



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Emodo & another (Criminal Case 12 of 2020)
[2022] KEHC 12228 (KLR) (21 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE 12 OF 2020
JR KARANJA, J
JUNE 21, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

PATRICK OTEBA EMODO 1ST ACCUSED

PHANICE CHEPKEMOI BARASA 2ND ACCUSED

JUDGMENT

1. The accused, Patrick Oteba Emodo, was initially charged alongside, Phanice Chepkemoi Baraza, with Murder, contrary to s 203 as read with s 204 of the [Penal Code](#).
It was alleged that the night of 23rd and June 24, 2020 at Alowet village, Kolonya, Teso North within Busia County, they jointly murdered John Indeché Ikapesi (deceased).
2. On March 4, 2021, the prosecution discontinued the charge against Phanice Chepkemoi Baraza, with a view to having her treated as a witness for the prosecution.
The case against the accused was that on the June 23, 2020, the deceased accompanied by the accused and Phanice were drinking illicit liquor (*chang'aa*) at the homestead of Margaret Akisa Enayo (PW 2). After partaking the liquor the trio left and went away.
3. The chairman of the local community policing unit, Obadiah Sikuku Ongoro (PW 3), happened to pass by at the home of Margaret. He found the trio drinking "*chang'aa*", he questioned them as to why they were drinking the stuff at that time of the day as he knew them as persons normally involved in undesirable activities surrounding the lady Phanice, a widow who was involved in intimate relationship with both the deceased and the accused and who was mostly the cause of dispute between the two.
4. The chairman (PW 3) warned the trio and proceeded to his home but left at about 6.00 pm when he again spotted Phanice and the deceased together. He met them on the way and noted that they



- were intoxicated. He left them alone and went his way but on the following day at about 2.00 pm was attracted by screams and shouts in the village. He enquired and learnt that the dead boy of the deceased had been found near a maize plantation.
5. Earlier on the June 17, 2020, the deceased's son-in-law, Fidelis Ikapesi (PW 4), was at their home when the accused arrived there and threatened the deceased before he asked him to leave. Thereafter, the deceased became restless and on June 19, 2020, indicated that he would see the area assistant chief over the accused's threats. Later, on June 24, 2020, Fidelis (PW 4) learnt that the dead body of his father-in-law had been found in a maize planation.
 6. The area assistant chief, Noah Emwen (PW 5), received a call from a village elder and informed of the deceased's dead body in a maize planation. He notified the area chief and the police before proceeding to the scene which was a maize planation belonging to Phanice. He noted that the body of the deceased was on the ground with injuries on the head.
 7. Cpl Patrick Okumu (PW 6), a detective police officer attached to the Directorate of Criminal Investigations (DCI) Teso North proceeded to the scene on receipt of the necessary report and instruction. He found the deceased's body in the maize planation surrounded by a group of villagers. In the process, he caused the scene to be photographed and then removed the body to the local mortuary. A group of four people including the accused and the lady Phanice were suspected to have been involved in the killing of the deceased.
 8. After investigations, the remainder of the suspects were released. The accused and Phanice were charged with the present offence, but Phanice was eventually released to be treated as a prosecution witness, but remains at large to date. The detective officer (PW 6) indicated that she escaped and could not be traced. He also indicated that investigations revealed that the accused and the deceased had a long standing grudge over the affection of Phanice for which they were always quarrelling and feuding.
 9. The post mortem report (PEx 1) prepared and signed by a medical officer at Kocholia District Hospital indicated that the cause of the death of the deceased was severe head injury due to blunt head injury.
The accused in his defence denied responsibility for the fatal injury and contended that he did not know how the deceased died as he was at his home on the material night.
 10. The accused stated that he previously worked in Kisumu but due to the onset of the corona pandemic the hotel where he was working closed down thereby causing him to return to his rural home in Teso North where he developed a relationship with the lady Phanice despite warnings from his relatives. He however, halted the relationships and on April 20, 2020, he was hired by Fidelis (PW 4) to do a casual job of digging a toilet. He was paid an initial amount of Kshs 2000/= on April 30, 2020. The balance was to be paid in May 2020, but when he met Fidelis, a lot of traditional liquor was purchased for him by Fidelis who complained that the job had not been done to his satisfaction.
 11. The accused went on to state that Fidelis insulted him in the presence of the deceased who then calmed him (accused) and that he (accused) was due to appear before tribal elders for cleansing of a taboo arising out of his relationship with a woman who was also in a relationship with his father. The accused further stated that he was at a liquor drinking den with the deceased and Phanice on the material date but left at about 5.00 pm for his home. The deceased and Phanice left earlier at 3.00 pm.
 12. On the following morning, the accused heard screams and on enquiry learnt that the body of the deceased had been found near the house of Phanice. He was later arrested together with Phanice and two others on suspicion of killing the deceased, but was the only one charged after the release of the other suspects.



