2025 INSC 1308

REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CURATIVE PETITION (CRL.) NO. .....OF 2025
@DIARY NO.49297 OF 2025
IN

R.P. (CRL.) NO.395/2014

IN

CRL. A. NO.2227 OF 2010

SURENDRA KOLI ...PETITIONER

VERSUS

THE STATE OF UTTAR PRADESH & ANR. ...RESPONDENTS

J U D G M E N T

VIKRAM NATH,J.

1. Delay condoned.

This curative petition presents an exceptional case for the exercise of our curative jurisdiction. The petitioner shows that a manifest miscarriage of justice endures and that two sets of outcomes resting on the same evidentiary foundation cannot lawfully coexist. When final orders of this Court speak with

discordant voices on an identical record, the integrity of adjudication is imperilled, and public confidence is shaken. In such a situation, intervention ex debito justitiae is not an act of discretion but a constitutional duty. We therefore entertain this petition to preserve the purity of this Court's process and to vindicate the rule of law.

2. The curative jurisdiction of this Court exists to prevent abuse of process and to cure a gross miscarriage of justice. In ***Rupa Ashok Hurra v. Ashok Hurra***[1], the Constitution Bench of this Court recognised that this power flows from the inherent authority of this Court to do complete justice and to protect the integrity of its judgments. However, the constitutional source of this power is coherent and limited. Article 129 of the Constitution of India (hereinafter "The Constitution") declares this Court to be a court of record with inherent powers to preserve the purity of its process. Article 142 of the Constitution empowers this Court to make such orders as are necessary for doing complete justice. Article 137 of the Constitution recognises the power

[1] (2002) 4 SCC 388

of review and marks its limits. Article 145 of the Constitution of India authorises the framing of rules. Order XLVIII of the Supreme Court Rules, 2013, titled "*Curative Petition"* prescribes the filing requirements, the certification by a Senior Advocate, and the preliminary circulation to a bench as indicated in *Rupa Ashok Hurra (Supra).* These provisions together sustain a narrow jurisdiction that may be invoked only after review has failed to correct a grave defect.

3. Moreover, we must emphasize that *Rupa Ashok Hurra (Supra*) makes it clear that a curative petition is not a second review. Finality remains the rule and intervention is reserved only for very strong reasons that strike at the legitimacy of the adjudicatory process. The court has stated that only certain foundational circumstances demand relief as a matter of justice. One is a violation of natural justice where a person is adversely affected without being heard or without proper notice. Another is a case where a Judge failed to disclose a connection with the subject matter or with a party which gives rise to a reasonable apprehension of bias. The instances are illustrative and not exhaustive. The guiding principle

for the exercise of curative jurisdiction is the duty of this Court to avert manifest injustice.

4. The controlling test is whether the earlier decision produces a result that offends the conscience of this Court because of a fundamental defect in process or because of a grave miscarriage of justice. Such defects may appear where outcomes are irreconcilably inconsistent on the same substratum of facts and evidence or where material circumstances bearing on fairness and reliability were overlooked or where the guarantees of equality and due process under Articles 14 and 21 of the Constitution stand compromised. Even when leave to proceed is granted, the inquiry remains narrow. This Court does not sit in appeal over its own final judgment and does not reappraise evidence as if in a second appeal. The question is whether intervention is necessary to vindicate the rule of law and to restore confidence in the administration of justice. With these principles in view we shall now examine whether the present case meets the exacting threshold for the exercise of the curative jurisdiction of this Court.

5. This curative petition arises from Criminal Appeal No. 2227 of 2010 decided on 15.02.2011, by which this Court affirmed the petitioner's conviction and sentence of death in the Rimpa Haldar case. The review petition against this order was dismissed on 28.10.2014 in Review Petition (Crl.) No. 395 of 2014. On 28.01.2015, the High Court commuted the death sentence to imprisonment for life. In twelve companion prosecutions founded on the same confession and recoveries, the High Court acquitted the petitioner on 16.10.2023, and on 30.07.2025, this Court dismissed the State appeals and affirmed those acquittals. The present petition is brought on the footing that irreconcilable outcomes have arisen on an identical evidentiary framework and that a manifest miscarriage of justice remains despite the dismissal of review.

6. The Nithari Case Background:

6.1. Surendra Koli, the petitioner herein, was employed as a domestic help at House D5, Sector 31, Noida. The house was owned and occupied by one Moninder Singh Pandher, the employer of the petitioner. From early 2005

residents of Nithari began reporting that women and children were missing. In March 2005, children in the neighbourhood playing cricket noticed a human hand in the narrow open strip between Houses D5 and D6 and the Jal Board residential quarters. On 03.12.2006, a human hand was again noticed during drain cleaning on the main road in front of the row of bungalows D1 to D6.

