

SURENDRA KOLI V. STATE OF UTTAR PRADESH

HARSHITA KAPOOR

ADARSH KUMAR

CITY ACADEMY LAW COLLEGE, UNIVERSITY OF LUCKNOW

Abstract

The following is a brief Case Analysis of the case titled Surendra Koli v. State of Uttar Pradesh & Others [AIR(2014) 16 SCC 494]. This Case is considered as the rarest of the rare case that revolves around Capital Punishment. This case has been read, summarized and analysed broadly under the following heads: Introduction, Facts of the case, Issues of the case, Arguments from the appellant side and respondent side, Legal aspect of the case, Judgment, Conclusion, Suggestion and References. This case focuses on the legal provisions embedded in the Section 302, 364, 376 of Indian Penal Code 1860, Section 164 of Code of Criminal Procedure 1973, Section 27 of Indian Evidence Act 1872 as well as the Article 21 and Article 137 of The Constitution Of India. In this case after 7 years of Imprisonment & PIL filled against the court, Supreme Court commuted Death Penalty to Life Imprisonment.

Keywords: Case, Constitution, Capital Punishment, IPC, CrPC.

SURENDRA KOLI V. STATE OF UTTAR PRADESH

Introduction

The case is a **Criminal Case (Capital) appeal No. 1475 of 2009**

This case deals with the capital punishment for the serial killing. Nithari case is one of the most horrifying and gruesome case of 2006. Nithari is a village situated in Noida (NCR). The case gained light from media for its brutal and rare nature of crimes.

BRIEF FACTS OF THE CASE

- December 2006, two residents of Nithari claimed to found a location behind House D5, a Municipal water tank with the remains of the children who had gone missing since past two years.
- Parents whose two daughters were missing suspected a domestic helper at House D5 Surendra Koli, to have something to do with the matter.
- Later, a resident claimed to found a decomposed hand, after which they informed the police.
- As per media report, Koli's employer, Moninder Pandher was picked up by the police on 26th December and Koli on 27th December in connection with the disappearance of girls.
- After 60 days of the custody Koli made the confession and the police started digging up the nearby land area and discovered the children's bodies.
- The convict Surendra Koli not only allured and kidnapped the victims but also murdered them. He committed rape on the death bodies and later defiled them, often cutting the victims for cooking.

ISSUES OF THE CASE

1. Whether Koli's statement after 60 days of police custody accounts to confession?
2. Whether Koli should be given death sentence?

ARGUMENTS FROM THE APPELLANT SIDE

- The counsel from the appellant side argued that according to Section 24¹ of the Indian Evidence Act, the statement though should not be considered as confession. Further he said that the convicted asserted that “he was tutored by the police to say many things, including the names of the victims, the manner of killing etc. He also said that the police had tortured him brutally.”
- Koli was more a mental patient who needs a doctor more than being hanged. It is quite evident from his activities of murder of both boys and girls that he is no more but a serial killer.

ARGUMENTS FROM THE RESPONDENT SIDE

- The counsel from the respondent side admitted that there was a confession made by Surendra Koli before the Magistrate under Section 164² CrPC and it was a voluntary confession. The Magistrate repeatedly consoled the accused that he was not bound to make the statement and it can be read against him.
- Further counsel stated that the killings by the appellant are horrifying and barbaric and as a result of which this case falls within the category of the rarest of rare case.

LEGAL ASPECTS

The case revolves around the Sections 302, 364, 376 of Indian Penal Code, Section 164 of CrPc, Section 27 of Indian Evidence Act and Article 21 & 137 of the Constitution of India.

INDIAN PENAL CODE 1860-

SECTION 302:- Section 302 deals with the punishment for murder “*Whoever commits murder shall be punished with death or [Imprisonment for life]³, and shall also be liable to fine.*”

SECTION 364:- Section 364 deals with kidnapping or abducting in order to murder.

¹ Section 24 of Indian Evidence Act 1872, Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

² Section 164 The Code of Criminal Procedure 1973, Recording of Confession and Statements.

³ Subs by Act 26 of 1955, Sec 117 and Sch. for “transportation for life”(w.e.f. 1.1.1956)

SECTION 376:- Section 376 deals with the punishment for rape.

THE CODE OF CRIMINAL PROCEDURE 1973

SECTION 164:- This Section deals with the “Recording of confessions and Statements”.

THE INDIAN EVIDENCE ACT 1872

SECTION 27:- Section 27 deals with “*How much of information received from accused may be proved- Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amount to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*”

THE CONSTITUTION OF INDIA

ARTICLE 21:- Article 21 is the smallest article of the Constitution that is “Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by Law.”

ARTICLE 137:- Article 137 is about “Review of judgments or orders by the Supreme Court subject to the provisions of any law made by Parliament. The Supreme Court shall have power to review any judgment pronounced or order made by it.”

VIEWS OF THE COURT

- Koli was sentenced to death by a special CBI Court in Ghaziabad on February 13, 2009. The High Court had passed the order while allowing a PIL filed by people’s Union for Democratic Rights, clubbed with another petition filed by Koli himself. Both the petitions had questioned the constitutionality of the execution of the death sentence that Koli has been in jail for more than seven years and that the time taken in deciding his mercy petition alone was “Three years & three months”, that violate the Rights grant in Article 21⁴ of the Constitution.
- In appeal to the High Court accused Surendra Koli’s death sentence was affirmed while the accused Maninder Singh Pandher was acquitted.

⁴ Article 21, The Constitution of India 1950.

