

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 224 of 2020

Appellant : Dil Nazeer
through Mr. Khalid Hussain Chandio, Advocate.

Respondent : The State
through Ms. Robina Qadir, Addl.P.G.

Complainant : Nehal Qasim
through M/s. Shaukat Hayat and Saqlain Shafi
Rajput, Advocates.

Date of hearing : 26th October, 2023

Date of Judgment : 31st October, 2023

JUDGMENT

Omar Sial, J.: An old couple, Mehjabeen and Kazim Hasan, lived in a house in the Defence area of Karachi. Mr. Hasan had dementia, and mobility for him was also difficult. Dil Nazeer was employed to take care of the old couple. He was a twenty-four-hour employee whose duties included caring for Mr. Hasan at night. The couple's daughter, Aleena, married Nehal and lived in a separate house. For Aleena to keep checking up on her parents was a regular activity. On May 7, 2016, Aleena kept calling her parents but could not get through. At night, she and Nehal decided to go and check on the old couple. They found the gate locked from inside and the old couple's car missing from the porch. With some difficulty, and after scaling the wall, access to the house was enabled. Much to Aleena and Nehal's shock and horror, they found Mr. Hasan lying on the ground, alive but in an abysmal state. Mrs. Hasan was found lying dead. Dil Nazeer was conspicuous by his absence. There were visible signs that Mehjabeen had been throttled to death. Apart from the car, certain valuables were also missing from the house. F.I.R. No. 207 of 2016 was registered on the complaint of Nehal under sections 302, 381 and 381-A P.P.C. at the Darakshan police station on May 8, 2016.

2. A few days later, on May 19, 2016, Dil Nazeer, who could not be found till then, appeared at Aleena and Nehal's house, ostensibly unaware of the tragedy the couple had recently sustained. When queried by Nehal, Dil Nazeer told him that on the fateful night, some people had broken into the house and abducted him. The thieves also took his original National Identity Card, cell phone, and car keys. The couple contacted the investigating officer, who arrived and arrested Dil Nazeer. The investigating officer told Nehal that the police had deployed some hardball tactics with Dil Nazeer's family, forcing him to appear.

3. The record shows that during interrogation, Dil Nazeer changed his initial stance of being abducted to having gone to his village one day before the incident after taking leave from Mehjabeen. Later, he once again changed his perspective. On June 2, 2016, he recorded a section 164 Cr.P.C. statement in which he admitted that he had murdered Mehjabeen and stolen the valuables and the car but that he had done all that on Nehal's instructions as Nehal was interested in usurping the old couple's property and assets.

4. The prosecution examined **Nehal Qasim** as **PW-1**, **Aleena Hasan** as **PW-2**, **A.S.I. Mohammad Ramzan** (the first police responder to the information of the incident) as **PW-3**, **Dr. Nasreen Qamar** (the doctor who did the post-mortem) as **PW-4**, **Arif Masih** (a former employee who confirmed Dil Nazeer's employment with the old couple as **PW-5**, **S.I. Mohammad Akram** (witnessed the arrest. and recovery at the pointation of Dil Nazeer) as **PW-6**, **Javed Masih** (a medical service provider) as **PW-7**, **S.I. Saleemullah Qureshi** (the second investigating officer) as **PW-8**, **Nazish Naz** (the learned Magistrate who recorded Dil Nazeer's section 164 statement) as **PW-9**, **S.I. Rana Mohammad Latif** (the police officer who verified the signatures of S.I Mohammad Ishtiaq, the first investigating officer who could not come to trial due to illness) as **PW-10**.

5. In his section 342 Cr.P.C. statement, the appellant admitted that he had taken the car of the old couple with him and taken it to Haripur. He

justified his actions by stating that Nehal had told him to sell the vehicle. He denied that he had murdered Mahjabeen or stolen anything from the house.

6. Dil Nazeer was arrested on May 19, 2016. Nine days later, on May 28th, he led the police to an oil change shop in Haripur, KPK, where he had sold the car. The person to whom the vehicle was sold was sitting in the oil shop and confirmed to the police that he had bought the car from Dil Nazeer. The vehicle was seized under a memo and returned to Karachi on May 30, 2016. PW-6 S.I. Mohammad Akram witnessed the entire episode. This recovery was strong evidence linking Dil Nazeer to the crime. He had taken the original file of the car with him and sold the same. The prosecution case would have been stronger had the person to whom the vehicle was sold been examined at trial. Be that as it may, Dil Nazeer never denied that he had sold the car in KPK. Still, later in the investigation, he justified the act by saying that Nehal had given him the car as a reward for murdering Mehjabeen.

