



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E018 OF 2021[MURDER TO MANSLAUGHTER]

CORAM: HON. R.E. ABURILL J

STATE.....PROSECUTION

VERSUS

ANDREW OTIENO GUYA..... ACCUSED

JUDGMENT ON PLEA BARGAIN

1. The accused person herein is Andrew Otiemo Guya. He was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the Information dated 19th July 2021 are that on the 30th Day of April at Kanyabok village, Mulunga Central Sub location in Gem Sub County, in Siaya County, the accused person murdered Josphine Caroline Akonde. The accused person took plea on 28/7/2021 after the court was satisfied that he had been assessed and found to be mentally sound and fit to take plea and stand trial. He pleaded not guilty to the charge of murder and a hearing date was set for 16th November, 2021. On the latter date, the accused person through his advocate Mr. Okanda offered to plea bargain but because the witnesses were already in court, the court took the testimony of PW1 Moses Onyango Alego while the prosecution Counsel Mr. Kakoi undertook to speak to the family of the deceased and the investigating officer on the offer. The actual plea bargain was concluded on 30/11/2021, with an agreement duly signed by the prosecution counsel, the defence counsel and the accused person.
2. The prosecution did apply and the court allowed for substitution of murder to manslaughter contrary to section 202 as read with section 205 of the Penal Code. The factual basis upon which the prosecution considered and accepted the plea bargain is that the process would save the court time and resources by shortening the trial, that the family of the deceased wanted closure of the case but that the victim remains blameless.
3. The court then took through the accused person the plea bargain procedure to establish whether he understood the process and after satisfying myself that the accused understood the process, I substituted the charge of murder for manslaughter upon which the said charge by way of Information dated 30/11/2021 was read out to the accused person in dholuo language which he understood and he pleaded guilty to the lesser charge of manslaughter. The prosecutor read out the facts of the case and the accused person on being asked whether the facts were correct or not correct, he admitted the facts as being correct. The court then convicted the accused person on his own plea of guilty for the Information of manslaughter contrary to section 202 of the Penal Code.
4. The facts as read out to court and as recorded are that on 30th April 2021, the accused went with the deceased to a chang'aa den where they partook of some small amount of the liquor and left together. Along the way, they went into a nearby bush and had sex and in the course, the accused person had the urge to kill the deceased so he strangled her then he took her groundnuts which she had for sale and went back to the chang'aa den and tried to sell it to the revelers but they refused to buy the same so he went away and slept. Later at about 3.00am, he went back to the scene where he had strangled the deceased to death and dragged the body and threw it into a toilet in an abandoned homestead nearby then he went back to his home and continued with his life as usual.
5. The husband to the deceased on started looking for her as she failed to return home and reported the matter to the police who commenced investigations and the accused was suspected as he was the last person to be seen with the deceased. He was questioned by the police but he denied any wrongdoing until two months later when he was arrested and interrogated further on 23/6/2021 when he took the police to where he had thrown the body of the deceased, in a pit latrine. The police found a decomposed body of the deceased, removed it from the pit latrine and a postmortem was undertaken but the results on the cause of death were found to be inconclusive due to the near complete decomposition of the body systems. The post mortem report was produced as PW1.
6. A DNA was conducted on the deceased's arm and her living daughter to establish the identity of the dead body as per Pex 2(a), a DNA report which revealed that the decomposed body was that of the deceased Josphine Caroline Akonde as her DNA matched that of her daughter Emily Akinyi. The Exhibit memo forwarding the samples to the Government Chemist was produced as Pex 2(b).
7. On further interrogation, the accused made a confession recorded by Chief Inspector Joash Onchwari, both handwritten and typed

confession were produced as Pex 3 (a), (b) and proforma on preliminaries to the confession as Pex 3(c). The accused was then formally arrested and taken for mental assessment where he was found to be fit to stand trial and charged with the Information for murder which has now been reduced and substituted with manslaughter through plea bargain.

