

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPEAL NO. 1211 OF 2014

MUNAWWAR APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

The sole appellant, Munawwar, in this appeal assails his conviction for murder and kidnapping of a seven-year old boy, 'X' under Sections 302 and 365 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC') as also causing disappearance of evidence of offence under Section 201 read with Section 34 IPC. The appellant stands sentenced to undergo imprisonment for life, seven years and three years rigorous imprisonment respectively, which sentences, it is directed, shall run concurrently (no separate sentence for fine has been imposed but we are not commenting and examining this aspect in the present appeal and judgment).

2. Learned counsel for the appellant has submitted that the principle of last seen has been wrongly invoked, for even if the Court were to accept the testimony of Mohd. Sayeed (PW-2), Ashraf (PW-3), Sayeed Ahmed (PW-5), and Mustak (PW-7), 'X' was last seen in the company of the appellant, along with the appellant's brothers Noor Mohammad, Tahir (since deceased) and a third person Shamim, at Laddawala, Muzaffarnagar, Uttar Pradesh on April 01, 1988, whereas two ransom notes were purportedly received by Mohd. Khurshid (PW-1), father of 'X', on April 03, 1988 and April 07, 1988, and subsequently, 'X's dead body was exhumed at a different location on April 18, 1988. Reference was made to ***Jaswant Gir vs. State of Punjab***¹ and ***State of Goa vs. Sanjay Thakran & Another***². The appellant also submitted that there was a delay in recording the First Information Report (FIR) under Section 365 IPC, which, it was highlighted, was registered at Police Station, Kotwali, Muzaffarnagar on April 07, 1988 at about 9:40 p.m.
3. We have considered the contentions but do not find any good ground and reason to differ and upset concurrent finding of conviction as recorded by the Additional District and Sessions

¹ (2005) 12 SCC 438

² (2007) 3 SCC 755

Judge vide judgment dated August 19, 1992 and in the impugned judgment of the Allahabad High Court dated March 08, 2013.

4. Co-accused and convicts Noor Mohammad and Shamim have not filed an appeal before this Court and Tahir as noticed above has since died. Hence, we are examining and deciding the present appeal preferred by Munawwar.
5. The fact that 'X', son of Mohd. Khurshid who has appeared as PW-1, was kidnapped on April 01, 1988 and his dead body was exhumed on the basis of the disclosure statement made by Noor Mohammad on April 18, 1988 has been proved and established beyond debate and doubt. It is also an accepted position that the appellant-Munawwar, Noor Mohammad, Tahir (since deceased) are brothers. Mohd. Khurshid (PW-1) in his deposition was lucid that his seven-year old son, 'X', who had gone to a neighbourhood shop on asking of his mother to purchase *dal* at about 4 p.m. on April 01, 1988 did not return and was untraceable. PW-1, who was working in the Tehsil, on return from work had searched and looked desperately for 'X' but without success. Upon enquiring in the neighbourhood, PW-1 had learnt that 'X' was last seen with Noor Mohammad at the shop of Ashraf, as told to him by Ashraf who had deposed as PW-3 and confirmed the fact. Mohd.

Khurshid (PW-1) had also spoken to Mohd. Sayeed (PW-2), who was standing a few feet away from the shop of Ashraf (PW-3), and had seen 'X' with the appellant- Munawwar, Noor Mohammad, Tahir (since deceased) and Shamim who had taken 'X' with them on foot towards Sultan Industries. This narration was affirmed by Mohd. Sayeed (PW-2), who had seen 'X' in the lap of Noor Mohammad as they had moved out of the shop to the road where the appellant-Munawwar, Tahir (since deceased) and Shamim were present. Mohd. Sayeed (PW-2) had also testified that the accused were maternal uncles of 'X' and they would daily take 'X' for a walk and get things for him to eat. Therefore, PW-2 had no reason to suspect and did not deem it proper to intervene. PW-2 has confirmed his interaction with PW-1 in the evening when PW-1 had made enquiries about his son.

6. We have the testimony of Mustak (PW-7), who has stated that he knew 'X', son of Mohd. Khurshid (PW-1), who were residing in the same *mohalla*. On April 01,1988 at about 5 p.m. PW-7 had returned from Devband by bus. While proceeding towards *Laddawala*, PW-7 had seen 'X' with the appellant- Munawwar, Noor Mohammad, Tahir (since deceased) and Shamim, who were taking him towards the hill. He had not objected because he knew

that the persons were relatives of 'X' and had thought that they were possibly taking him for a walk.

