



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J

CRIMINAL CASE NO. 97 OF 2018

BETWEEN

REPUBLIC.....PROSECUTOR

AND

CHRISTOPHER MUTWIRI NKUNJA.....ACCUSED

JUDGMENT

1) **CHRISTOPHER MUTWIRI NKUNJA (Accused)** is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars of the charge are that

On 11th October 2018 at Kibutu Village, Kiani Sub-location, Anjalu Location, Igembe North Sub-County within Meru County murdered ISAAC KAMBWALE

PROSECUTION CASE

2) The prosecution case as narrated by **PW1 Regina Nkatha** is that on 11th October 2018 Accused who is his nephew was sleeping in his house when **Isaac Kambwale (Isaac)** went into the house to wake up Accused and allegedly take him to hospital. That shortly thereafter, the two suddenly emerged quarreling as a result of which Accused chased Isaac and then picked a stick from the fence with which hit Isaac on the back. That later on the same day, he received information that Isaac had died. **PW2 Rosa Kagendo** on the material date parted with her husband (**Isaac**) as he went to Accused's home allegedly to take him to hospital. That shortly thereafter, she heard scream and returned to meet Accused pursuing Isaac. That Isaac fell and Accused sat on him and knocked him severally on the head with stones. That seeing how her husband was injured, she lost consciousness and when she came was informed her husband had been taken to hospital where he died.

3) **PW3 Charles Meme and PW4 Jacob Unau** arrived at the scene to find Isaac lying dead. That Accused who was alleged to have killed Isaac appeared confused and did not seem to comprehend his actions.

4) An autopsy on Isaac's body was conducted on 18th October, 2018 and the Postmortem form tendered by **PW4 Dr. Sammy Githu Wachira** as **PEXH. 1** reveals that deceased suffered multiple bruises on the head and forehead about 1 to 3 cm long, back of the head and on the left knee. There was a sub-scalp bleeding on the right temporal region, fragmented fracture of the right temporal parietal occipital bones caused by a heavy force. There was intracerebral bleeding with subdural bleeding on the right occipital region and there were fragments of bone in the brain. An opinion was formed that the deceased died of cardiopulmonary arrest due to severe heavy blunt injury with subdural bleeding in the brain and comminuted scalp fractures. After investigations, Accused was arrested and charged.

DEFENCE CASE

5) In his Accused sworn statement, Accused conceded that Isaac went to him house on the material night and they disagreed. He stated that they were fighting when Isaac fell and got injured. His witness stated that Isaac who was drunk went to Accused's house and they two emerged with Isaac running ahead of Accused. That she was later informed that Isaac had fallen on stones and got injured.

Analysis and determination

6) **Section 203** and **204** of the **Penal Code** under which the accused is charged provide for the offence of murder and the punishment for it.

They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought. The sections read as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Any person who is convicted of murder shall be sentenced to death.”

7) I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused caused the death and that he was actuated by malice.

(a) The death of the deceased

8) The postmortem form **PEXH.1** reveals that the deceased that deceased suffered multiple bruises on the head and forehead about 1 to 3 cm long, back of the head and on the left knee. There was a sub-scalp bleeding on the right temporal region, fragmented fracture of the right temporal parietal occipital bones caused by a heavy force. There was intracerebral bleeding with subdural bleeding on the right occipital region and there were fragments of bone in the brain. An opinion was formed that the deceased died of cardiopulmonary arrest due to severe heavy blunt injury with subdural bleeding in the brain and comminuted scalp fractures.

(b) Proof that accused person committed the unlawful act which caused the death of the deceased

9) PW1 and PW2 and Accused and his witness have confirmed that there was a confrontation between Accused and Isaac on the material date. Accused explained that the confrontation was caused by Isaac who attacked him. His evidence was not controverted but only the two were in the house when the confrontation arose. There is no dispute that Isaac ran away and Accused pursued him. PW2 explained that she saw Accused attack Isaac on the head with stones.

10) The doctor confirmed that most of the injuries suffered by Isaac were on the head. The multiple injuries are not consistent with a fall and Accused's defence that Isaac fell on stones and injured himself is therefore rejected. The injuries are consistent with PW2's evidence that Accused attacked Isaac and hit him severally on the head.

11) From the foregoing, I am persuaded that Accused is the one that committed the unlawful act which caused the death of the deceased.

c) Malice aforethought

12) The offence of murder is complete when, “malice aforethought” is established if, pursuant to **section 206** of the **Penal Code** evidence proves any one or more of the following circumstances:

“(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) An intent to commit a felony;

(d) An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

13) When none of the aforesaid elements are proved but there is otherwise an unlawful killing of another human being, the person commits the felony of manslaughter under **section 202 Penal Code** which is punishable under **section 205 Penal Code** by a term of imprisonment extending up to life.

14) Having found that the prosecution has proved *actus reus*, the issue for determination is whether malice aforethought can be inferred from the circumstances of this case. Evidence by the Accused that he was provoked by Isaac has not been controverted.

15) . From the foregoing, it can safely be inferred that the act of assaulting deceased was not premeditated. The evidence as adduced by the prosecution established beyond reasonable doubt the act of unlawful killing of the deceased by the Accused person herein without malice aforethought. Sections 179 of the Criminal Procedure Code stipulates:

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but he remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.”

16) From the foregoing analysis, I find Accused guilty of a lesser charge of manslaughter contrary to Section 202 (1) of the Penal Code as read with Section 205 of the Penal Code and she is convicted accordingly.

DELIVERED AT MERU THIS 17th DAY OF *February* 2022

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr.Mutuma Kithinji hb for Mr.Kithinji KirigiahAdvocate

For the State - Ms. Mwaniki