8. Upon conviction of the accused on his own plea of guilty, the prosecutor indicated that he had no previous records and therefore the accused could be treated as a first offender.

9. In mitigation by his counsel and in person, the accused is said to have been extremely disturbed and sad that he killed the deceased, someone's wife and mother. He regretted his actions which had now shamed and embarrassed him, he is a first offender. Counsel prayed for lenient sentence of up to 15 years imprisonment.

10. In his own words, the accused mitigated and thanked the court for accepting his plea bargain and expediting his trial saying he was still shaken by the incident and pleaded for forgiveness. He stated that he was 33 years old and married to one wife and has two children. That he knew the deceased, her family and husband and asked for their forgiveness.

11. Michael Okoth Orengo the husband to the deceased was sworn to give a victim impact statement. He stated that he was 43 years old and had been married to the deceased for 10 years. She was 34 years old. They were blessed with two children but one died. He loved his wife who used to sell ground nuts to fend for the family while he did casual jobs as a jua kali artisan. He did not agree with the accused and blamed him for killing the deceased. He asked the court to jail the accused for over 50 years so that he also dies in prison.

12. This court has considered the charge as plea bargained for from murder to manslaughter and the circumstances under which the offence was committed, and the age of the accused person, and the Judiciary Policy Sentencing guidelines as well as the sentencing guidelines espoused in the **Francis Muruatetu & another v R [2017]e KLR** case. In this case, as clarified by the supreme Court on 6/7/2021, the court is sentencing should consider the following factors which I shall consider in this case:

a. Age of the offender;

b. Being a first offender;

c. Whether the offender pleaded guilty;

d. Character and record of the offender;

e. Commission of the offence in response to gender-based violence;

f. The manner in which the offence was committed on the victim;

g. The physical and psychological effect of the offence on the victim's family;

h. Remorsefulness of the offender;

i. The possibility of reform and social re-adaptation of the offender;

j. Any other factor that the Court considers relevant.

viii.

13. I observe that the accused person was charged with murder but has plea bargained for manslaughter and pleaded guilty to the lesser charge of manslaughter which carries up to life imprisonment upon conviction. I also observe that the accused is aged 33 years old and a first offender. He is remorseful for what he did to the deceased and his family and has asked the court to sentence him to no more than 15 years imprisonment. The prosecution asked the court to impose a prison term of not less than 40 years as the deceased was blameless.

14. From the admitted facts which are also contained in the confession statement by the accused person produced as an exhibit, the accused strangled the deceased after having sex with her and he claims that he seduced her and she accepted to have sex with him then something came over him and he decided to strangle her. He then pulled the body into a bush to conceal it and went away as if nothing had happened although his spirit was troubled. He later returned to the scene and on realizing that nobody had seen or disturbed it, he pulled the deceased and dumped her body into a nearby pit latrine where she got decomposed such that by the time her body was retrieved and with the help of the accused person, it was beyond recognition. He nonetheless could identify her and the clothing she wore on the day he strangled her. There is absolutely no reason why the accused unlawfully killed the deceased. He is lucky that his plea bargain for manslaughter was accepted by the state otherwise this was a pure murder case. He gave no reason.

15. I find the accused to be an extremely dangerous human being who has no respect for life. He deserves very severe punishment as correctly stated by the husband to the deceased in his victim impact statement. No person has any right to take away the life of another except by law provided. The deceased left behind a family that loved her. She did not deserve to be killed. She was killed after a sexual ordeal in the hands of the accused who by his own admission, he knew her and her family and husband. Therefore considering all the above factors and circumstances, I exercise discretion and sentence the accused person Andrew Otieno Guya to serve fifty (50) years imprisonment to be calculated from the date of his arrest on 18th May, 2021.

16. Orders accordingly.

17. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF NOVEMBER, 2021

R.E.ABURLI

JUDGE