6.2. On 29.12.2006, the local police took the petitioner into custody in connection with FIR No. 838 of 2006 concerning the disappearance of Payal, one of the victims. On the same day Pandher was detained outside D5. When the police and panch witnesses reached D5, a large crowd had already gathered and digging was underway in the open strip between D5, D6 and the Jal Board compound. Multiple skulls and bones with footwear and clothes were recovered from that strip on 29.12.2006. A knife was recovered from beneath the terrace water tank of D5. On 31.12.2006 further human remains and articles were taken out from the covered

storm water drain in front of Houses D1 to D6. Multiple FIRs were registered on 30.12.2006 for different missing persons.

6.3. On 09.01.2007, the State transferred investigation to the Central Bureau of Investigation under the Delhi Special Police Establishment Act, 1946. A team from the Forensic Science Laboratory at Agra examined D5 between 04.01.2007 and 06.01.2007. Teams from the All India Institute of Medical Sciences and the Central Forensic Science Laboratory assisted the CBI in searches at and around D5 through mid-January 2007.

6.4. Thirteen trials followed. Each proceeded on a common evidentiary foundation that comprised the alleged disclosure leading to recoveries and the confessional statement under Section 164 of the Code of Criminal Procedure, 1973[2]. The present matter concerns the case relating to Rimpa Haldar, a minor who went missing in 2005.

[2] CrPC

7. First round of litigation (Rimpa Haldar case)

7.1. By judgment dated 13.02.2009 in Sessions Trial No. 611 of 2007, the Trial Court convicted the petitioner for the death of Rimpa Haldar under Sections 302, 364, 376 and 201 of the Indian Penal Code, 1860[3] and imposed the death sentence. The Trial Court relied on a confession recorded on 01.03.2007 under Section 164 of the CrPC, on recoveries said to have been made at the petitioner's instance from House No. D-5, Sector 31, Noida, and on a chain of circumstantial facts. The confession runs to several pages and states that the petitioner lured the victim Rimpa Haldar into D-5, strangled her with a chunni, engaged in sexual assault after death, dismembered the body, and disposed parts in the rear gallery and in the stormwater drain. The Magistrate recorded preliminary questions on voluntariness. The Trial Court treated the confession as voluntary and truthful and found corroboration in the recovery of skulls and bones from the rear

[3] In short "IPC"

gallery and drain, in the identification of the victim's clothing by relatives, and in DNA profiling reported by the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, which matched remains with the blood samples of the victim's parents.

7.2. On 11.09.2009, the High Court affirmed the conviction and sentence of death of the Petitioner and acquitted the co-accused, Moninder Singh Pandher, in this case. The High Court treated the confession under Section 164 CrPC as voluntary and reliable. It also found corroboration in material particulars. It relied on recoveries of skulls, bones, clothing and footwear from the enclosed gallery behind D-5 and from the adjacent drain, identification of articles by relatives of victims including Payal, one of the victims, and the testimony of two young girls, PW-27 Pratibha and PW-28 Purnima, who described attempts by the petitioner to lure them towards D-5, which the High Court viewed as revealing the Petitioner's modus operandi. The High Court also noted

forensic linkage through DNA analysis and held that the circumstantial chain was complete. In acquitting Moninder Singh Pandher, the High Court recorded that there was no substantive evidence connecting him with the crime, that the petitioner's confession was not admissible against a co-accused, that recoveries were pursuant to the petitioner's disclosure, and that no overt act or presence of Pandher was proved in relation to this offence.

7.3. On 15.02.2011, a two-Judge Bench of this Court dismissed Criminal Appeal No. 2227 of 2010 and affirmed the conviction and sentence of death. This Court recorded that the confession under Section 164 CrPC was voluntary and that statutory safeguards were observed. It noted the petitioner's detailed admissions and his leading of the police to the place where multiple skulls and bones were recovered, as well as the seizure of a knife from D-5. It referred to the evidence of PW-27 and PW-28 as indicative of the petitioner's modus operandi. It relied on DNA analysis by the

Centre for DNA Fingerprinting and Diagnostics matching remains to the blood samples of Rimpa Haldar's parents and brother, and on the role of doctors from the All India Institute of Medical Sciences in assembling recovered parts. The recoveries were treated as admissible under Section 27 of the Indian Evidence Act, 1872[4]. Characterising the petitioner as a serial killer, this Court held that the case fell within the "rarest of rare" category and upheld the sentence of death.