- Relying upon the recent order dated 02.09.2014 of the Court in *Mohd Arif V. Supreme Court of India*⁵, the convict in the Nithari Killings Case, sought for recalling and reviewing of the death warrant issued against him. Considering the urgency of the matter, the bench of **H.L. Dattu** and **Anil R. Dave**, took up the matter.
- Supreme Court was entirely agreed with the findings, conclusion and sentence of the High Court. The appellant was charged for the murder and was found guilty by both the Trial Court and High Court.
- His mercy petition was also rejected by the President of India on 27.07.2014.
- The learned Judge said that the convict should be hanged to death as he had exhausted all his legal remedies.
- Supreme Court consider this case to fall within the category of rarest of rare cases as laid down in *Bachan Singh V. State of Punjab*⁶ which has been subsequently followed in *Atbir V. Government of NCT of Delhi*⁷.

FINAL JUDGEMENT

On 29 October 2014, the Supreme Court Bench headed by Chief Justice of India **H.L. Dattu** rejected the death sentence awarded by the High Court review petition with the view that the court had not committed any error in judgment.

On 28 January 2015, the High Court bench headed by Chief Justice **D.Y. Chandrachud** and Justice **Pradeep Kumar Singh Baghel** commuted the death sentence to Life Imprisonment on the ground of “inordinate delay” in deciding the mercy petition.

In the end in February, 2011 the Supreme Court upheld the death sentence of the culprits. In July, 2014 the President had rejected the mercy petitions filed for them. On 3rd September, the court had issued death penalty against Koli. On the evening of 4th September, Koli was transferred from Meerut Jail because of the absence of hanging facilities. On October 29th 2014, the Court bench headed by Chief Justice **H.L. Dattu** had rejected the death sentence review petition. After so many review petitions, the court had finally given death sentence to them in the 10th conviction in the year 2019.

⁵ *Mohd Arif V. Supreme Court of India (Writ Petition No. 77 of 2014).*

⁶ *Bachan Singh V. State of Punjab (AIR 1982 SCC 689)*

⁷ *Atbir V. Government of NCT of Delhi [AIR 2010 SCC (9) 1]*

CRITICAL OVERVIEW OF THE JUDGMENT

- Firstly, the accused was held liable for the murder by the Supreme Court. Secondly, his mercy petition was rejected after recognition by the nominal head of the Constitution that's Pranab Mukherjee, who held this stature at that particular time. All this lacks relevancy, justification, excuse for unpardonable delay. All mugged up seems everyone shunning his own duties to be a decisive person at crucial times.
- The Government with compilation to judicial system and legal fraternity should forward a robust mechanism to evict unrelevant delay and exhaustion of judicial timings in explicitly covering on such cases.
- The profound agency named as Central Bureau of Investigation after covering the crucial episode of probes of the all missing and unidentified persons was believed to project static strategy to conduct the prosecution after reckoning the number of charges chronolyzing the evidences. But there was no punctual conduction and legal sustainable prosecution but this was not the case.
- When an offender has been held for the mischief in one case and at the same moment dropping of his prosecution in other cases intensify the quest of identity and being cumbersome of other perpetrators of crime in absence of judicial verdict.
- At the hault of this judgment a question puffed out interrogating the need of having subsequent and aloof court trials when the fate of the accused is going to be the same regardless of the outcomes in this whole chronology of subsequent trials.

Conclusion

This case of 2006 constitutes one of the biggest and bizarre urban crimes which have been recognized as the rarest of rare by the courts at several instances. Not just the families but the entire nation was riveted when the body parts of the victims were found in and around. This was the first time the assertion for the right of the speedy trial was articulated in the Magna Carta. Nithari killings were the most horrible crimes but people often forget such misfortune with passage of time. Since an accused can only be hanged once, the disposal of the case and impact on the society by the due administration of justice will always suffer in the absence of clear and timely law enforcement. This clearly signifies that there is a need of developing a mechanism

that would help in affective dealing with case of such nature, where the prime accused is same in every case.

Suggestions

- The four prominent objectives of criminal justice stem comprise of Reformation, Deterrent, protection of society against criminals and Retribution can only be reciprocated well through life imprisonment. We neither revert acid attackers through acids nor we sexually abuse rapists in the shed of prevailing justice. Such in this case hanging an accused for murder is not suitable.
- As per some psychological sources in particular context of this case the confession of the accused before officials renders the need of doctors along with the other legal proceedings.
- Only on the mere confession of the accused, it is not right to sentence Capital Punishment. Capital punishment should be on account of watertight evidences but the capital punishment which is irrevertible and extreme was awarded to the accused in this case only on the grounds of confession of the accused.

References

PRIMARY SOURCES

CASES

1. *Mohd Arif V. Supreme Court of India (Writ Petition No. 77 of 2014).*
2. *Bachan Singh V. State of Punjab (AIR 1982 SCC 689)*
3. *Atbir V. Government of NCT of Delhi [AIR 2010 SCC (9) 1]*

SECONDARY SOURCES

BOOKS AND BARE ACTS

1. *Dr. J.N. Pandey, Constitutional Law of India (first published 1969, Central Law Agency)*
2. *Indian Evidence Act 1872*
3. *Indian Penal Code 1860*
4. *The Code of Criminal Procedure 1973*

WEBSITES AND BLOGS

1. *SCC Online Blog*
2. *LAWNN.COM*
3. *Indian Kanoon.org*
4. *Casemine.com*

NEWSPAPER ARTICLE

1. *Indian Express.*
2. *The Times of India.*