

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 264 of 2015

Appellant : Wazir Ali
through Mr. Moula Bux Bhutto, Advocate

Respondent : The State
through Mr. Hussain Bux Baloch, Addl.P.G.

Date of hearing : 3rd November, 2022

JUDGMENT

Omar Sial, J.: 1. The appellant Wazir Ali, who had in one point in time worked in the police department, was married to Shafat Khatoon. They had 2 sons, 12 year old Wasim and 1½ year old Bilawal. Wazir lost his job and started work as a farmer. Shafat would often complain to her family that Wazir mistreated her. On 07.11.2011, Shafat's brother, a gentleman by the name of Ikhlq Hussain, told him that Wazir had phoned and said that he had killed Shafat. Ikhlq, accompanied by 2 of his uncles, went to the police station where they saw 12 year old Wasim already present. Wasim told his family members that the previous day i.e.06.11.2011, his father had axed his mother to death at about 7:00 p.m. in the evening. By that time Shafat's dead body had been sent to the morgue. F.I.R. No. 44 of 2011 under sections 302 and 506/2 P.P.C was registered 12:00 p.m. on 08.11.2011 at the Jhirk police station.

2. Wazir was arrested on 10.11.2011 by A.S.I. Bashir Ahmed Chandio in the presence of P.C. Deedar Ali and P.C. Saeed Ahmed. On 13.11.2011 Wazir led the police to some trees growing behind his house and produced the hatchet with which he had killed Shafat. No blood stains were found on the hatchet.

3. Wazir pleaded not guilty to the accusation against him and claimed trial. **PW-1 Ikhlq Hussain** was Shafat's brother and the complainant. **PW-2 Deedar Ali** was the witness to Wazir's arrest. **PW-3 Dr. Shamim** conducted

the post mortem. **PW-4 Ghulamuddin** was the tapedar who prepared the sketch of the place of incident. **PW-5 Waseem** was the couple's son. **PW-6 Hasan Ali Dall** was one of the villagers who Wasim had informed that his father had killed his mother. He also served as a witness to several steps taken by the police from the time it first responded to the information of the murder. In particular he witnessed the arrest of the accused as well as the recovery of the hatchet made on Wazir's pointation. **PW-7 A.S.I. Bashir Ali** was the first police responder as well as the investigating officer of the case. **PW-8 Ahmed Turk** was also a witness to various steps taken by the police in its investigation. **PW-9 Haji Rehmatullah** was perhaps the first person who was told by Wasim that his father had killed his mother.

4. After the prosecution had produced all its evidence against Wazir, he recorded a section 342 Cr.P.C. statement. While denying any wrong doing on his part, he said that he had himself gone to register the F.I.R. for the murder of his wife against unknown persons but that the police arrested him and made him an accused. When asked why his own son Wasim had testified against him, Wazir denied that Wasim had done so, in fact, said that Wasim's testimony itself was enough to exonerate him. He denied that he was at home at the time of the incident as he had gone to a nearby town to buy some things and had returned home at 8:00 p.m.

5. On 06.07.2015 the learned Sessions Judge, Thatta found the accused guilty of an offence under section 302(c) and 308 P.P.C. and sentenced him to 25 years in prison. He was also directed to pay *diyat* in accordance with the prevailing rate when the payment would be made. It is this judgment of the learned trial court that has been challenged in these proceedings.

6. Learned counsel for the appellant has submitted that this is a case of no evidence against the appellant and that the recovery of the hatchet is doubtful in itself as the same was not stained with blood. The learned APG has stressed heavily on the fact that Wazir could not offer any plausible reason as to why he did not know who killed his wife, as at the end of the day, she was murdered in their own house. Several notices to the

complainant remained unanswered and as such no one effected an appearance. I have heard the learned counsels and reviewed the record. My observations and findings are as follows.