7.4. On 28.10.2014, after an open-court hearing, this Court dismissed Review Petition (Crl.) No. 395 of 2014. The Court reiterated the narrow compass of review under Article 137 of the Constitution, found no error apparent on the face of the record, and declined to revisit findings on voluntariness or evidentiary appreciation. The submission regarding ineffective assistance at trial was rejected at the review stage.

[4] Evidence Act

7.5. Subsequently, on 28.01.2015, in writ proceedings challenging the rejection of mercy petition of the Petitioner, the High Court commuted the sentence of death in this case to imprisonment for life. The conviction continued to stand. Special Leave Petitions, SLP (Crl.) No. 1444 of 2016 and SLP (Crl.) No. 7456 of 2016, filed against the judgment dated 28.01.2015 of the High Court, remain pending before this Court.

8. The other twelve cases

8.1. Between 2010 and 2021, the petitioner was tried and convicted in twelve additional capital cases arising from the same circumstances in the Nithari area at House No. D-5, Sector-31, Noida. These trials proceeded on the same evidentiary foundation, namely the confession recorded under Section 164 of the CrPC and alleged discoveries and recoveries said to have been made at the petitioner's instance under Section 27 of the Evidence Act. In two of these

cases the co-accused, Moninder Singh Pandher, was also convicted by the Trial Court.

8.2. By a set of judgments dated 16.10.2023, the High Court allowed the petitioner's appeals in all twelve matters and acquitted the Petitioner. The High Court held that the confession under Section 164 CrPC could not be treated as voluntary or reliable. It recorded that the petitioner had been kept in uninterrupted police custody for about sixty days before the confession was recorded, that there was no meaningful or private access to legal aid, that the recording Magistrate did not express the clear satisfaction on voluntariness that Section 164 CrPC requires, and that the Investigating Officer was brought into the room at the outset and kept immediately available outside, which undermined voluntariness. The High Court noted repeated assertions within the confession of tutoring and references to torture and concluded that the bar under Section 24 of the Evidence Act was attracted.

8.3. The High Court further held that the alleged discoveries and recoveries under Section 27 of the Evidence Act were inadmissible and unreliable. The prosecution did not prove any contemporaneous disclosure statement. There were material contradictions between the panchnama narrative and the remand papers, including a reference to a joint disclosure by both accused that could not stand with the later version that the petitioner alone led to discovery. The evidence showed that members of the public and the police were already aware of body parts at the recovery site and that excavation had commenced before the petitioner arrived. The principal site lay in an open strip behind D-5 and D-6 and in the drain on the main road, which was not under the petitioner's exclusive domain. These features negated the essential element of discovery by the accused.

8.4. On the forensic record, the High Court found an absence of corroboration. Searches of D-5 by expert teams did not yield human bloodstains or human remains that would be consistent

with multiple homicides and dismemberment inside the house. There was no incriminating trace in the kitchen or on utensils. A semen stain on a quilt did not match with the petitioner or the identified victims. The DNA work undertaken by the Centre for DNA Fingerprinting and Diagnostics linked certain remains to families of missing persons but did not connect the petitioner to the actus reus within D-5. The High Court therefore held that the circumstantial chain was incomplete.

8.5. The High Court also found that the recoveries of a knife and an axe did not advance the prosecution case. Neither implement bore human blood or tissue. The prosecution did not establish that the cut marks on bones, if any, were consistent with those implements or that these specific implements were used. There was no independent proof that the petitioner possessed the skill or capability to carry out the precise acts alleged with those implements. Taken with the absence of incriminating traces within D-5, the supposed weapon link failed.

The High Court criticised the investigation as botched and shifting, and recorded that material avenues, including the organ-trade angle noted by a committee of the Ministry of Women and Child Development, were not probed. In two of the twelve matters the High Court also acquitted Moninder Singh Pandher.

8.6. The State preferred appeals against the acquittals. By an order dated 30.07.2025, a three-Judge Bench of this Court dismissed those appeals. The acquittals recorded by the High Court on 16.10.2023 have therefore attained finality.