13. All the foregoing evidence availed by both the prosecution and the defence in stating their respective cases indicated without dispute that the deceased died as a result of a criminal act of assault being committed against him by an individual or group of individuals. Indeed, the post mortem report (PEx 1) showed and established that the cause of death was due to severe head injury due to blunt head injury.
14. Therefore, there being no dispute as to the cause of death and the fact that it was a consequence of a criminal act of assault, the basic issue for determination was whether the accused was positively identified as the assailant and hence, responsible for the death of the deceased or whether he was positively linked to the death of the deceased.
15. Although the defence was a denial and the prosecution failed to lead any direct evidence against the accused, there was evidence from Collins Sishang Ekapes (PW 1), Margaret Alasa (PW 2) and Obadiah Sikuku (PW 3) which established that on or about the material date the deceased was in the company of the accused and Phanice partaking “changa” after which they left together. However, much later at about 6.00 pm, Obadiah (PW 3) spotted Phanice and the deceased together and very intoxicated.
16. There was also evidence from Fidelis (PW 4) which indicated that prior to the material date the accused had threatened the deceased in his presence to the effect that he (accused) would “finish” the deceased if he ever saw him (deceased) again. That, the deceased became restless after the threat and indicted that he would report the matter to the assistant chief.
However, according to a village elder, Isaac Emoiti (PW 7), the matter was reported to him by the deceased to the extent that the accused and the deceased had quarreled over repairs of a toilet.
17. The elder indicted that he pursued the matter by approaching the accused who told him that it was the deceased who wanted to beat him (accused).
There was no denial from the accused that he was with the deceased and Phanice on the material date drinking “changa”. He however, indicated that he remained at the “changa den” when the deceased left in the company of Phanice.
18. The accused thus implied that the deceased was lastly seen alive while in the company of the lady Phanice. However, Margaret (PW 2) indicated that the deceased was lastly in the company of both Phanice and the accused and this was more or less confirmed by Obadiah (PW 3) who also indicated that at some stage he saw Phanice and the deceased together.
19. The investigating officer (PW 6) indicated that the investigations revealed that the accused and Phanice were the last persons to be seen with the deceased while he was alive. That, the deceased and Phanice left the changaa den together but were immediately followed by the accused.
20. This evidence that the deceased was lastly seen alive while in the company of the accused and Phanice together with the evidence that the accused had prior to the material date threatened the deceased and the evidence that the accused, the deceased and Phanice had been involved in a “love triangle” provided strong and credible circumstantial evidence linking not only the accused but also Phanice to the death of the deceased.
Although Phanice was released for her to be treated as a prosecution witness, she was deeply linked to the death of the deceased as an accomplice of the accused.
21. It was not therefore surprising that Phanice took advantage of being released from this matter by escaping and remaining at large as a fugitive thereby further implying that she was one of the two people who assaulted and inflicted fatal injury upon the deceased. The other person as the evidence showed was the accused whose defence insofar as it portrayed him as an innocent person was overshadowed and



disproved by the very strong circumstantial evidence against him. In any event, it was not his obligation to prove his innocence but the prosecution's obligation to prove his guilt.

22. Circumstantial evidence is that which implies that a person committed a crime. It is evidence of facts that the court can draw conclusions from.

The circumstantial evidence adduced herein by the prosecution against the accused did establish the circumstances which led to the death of the deceased and inferred the guilt of the accused and Phanice to the exclusion of any other person.

23. The evidence establishes and upholds the prosecution's narrative that the deceased was assaulted and occasioned fatal injury by the accused. However, the circumstances leading to the offence actually indicated that the accused, the deceased and the lady Phanice were intoxicated at the time such that it was doubtful that the accused and Phanice had or formed the necessary intention to cause the death of the deceased. The incident was ignited by irresponsible consumption of alcoholic drink by the trio which unfortunately led to the death of the deceased.

24. It would therefore be safe for this court to conclude that the prosecution has by way of circumstantial evidence established and proved beyond reasonable doubt the guilt of the accused not for the offence of murder, but that of manslaughter, contrary to s 202(1) of the *Penal Code*.

The accused is accordingly convicted of manslaughter.

DELIVERED & SIGNED THIS 21ST DAY OF JUNE 2022

JR KARANJAH

JUDGE

