



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL CASE NUMBER 31 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

EMMANUEL SIMIYU SITATI.....ACCUSED

J U D G M E N T

The Accused **Emmanuel Simiyu Sitati** is charged with the offence of Murder Contrary to Section 203 of the Penal Code. The particulars of the offence are that on the 23rd day of August, 2019 at Joyland Village Matulo Su-location in Webuye West Sub-county within Bungoma County murdered **Janet Nelima Kabusia**.

The prosecuting case is that the deceased was a wife of the accused. On 23.8.2019 at 3 p.m. **PW2 Jentrix Wangila Wanyonyi** who is a tenant at the plot where the accused is a caretaker was outside her house. She saw a girl enter the house of accused. About 30 minutes after entering the accused house, she heard a girl crying from the house. After a short while the cries subsided. He then saw accused come out and lock his house with a padlock from the outside. Accused then asked witness to call his mobile number to enable him establish where his mobile was. She told him she did not have credit. He went to the toilet and went back to the house where he changed shirt and locked the house and went away. The girl however did not come out.

PW5 Millicent Nanjala Odhiambo who also stays in the same plot of houses was outside her house when she saw the deceased enter her house. The husband, the accused followed her and locked the house. She then heard them quarreling. After a short time accused came out and when the witness asked him he told her he had assaulted the deceased and left her to sleep and that she will wake up.

Accused then left saying he was going to pay for the milk. She did not see him come back. On being cross examined by **Wekesa** for accused, this witness stated that accused said he had assaulted the deceased because she had lied that she was going to her home but instead went to other men.

PW7 NO. 66046 Copl Joseph Musyoki attached to Bungoma police station was at the station on 23.8.2019 when accused went to the station at 10 p.m. and reported that he had killed his wife at Webuye. He arrested him and placed him in cells.

PW6 No. 9116 PC Peter Mukunya received the accused from Bungoma police and together with Inspector Wafula visited the scene with accused. Accused. Accused led them to Joyland estate Webuye where they found his house locked. He produced a key which they unlocked the padlock. On entering they found the body of the deceased which was covered with a blanket. There was a foam from the nose. They took the body to the mortuary. The next day they recorded statement of the neighbours.

PW1 Dr. Wanambisi Caleb Sita, produced a post mortem report prepared by Dr. Munyendo who performed the post mortem. Dr. Munyendo found that the deceased had bruises on right hand supervision bruises on neck, and bruises on right shoulder. Upon opening the body, he found there was inflammatory changes on right lung and swelling on the back of head with blood in the brain. He formed opinion that cause of death was due to blood in the brain caused by severed head injury.

The accused gave a sworn statement in his defence. He testified that the deceased was his wife. On 21.8.2019 she went to her parents' home to rest as she was suffering from epilepsy. On 22.8.2019 she came back saying she had come to buy paraffin but did not get it. He told her to go to the house. He also went and left at 2.30 p.m. leaving her preparing food. At 7 p.m. he went back and found her lying down with foam from her nose and had passed urine. He then left to look for assistance. He went to Bungoma police station and reported that he had found his wife having fallen down. They took him to Webuye police where he gave police direction to his home. They left him behind for fear of members of public. They took the body. He denied quarrelling with deceased or killing her.

Mr. Wekesa for the accused submitted that there are many doubts and gaps as to the cause of death which doubts should be found to be for the benefit of accused. He submitted that the accused's evidence is clear, devoid of contradiction and consistent and that the cause of death

was due to epilepsy which is an act of God.

That the deceased **Janet Nelima Kabusia** the wife of the accused died on 23.8.2019 is not contested. **PW1 Dr. Wanabisi Caleb Wata** who produced the post mortem report prepared by Dr. Munyendo confirmed this. Indeed even the accused testified that the deceased died on that day. From the post mortem conducted on the body of deceased the deceased had bruises on right hand on fingers, bruises on neck, right shoulder. There were slight inflammatory changes on the lung and sub-dural haematomas on the brain. He formed opinion that cause of death was due to severe head injury due to blunt trauma.

The accused in his defence while not contesting the cause of death testified that the deceased fell down due to epileptic fit and sustained the injuries. He contends that he did not inflict the injuries on the deceased.

PW2 Jentrix Wangila who was at the back of rooms where the accused was caretaker testified that accused and deceased were in their house when she heard them quarrel. The quarrel stopped and accused locked the house from outside and left. **PW5 Millicent Nanjala** was also at the venue when she saw accused and deceased enter the house and started quarrelling. Accused then came out and informed her he had assaulted the deceased. He then left.

PW7 No. 66046 Copl Japehth Musyoki was at Bungoma police station. When at about 10 p.m. the accused went to the police station and reported that he had assaulted his wife who died and he left her in the house. This witness on being cross examined by Wekesa for accused stated that accused had pushed the deceased and she fell down. Accused gave direction to **PW6** to his house where the body of the deceased was found covered by a blanket.

The deceased died from blunt force injuries at back of the head. She also had bruises on the right hand measuring 3x3 cm, bruises on the neck 8cm by 4 cm and another measuring 7cm by 4 cm, bruises on right shoulder approximately 3cm in diameter and sub-dural haematomas on the occipital region. These are severe injuries on the body of the deceased indicative of various parts of the body which cannot be consistent to a fall due to epilepsy. There was no evidence in the post mortem that the deceased ever suffered from epilepsy, nor was there history of the same. The accused's assertion that she died from a fall due to epilepsy cannot therefore be true.

From all the evidence tendered and the accused's defence I am satisfied that the accused did unlawfully inflict the injuries on the deceased from which injuries she died. I therefore find the prosecution has proved a charge of murder contrary to Section 203 as read with Section 203 and 204 of the Penal Code and convict him accordingly.

Dated, signed and delivered at Bungoma this 27th day July, 2021.

S N RIECHI

JUDGE