7. Mohd. Khurshid (PW-1) has deposed that on April 03, 1988 he had received ransom letter (Ext. 1) for payment of Rs. 21,000/- for safe release of 'X'. Money was to be paid at the railway bridge. Thereupon, PW-1 had proceeded to the house of the appellant Munawwar and his brothers and had met Tahir (since deceased) and had informed him about the ransom note and enquired if he could tell him his son's whereabouts. Tahir (since deceased) had thereupon asked PW-1 to arrange for the money and to write a letter seeking 2-3 days' time to make payment. Several other persons, including Kallu, were present with PW-1 at that time. On the request of Tahir (since deceased), PW-1 had written a letter and gave it to Tahir (since deceased) asking for 2-3 days' time to arrange for money. The aforesaid factum has been proved and also testified by Sayeed Ahmad (PW-5) who was present with PW-1 when the latter had spoken to Tahir (since deceased) about 'X' and the ransom note, and wrote the letter requesting for extension of time to make the payment. On April 05, 1988, Tahir (since deceased) had informed PW-1 that the letter had reached the persons and they had given PW-1 time to arrange money.

8. Mohd. Khurshid (PW-1) has also testified about the second ransom letter (Ext. 2) for payment of Rs. 22,000/- which was thrown in his house by Shamim, one of the accused, an act which was seen by Islam (PW-4) and Sayeed Ahmad (PW-5) who had tried to apprehend and catch Shamim but were unsuccessful as Shamim had managed to run away. Islam (PW-4) had also testified that 'X' was missing and this fact was known to the entire neighbourhood.
9. After receipt of the second ransom note, Mohd. Khurshid (PW-1) had proceeded to lodge the police report/complaint vide Exhibit KA-1. PW-1 had testified that upon submitting the scribed report, the police report was made and read out to him, and having understood the contents, he had put his signatures. Explaining the reason for the delay in filing the FIR, PW-1 had elucidated that he was arranging the money and perceiving danger and threat to the life of 'X', he did not initially lodge a police report. Further, till the second ransom note was thrown by one of the accused Shamim, PW-1 was uncertain on whether or not Tahir (since deceased) was trying to mislead him and also on participation and involvement of the appellant and his brothers. PW-1 has also spoken about his relation with the accused Shamim. Khalil who was uncle of his wife was the brother-in-law of the accused Shamim, a fact stated

by PW-1 in the cross-examination but not controverted or put for denial.

10. Equally important is the evidence of recovery of the dead body of 'X' pursuant to the disclosure statement made by Noor Mohammad upon his arrest on April 18, 1988. Noor Mohammad had thereupon taken the police and PW-1 and others to Bajheri jungle and the tube well of Irshad @ Yaseen and had shown the place where the dead body of 'X', his clothes and the knife by which he was killed had been buried in a ditch. Thereupon, after digging earth, the dead body of 'X' was exhumed, and his clothes and the knife were recovered vide Memo, Exhibit KA-2. PW-1 had identified the dead body of his son 'X' by looking at his face. Recovery of dead body of 'X' at the instance of Noor Mohammad is a fact also affirmed by Mustak (PW-7) and Police Sub-Inspector Raj Kishor Singh (PW-11).

11. The present case would not in a strict sense be a case of mere 'last seen'. 'X' was kidnapped at about 4:00 p.m. on April 01, 1988 when he was seen in the custody of the present appellant, Noor Mohammad, Tahir (since deceased) and Shamim near the shop of Ashraf (PW-3). 'X' was a young boy, seven years in age, who was close to and friendly with the appellant-Munawwar, his

brothers namely Noor Mohammad and Tahir (since deceased) and also knew Shamim who was living in the neighbourhood. The factum that 'X' was kidnapped on April 01, 1988 at about 4:00 – 4:30 p.m. has been established and proved beyond doubt. The identity of the kidnappers which includes the present appellant has also been established. Reliance placed on the two judgments relating to the “last seen” principle vide ***Jaswant Gir vs. State of Punjab*** (supra) and ***State of Goa vs. Sanjay Thakran & Another*** (supra) would not support the submissions on behalf of the appellant, for, in the present case, there is direct evidence in the form of ocular testimonies, as discussed above, which establish that the present appellant and others had kidnapped and had held their captivity. Further, there was no time gap or interregnum between 'X's disappearance and kidnapping; they were simultaneous. Subsequent evidence, including the conduct of Shamim, who had thrown the second ransom note, and Noor Mohammad, who had given the disclosure statement leading to recovery of the dead body, would implicate and establish the charge and the case of the prosecution.

12. Hence, we do not find any merit in the present appeal and we affirm the judgment of the High Court accepting the judgment of the Additional Sessions Judge convicting the appellant-

Munawwar under Sections 302, 365 and 201 read with Section 34 of the IPC. The appeal has no merit and is dismissed.

.....J.
(INDIRA BANERJEE)

.....J.
(SANJIV KHANNA)

**NEW DELHI;
July 16, 2019.**