9. In view of the foregoing narrative, the petitioner has shown grounds that lie within the narrow compass of the curative jurisdiction recognised in *Rupa Ashok Hurra (Supra*). What is asserted is not a plea for reappraisal of evidence but a fundamental defect that impeaches the integrity of the adjudicatory process. The petitioner points to outcomes of this Court that cannot be reconciled on the same evidentiary substratum and to defects that bear directly on voluntariness, admissibility and investigative

fairness. Such inconsistency engages the guarantees of equality and due process under Article 14 and Article 21 of the Constitution and warrants consideration *ex debito justitiae*. The petition carries the averments and certification required by Order XLVIII of the Supreme Court Rules, 2013 and has been placed before us in accordance with the prescribed procedure. We are therefore satisfied that the threshold for invoking the curative jurisdiction is met and we proceed to examine the merits.

10. Having heard learned counsel on both sides and having closely examined the record of the present case along with the subsequent judgments to which reference has been made, we are satisfied that the determinative question is whether two sets of outcomes of this Court can stand together when they rest on an identical evidentiary foundation. The first is the decision of 15.02.2011 affirming the petitioner's conviction and death sentence on the strength of a Section 164 CrPC confession and supposed discoveries under Section 27 of the Evidence Act. The second is the order dated 30.07.2025 by a three-Judge Bench dismissing the

State's appeals and thereby affirming twelve acquittals where the very same confession and the very same class of Section 27 material were rejected as legally unreliable. The tension is not peripheral. It goes to the integrity of adjudication. In such a situation, the curative jurisdiction recognised in *Rupa Ashok Hurra (Supra)* is rightly invoked. The object is not to reopen evidence as in a second appeal. The object is to cure a manifest miscarriage of justice where inconsistent results persist on the same foundation and undermine public confidence in the administration of justice.

11. We accordingly test the present conviction against the legal defects that led the High Court, and thereafter this Court, to discard the common evidentiary pillars in the companion matters. Those defects were not factual peculiarities confined to other victims. They were structural infirmities inherent in the mode of proof relied upon across the Nithari prosecutions. The petitioner's Section 164 CrPC statement was recorded after about sixty days of uninterrupted police custody without meaningful legal aid. The recording Magistrate did not record the

clear, unqualified satisfaction that the statute demands. The Investigating Officer's proximity to the recording process, including his presence at the outset and his ready access, thereafter, compromised the environment of voluntariness. The text of the statement itself repeatedly adverted to tutoring and to prior coercion. These features attracted the bar under Section 24 of the Evidence Act and rendered the confession inadmissible as a matter of law. We find no principled basis on which the same statement can be treated as voluntary and reliable in this case when it has been judicially discredited in all others.

12. The second pillar concerns the alleged discoveries and recoveries under Section 27 of the Evidence Act. The High Court found that no contemporaneous disclosure memo was proved. The narrative in the later-prepared seizure memorandum conflicted with the remand papers, which recorded a joint disclosure by both accused. The evidence also showed that the police and members of the public already knew that bones and articles lay in the open strip and that excavation had begun before the petitioner arrived. These features negate the essential element of

discovery by the accused and reduce the exercise to a seizure from an already known place. Those findings were upheld when the State's appeals were dismissed on 30.07.2025. The present conviction rests on the same recovery architecture. Once the disclosure is not contemporaneously proved, once prior knowledge is established, and once contradictions infect the record, Section 27 of the Evidence Act ceases to operate. The legal conclusion cannot change from case to case when the premise is identical.

13. The forensic analysis reinforces that conclusion. Extensive searches of D-5 by expert teams did not yield human bloodstains, remains, or transfer patterns consistent with multiple homicides and dismemberment inside the house. The DNA work undertaken by the Centre for DNA Fingerprinting and Diagnostics in Hyderabad linked certain remains to families of missing persons. That science aided only identification. It did not prove authorship of homicide by the petitioner within D-5. Knives and an axe were exhibited without proof of blood, tissue, or hair consistent with use in the alleged crimes. There was

no credible chain of custody or expert testimony establishing that a domestic help with no medical training could perform the precise dismemberment described. These gaps were central to the acquittals in the twelve cases. They are equally present here.

14. We add that the High Court's critique of the investigation was not rhetorical excess. It was anchored in record-based deficiencies that bear directly on fairness and reliability. The failure to secure prompt and independent medical documentation during the long spell of police custody, the perfunctory legal-aid arrangement at the moment of confession, the presence and influence of the Investigating Officer during the Section 164 procedure, the contradictions in remand and recovery papers, and the neglect of material avenues of inquiry, including the organ-trade angle flagged by a governmental committee, cumulatively undermine confidence in the prosecution's case theory. We find ourselves in agreement with that assessment. The same infirmities, viewed through the lens of the present record, cannot yield a different legal conclusion.