- (I) I tend to agree that the only evidence against the appellant is the statement of his son Wasim and his inability to provide a reasonable explanation to his lack of knowledge about how the murder occurred. I have therefore focused on these 2 aspects of the case in greater detail.
- (II) Wasim was about 12 years old when his mother was murdered and 15 years when his testimony was recorded. His younger brother, Bilawal, who was alive at the time of incident, had died by the time the case had come up for trial. Wasim told the court that on that fateful day, he was out of the house but was aware that his mother Shafat and his brother Bilawal were at home. When he had returned home, he had found his mother dead. He had then informed the villagers of what had happened. At trial, he said that it was not in his knowledge if it was his father or someone else who had killed his mother. The prosecution thus declared him hostile and requested the court that they be allowed to cross examine Wasim. Wasim took a complete somersault at trial from what he had recorded in his initial section 161 Cr.P.C. statement. He had earlier recorded that on the date of incident there had been a harsh exchange of words between his parents and that in a rage, his father had struck his mother on her head with a hatchet. Wasim had cried upon seeing the scene but was threatened by his father that he should not tell anybody what he had seen. Wasim acknowledged that his father was a drug addict and that that was the reason he was dismissed from the police. It is also important to keep in mind that the learned trial judge noted that as Wasim testified in favour of his father, he had tears in his eye. Even though Wasim retracted his earlier statement at trial, in the circumstances of the case, where a boy of tender age was caught between the devil and the dark blue sea, I believe that his

statement at trial was under duress and undue influence and that what Wasim had recorded in the first instance was true. Such a conclusion was also backed up by the testimony of PW-9 Haji Rehmatullah who stated at trial that Waseem had come to his otak at about 3:00 p.m. on 07.11.2011 and told him that the previous night his father had murdered his mother.

- (III) It was therefore the night of 06.11.2011 that Wazir killed his wife. He then in a cowardly act left the house and his 2 minor children to alone face the trauma he had exposed them to. Till 10.11.2011 when he was arrested, he had not appeared. He did not come for his wife's burial or the post death ceremonies. He did not report the death to anybody and it was only when he was caught that he lied that some unknown persons had killed his wife and that he had come to the police station to register an F.I.R. when he was arrested.
- (IV) As far as this case goes, I am confronted with a situation in which Wazir Ali, in all likelihood did indeed do his wife to death. But, if one looks at the evidence recorded, there is not much against him. If we just look at the case from this aspect, while eliminating the circumstances surrounding the incident, then in all probability, Wazir Ali deserves to be acquitted. This is however a gender based violence case and therefore demands that it be looked at differently. It demands that the circumstances surrounding the incident, though not perfectly documented nor investigated well, should be taken into account.
- (V) The "circumstances surrounding" mentioned in the preceding paragraph, are as follows: Wasim's initial statement made to the police; Wasim informing PW-9 Haji Rehmatullah on 07.11.2011 that his father had killed his mother the previous day; From 06.11.2011 i.e. the date of the incident till 10.11.2011 i.e. when Wazir was arrested, Wazir disappearing from the scene leaving his 2 small children and a dead wife behind in the house without informing anybody; Wazir not being present when his wife was buried or on her

soyem; Wazir at trial claiming that he was in a different village when the murder occurred but then failing to produce even one witness to support his plea of alibi; Wazir failing to give any reason as to what happened to his wife and who would want to kill her; Wazir failing to produce even one witness to support his stance that he had gone to the police station to lodge an F.I.R. when he was arrested; the medical evidence reconciles with what Wasim had said initially.

- (VI) I am inclined to agree with the learned trial court that there was perhaps not enough evidence to prove the surrounding circumstances and thus merits a punishment under section 302(c) PPC. Throughout this case the dead girl's relatives were conspicuous by their absence. None appeared during the 11 years that this case has taken to reach this stage. Wasim is living with his paternal uncle and one cannot even begin to imagine the trauma this child must have gone through till today. The pressures he must be exposed to because of being in this quagmire of circumstances must be phenomenal. I have however given a deep thought to the quantum of sentencing. Wazir Ali has been in prison for nearly 21 years now, which period includes the remissions he has earned to date. I am however not inclined to interfere with the sentence given to him by the learned trial court.
- (VII) Appeal is dismissed.

JUDGE