal and given a third death sentence the following day.
- On 22 December 2010, Koli was found guilty of the June 2006 murder of Deepali Sarkar and given a fourth death sentence.
- On 15 February 2011, the Supreme Court upheld the death sentence of Surinder Koli.
- On 24 December 2012, Koli was found guilty of the 4 June 2005 murder of Chhoti Kavita and given a fifth death sentence.

On 10 September 2009, the Allahabad High Court acquitted Moninder Singh Pandher and overturned his death sentence. He was not named a main suspect by investigators initially but was summoned as co-accused during the trial. While Pandher was acquitted, the Allahabad High Court upheld the death sentence for Surinder Koli, his former domestic servant.

In February 2011, the Supreme Court of India upheld the death sentence against both suspects. In July 2014, the President of India rejected the mercy petitions filed by Koli. On 3 September 2014, the Court issued a death warrant against Koli in the Nithari case. On the evening of 4 September 2014, Koli was transferred to Meerut Jail because of the absence of hanging facilities at Dasna Jail, Ghaziabad. He was to be hanged on 12 September 2014. The Supreme Court stayed the death sentence for one week after a petition was filed for Koli. The court stopped Koli's hanging at a midnight hearing, saying an inordinate delay in execution was valid grounds for commutation. But on 29 October 2014, the Supreme Court bench headed by the

Chief Justice of India H. L. Dattu rejected the death sentence review petition stating that the court had not committed any error in judgement.

On 28 January 2015, however, the High Court bench headed by Chief Justice D. Y. Chandrachud and Justice P. K. S. Baghel commuted Koli's death sentence to life imprisonment on the ground of "inordinate delay" in deciding his mercy petition. On 24 July 2017, both Koli and Pandher were given the death sentence (case #8 out of 16) in the latest hearing by the CBI Court at Ghaziabad. In 2019, Koli was again given a death sentence in the 10th conviction.

ISSUES RAISED:

- The contrasting verdicts highlight the importance of robust forensic evidence collection and presentation in court.
- The case exposes the vulnerability of marginalized communities, whose missing persons reports may not be adequately investigated.
- The acquittals raise questions about accountability within the justice system and the ability to deliver closure to victims' families.

ACQUITTAL

After the two suspects filed appeals, Koli and Pandher were cleared of all charges on October 16, 2023, 17 years after the crimes were found. The Allahabad High Court found neither of them guilty, citing the accused(s) admissions as the only credible source of evidence.

The decision came as a shock for the victim's families who were hoping for justice. Pappu Lal, a security guard whose eight-year-old daughter was killed in the serial killings, said after the judgement: "We don't have this much money that we can keep fighting for justice for so many years." Durga Prasad, whose seven-year-old daughter was murdered, declared: "This court might have acquitted those monsters but there is a bigger court of God who will not spare them".

RECENT STATUS OF THE CASE

After the acquittal from the Allahabad High Court, a Special Leave Petition was filed by one of the victim's Father named Pappu Lal in the Supreme Court of India dated 04.05.2024 which was accepted by Hon'ble Court and the proceedings are still going on

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