7. At the end of the trial, the learned 1st Additional Sessions Judge, Karachi South, on 07.02.2020, convicted Dil Nazeer for an offence under section 302(b) P.P.C. and sentenced him to life in prison. He was also convicted for an offence under section 381 P.P.C. and sentenced to imprisonment for seven years. The appellant was also directed to pay compensation of Rs. 500,000 to the legal heirs of the deceased lady, and if he did not pay the money, he would remain in prison for a further six months.

8. I have heard the learned counsels for the appellant, the complainant, and the learned Additional Prosecutor General. For the sake of brevity, their respective arguments are not being reproduced but are reflected in my observations and findings below.

9. Admittedly, there are no eyewitnesses to the murder; however, in the circumstances of the case, this is not surprising. The case against Dil Nazeer is based on circumstantial evidence. Dil Nazeer was a full-time

employee of the old couple with a twenty-four-hour duty. His unexplained disappearance from the scene had justifiably aroused suspicion towards him. At the very least, Dil Nazeer could have provided a plausible explanation of what happened in the old couple's home that unfortunate day. Not only did Dil Nazeer not offer a reasonable reason, but through the length of the trial, he kept changing his stance. Eleven days after the murder, Dil Nazeer had appeared at the complainant's house pretending that he was not aware that the old lady, his former employer, had been murdered. As is evident from the witness testimonies, he then told Nehal that on an ill-fated day, some robbers had broken into the house and abducted him along with the car keys, his original CNIC and his cell phone. Later, he recorded a judicial confession in which he confessed to the murder but said that Nehal had told him to do it. In his section 342 Cr.P.C. statement, he denied that he had confessed before a magistrate. He also pleaded ignorance regarding Nehal's involvement in the murder. Courts of this country have repeatedly held that an accused is entitled to change his stance. There is no cavil to this subsisting principle. Yet, in this case, none of the explanations given by Dil Nazeer for his absence was plausible to justify his sudden and surreptitious disappearance from the lives and home of the old couple he was entrusted with to take care of.

10. The car of the old couple was sold in Haripur, KPK, and recovery of the vehicle was a very well-documented procedure. The police did not need to show recovery in KPK if it was a staged recovery. Dil Nazeer himself, in his section 342 Cr.P.C. statement, did not deny that he had taken the car and sold it in Haripur. The explanation he gave was that Nehal had asked him to sell the car in his village. The very explanation is ludicrous for apparent reasons. The prosecution case would, however, have been strengthened if the buyer of the vehicle had appeared as a witness at trial. His absence, however, has not aroused any doubt in my mind, looking holistically at the evidence and keeping in mind Dil Nazeer's admission in this regard.

11. The learned counsel argued that Zaki Pasha and Elia Qazalbash were not examined. Zaki Pasha was Nehal's maternal uncle and had accompanied the police to the crime scene. Elia was a signatory to the memo of inspection of the crime scene. Nehal was the other witness to the memo and was examined. With much respect to the learned counsel, I do not find Zaki and Elia's absence at trial to have had any adverse impact on the prosecution case. Thus, I am not convinced that the presumption contained in Article 129 of the QSO would come into play.

12. The key witnesses, Aleena and Nehal, were cross-examined at length at trial. The two entirely and accurately corroborated and supported each other. Their respective testimonies were confidence-inspiring and trustworthy. Nehal also explained why his name as an accused was attempted to be included in this case. Saleemullah Qureshi, the second investigating officer of the case, would turn up at odd hours at the couple's home with no real purpose. He wanted the complainant party to satisfy his urge to obtain illegal gratification. When his conduct was reported to his seniors, he appears to have maliciously included Nehal's name in the crime. If Saleemullah Qureshi is still in active service, I.G. Sindh shall review his service record to determine if his actions and conduct align with the dignity, respect, prestige and professionalism of the Sindh police.

13. Dil Nazeer was a caregiver of an old couple. One of whom had dementia. The cold-heartedness and brutality with which he acted should have disintitiled him to any concessions; however, as the evidence was all circumstantial, I agree with the learned trial court to a life imprisonment sentence. After a reappraisal, I find no reason to interfere with the judgment of the learned trial court.

14. A copy of this judgment is to be sent to I.G. Sindh to facilitate him with directions contained in paragraph 12 of this opinion.

15. Appeal is dismissed.

JUDGE