15. We must emphasize that Article 21 of the Constitution insists on a fair, just and reasonable procedure. That insistence is at its acutest where capital punishment is imposed. Although the petitioner's death sentence in this case was commuted to imprisonment for life on 28.01.2015, the conviction continues to carry the gravest consequences. To allow a conviction to stand on evidentiary basis that this Court has since rejected as involuntary or inadmissible in the very same fact-matrix offends Article 21 of the Constitution. It also violates Article 14 of the Constitution, since like cases must be treated alike. Arbitrary disparity in outcomes on an identical record is inimical to equality before the law. The curative jurisdiction exists to prevent precisely such anomalies from hardening into precedent.

16. We are mindful of finality. We are equally mindful that curative relief is exceptional and proceeds on narrow grounds. The present case crosses that exacting threshold. The confession that anchored the conviction is legally tainted on grounds already accepted by this Court in the companion matters.

The supposed discoveries do not satisfy the statutory preconditions for admissibility. The forensic and investigative record does not supply the missing links. Once those keystones are removed, the circumstantial chain no longer holds. The conviction cannot be sustained without departing from principles that now stand authoritatively applied to indistinguishable prosecutions arising out of the same occurrence. For these reasons, we hold that the petitioner has established a fundamental defect that impeaches the integrity of the adjudicatory process and that relief is warranted *ex debito justitiae* within the parameters of *Rupa Ashok Hurra (Supra).*

17. The offences in Nithari were heinous, and the suffering of the families is beyond measure. It is a matter of deep regret that despite prolonged investigation, the identity of the actual perpetrator has not been established in a manner that meets the legal standards. Criminal law does not permit conviction on conjecture or on a hunch. Suspicion, however grave, cannot replace proof beyond reasonable doubt. Courts cannot prefer expediency over legality. The presumption of innocence endures

until guilt is proved through admissible and reliable evidence, and when the proof fails the only lawful outcome is to set aside the conviction even in a case involving horrific crimes.

18. At this juncture, we must remark on our abiding faith in the capacity of police and investigative agencies of our country. When investigations are timely, professional and constitutionally compliant, even the most difficult mysteries can be solved and many crimes can be prevented by early intervention. It is, therefore, genuinely unfortunate that in the present matter negligence and delay corroded the fact-finding process and foreclosed avenues that might have identified the true offender. The scene was not secured before excavation began, the alleged disclosure was not contemporaneously recorded, the remand papers carried contradictory versions, and the petitioner was kept in prolonged police custody without a timely, court-directed medical examination. Crucial scientific opportunities were lost when post-mortem material and other forensic outputs were not promptly and properly brought on record and when searches of D-5 yielded no

incriminating traces that could be forensically anchored to the alleged events. The investigation did not adequately examine obvious witnesses from the household and neighbourhood and did not pursue material leads, including the organ-trade angle flagged by a governmental committee. Each lapse weakened the provenance and reliability of the evidence and narrowed the path to the truth.

19. For the reasons recorded above, the curative petition is allowed.

20. The judgment dated 15.02.2011 in Criminal Appeal No. 2227 of 2010 and the order dated 28.10.2014 in Review Petition (Crl.) No. 395 of 2014 are recalled and set aside.

21. Criminal Appeal No. 2227 of 2010 is allowed. The judgment dated 13.02.2009 in Sessions Trial No. 611 of 2007 passed by the Additional Sessions Judge, Ghaziabad, and the judgment dated 11.09.2009 passed by the High Court of Judicature at Allahabad in Criminal Confirmation/Appeal No. 1475 of 2009 are set aside.

22. The petitioner is acquitted of the charges under Sections 302, 364, 376 and 201 of the IPC. All

sentences and fines imposed thereunder stand quashed.

23. The petitioner shall be released forthwith, if not required in any other case or proceeding. The Registry shall communicate this judgment forthwith to the Superintendent of the jail concerned and to the Trial Court for immediate compliance.

24. In view of this acquittal, SLP (Crl.) No. 1444 of 2016 and SLP (Crl.) No. 7456 of 2016 arising from the judgment dated 28.01.2015 stand disposed of as infructuous.

25. All pending applications stand disposed of.

.....CJI.
[BHUSHAN RAMKRISHNA GAVAI]

.....J.
[SURYA KANT]

.....J.
[VIKRAM NATH]

NEW DELHI
NOVEMBER 11, 2025