



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO. 8 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

DKR (Minor).....SUBJECT

JUDGMENT

1. The subject in this case is a minor aged 15 years old at the time he was charged in court. The subject is facing a charge of MURDER contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge are that on 18/2/2020 at KAPKWEN village, AINAMOI location in KERICHO East within KERICHO County, the subject murdered JOSEPH BARCHILEI.
3. The subject pleaded not guilty to the charge and the prosecution called six (6) witnesses during the trial whose evidence was as follows;
4. PW1, ALFRED KIPKURUI said on the material day at 6p.m he was at the home of the deceased who was his cousin resting when the subject arrived at the home of the deceased and asked the deceased why he had reported to the police that he (subject) had stolen his money.
5. The subject took an axe which the deceased's son was using to split firewood and he hit the deceased with it on the forehead and he ran away.
6. PW1 said the deceased was injured on the forehead. He said he wanted to take the deceased to hospital but he declined and said his brother would take him to hospital. The deceased's brother had gone to Londiani.
7. The deceased's brother delayed and PW1 decided to wait for him. He took the deceased to his house and the deceased's son prepared food but the deceased did not eat.
8. At 4a.m PW1 said he noticed the deceased was not responding and he called the deceased's son who confirmed that the deceased had died.
9. The matter was reported at Ainamoi Police Station. PW1 said the deceased and the subject were friends. He said the subject was working for the deceased as a motor cycle operator. The money in dispute was Kshs. 20,000 which was stolen from the deceased and he (deceased) suspected that the subject had stolen it and he had reported to the police.
10. On cross examination PW1 said the deceased started bleeding from the nose when he was hit by the subject. He also said the deceased told him that he had sold a shamba and he wanted to buy a cow with the Kshs. 20,000 which the subject stole from him.
11. PW2 GIDEON KIPRONO, a son to the deceased said at the material time he was at home with the deceased, PW1 and his girlfriend called Vicky when the subject arrived. He said the subject asked the deceased why he had reported that he (the subject) had stolen his money Kshs. 20,000.
12. PW2 said he left them talking and went to the posho mill. When PW2 returned he saw the subject picking an axe which PW2 was using to split firewood which he had left lying at the scene and used it to hit the deceased on the head.
13. PW2 said the deceased started bleeding from the nose and the subject ran way. PW2 also said the deceased refused to go to hospital and when PW2 prepared food he also did not eat.

14. PW2 said PW1 woke him at 4a.m and told him the deceased was not responding. PW2 called his uncle (PW3) and they confirmed the deceased had died. The body was taken to the mortuary by the police.
15. PW3 THOMAS KIMUTAI BARCHILEI said on the material day he had gone to Kaplolong' on official duties and when he returned at 9p.m he went to his house and slept. At 4a.m, he was called by PW1 and PW2 who told him the deceased who was his brother was lying in a pool of blood.
16. When PW3 went to the house of the deceased, he found him lying on a mattress on the floor and he saw blood oozing from the mouth, nose and ears. He was told the subject had hit the deceased with an axe. PW3 reported the matter to Ainamoi police station. He said he knew the deceased had reported to the police that the subject had stolen his money Kshs. 20,000/=.
17. On cross-examination PW3 said the deceased had separated with his wife due to domestic problems.
18. PW4 SERG. PETERSON OTACHI said on 19/2/2020 he was at Nyagacho Police Station when the OCS told him to accompany him to Kapkwen village at Ainamoi. They went to Ainamoi police station where they met PW3 who reported that his brother JOSEPH BARCHILEI (the deceased) had been murdered.
19. PW4 went with PW3 in the company of police officers from Ainamoi Station and they took the body of the deceased to Siloam Hospital mortuary where a post mortem was to be done. PW4 also said the deceased had made a report at Ainamoi police station that the subject had stolen his money. PW4 did investigations and charged the subject with this offence.
20. PW5, GILBER ROTICH said he was at the home of the deceased picking tea when he saw the deceased and the subject arguing. PW5 did not know what they were arguing about. He said he went to the kitchen to drink water and when he returned, the subject had run away and the deceased was bleeding. PW5 did not witness the incident as he was in the kitchen drinking water.
21. PW6, DR. HARRY MUGUN conducted the post mortem on 20/2/2020. The doctor formed the opinion that the cause of death was subdural haematoma secondary to blunt force trauma.
22. The doctor also said the deceased did not have physical injuries but upon opening the brain, there was accumulation of blood (haematoma) in the occipital region. The Doctor produced the Post Mortem Report as an Exhibit in this case.
23. The court found that the prosecution had established a prima facie case at the close of their case to warrant the subject to be put on his defence.
24. The subject gave unsworn evidence and he called on witness (DW2), his mother. The subject said he used to take the deceased to drink on his (the deceased's) motor cycle and the deceased would pay him later.
25. The subject said he had gone to drink with the deceased the day before the incident occurred. He said he learnt the following day that the deceased had reported to the police that the subject had stolen his money Kshs. 20,000 and the subject went to ask him why he had made the said report. He said they fought and he learnt that the deceased died.
26. DW2 CECILIAH KOECH, the mother of the subject said the deceased was her neighbour and that he used to look for the subject to operate his motorcycle. She said the subject dropped out of school in class 6 and he used to drink alcohol. She said the subject did not have any disagreement with the deceased.
27. I have considered the evidence on record together with the submissions filed by both parties. It is the duty of the prosecution to prove the guilt of the subject and the standard of proof is beyond reasonable doubt.
28. The elements the prosecution must prove in a murder charge are as follows;
 - i. The death of the deceased.
 - ii. That it is the Accused who caused the death.
 - iii. That the Accused had malice aforethought.
29. I find that in the current case, there is evidence that it is the subject that inflicted the fatal injuries on the deceased.
30. The subject said he went to inquire from the deceased why he had made a report to the police that he (the subject) had stolen the deceased's money.
31. There is evidence that the deceased and the subject were friends prior to the incident. There is evidence that on the material day, they argued over a report made by the deceased to the police that the subject had stolen his money Kshs. 20,000/=.
32. I find that the evidence reveals an offence of manslaughter. There is no evidence that the subject premeditated the offence and executed it with malice aforethought.

33. There is no evidence that the subject intended to kill the deceased.

34. I accordingly reduce the charge to manslaughter contrary to section 202 as read with section 205 of the Penal Code.

35. Section 189 of the Childrens' Act provides a safeguard in relation to the proceedings against a child particularly where the child is found guilty of the offence with which the child has been charged; it says:

"The words "conviction" and "sentence" shall not be used in relation to a child dealt with by the Children's Court, and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order upon such a finding, as the case may be."

36. I find the subject guilty of manslaughter but will not convict him since he is minor.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 26TH DAY OF NOVEMBER, 2021

A. N. ONGERI

JUDGE