



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 50 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

RICHARD CHESONI MUKHANGAIACCUSED

JUDGMENT

RICHARD CHESONI MUKH'ANGAI is herein charged with the offence of Murder, contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of this offence being that on the night of 7th and 8th day of January, 2012 at Loreto Matunda junction village, Matunda location in Eldoret West district, within Rift Valley province, the accused murdered *Elizabeth Wanjiku*.

The prosecution case is that the deceased in this case had a son called *Brand Mwangi* who is the PW-2 in this case. By the time of the alleged offence he was about 4 years old. The accused herein was in a love relationship with the deceased. The said relationship was well known about by PW-1 who is the father of the deceased and to the deceased's two sisters who are PW-4 and PW-6 in this case. As would be expected the relationship between the deceased and the accused was not entirely blissful. By the time the offence was allegedly committed the two had parted ways but were still in touch. On the night of 7th and 8th of January 2012 the deceased was with PW-2 in her house at Loreto Matunda junction village. The accused visited them. PW-2 however slept and left the deceased with the accused.

On 8th January at 6 a.m PW4 was called using a private number. She picked the call and recognized the voice as that of *Richard Chesoni*. They had met many times before and spoken and was conversant with his voice. He told her to go and pick *Brand Mwangi* (PW-2) as he was alone in the house. PW-2 asked where the mother was and the phone was disconnected. She was then sent a message using the deceased's number (phone) stating that, "your sis is dead." PW-4 knew it is the accused who sent the message as he was answering her question. Likewise PW-6 was called around the same time using a private number. She did not pick the phone, but when it rang again she picked. The accused spoke calling her "shem", a short form for "shemeji". He introduced himself as "Rich", but by then PW-6 had known it is the accused who was calling. He told her to go and pick the child as he was alone in the house. PW-6 asked him where the mother was and he did not respond. He disconnected the phone. He called again using the private number of which annoyed PW-6. He again asked her to collect the child as he was alone in the house. She asked where the mother was and he again disconnected the phone. She rose from bed. Pw-4 then called her and informed her that their sister had been killed. They both rushed to the deceased's house separately. Upon arrival PW-4 found the deceased lying facing upward. There was foam on the mouth and some marks on the neck. The marks were of some dots in a line. On her side was a blue chain. Under the bed there was a pen knife in its sheath. PW-6 arrived after the police and some other people had arrived. She saw the body on the floor next to the bed. It had foam on the mouth. She fell on the body crying and was held and led outside.

PW-1 was told about the death of his daughter by his wife on 8/1/2012 at about 8.00 a.m. He was shocked and left the house without shoes, not knowing where he was headed to. Neighbours among them the PW-3 in this case held him and led him back to the house. They calmed him. He then together with PW-3 went to the scene. He found his wife, PW-4 and PW-6 had already arrived. He witnessed the body of his daughter. He then went outside and started looking for the accused. One of his daughters (PW-4) gave him the accused's telephone number. He tried to call him but he did not pick the phone. He used PW-3's phone to call the accused and still he did not pick the phone. Later he returned the call and PW-1 told PW-3 to put it on speaker phone. He did so. PW-1 also told PW-3 to tell the accused that he was a friend to Elizabeth and wanted to know whether or not it was true that she had been murdered. PW-3 did exactly that and the accused said in Swahili, "*kama ni huyo, nimemuua, alikuwa anataka kunidunga na Kisu nikamshinda nguvu nikamuua*". In English this means, "*If it is that one, I have killed her, she wanted to stab me with a knife but I was stronger than her and killed her*". PW-1 told the police about it and gave them his number. CPL Kiragu called him and said he was saying he was in Eldoret and was on his way to the scene. At about 1.00 p.m PW-1 was told the accused was arrested around Kabose while on his way to Nairobi.

The body was taken to Kitale District Hospital mortuary where the post mortem was conducted on 12/1/2012 at noon by *Dr. Edward Kawa*. The doctor noted that there was circumferential abrasion around the neck at the level of cricoid cartilage. Other areas were normal. The cause of death was opined as asphyxia, secondary to strangulation.

The post mortem was thus filled and was produced as PExhibit 1.

The accused after investigations was charged for the offence.

The accused in his defence gave a lengthy sworn testimony. In it he said that he was married for 2 years and had an adopted boy, one *Brand Mwangi*. They had a blissful marriage for the period, the best he has ever had.

On 7th January, 2012 they were together in the house at Moi's Bridge till 3.00p.m when they went shopping. It was a routine for them to do shopping together. They returned to the house and made supper together.

He cooked ugali as she cooked the stew. They had dinner. He then went to take a shower as at 7.30 p.m he was to travel back to Nairobi. He was working at Nairobi with Lavington Security Company as a driver. The deceased packed his bag. They then had a short prayer together. At about 8.00p.m he left the house. She did not escort him as it was at night and

the stage was at a distance. He went and booked a ticker with Eldoret Express Bus. At about 9.00 p.m he boarded the bus. He got to Nairobi at about 5.00 a.m. He went to his room in Kangemi. He changed, had breakfast and reported for duty. He was assigned duty at Valley Arcade in Lavington. At about 10.30 a.m he received a call from a strange caller. He picked it. The caller introduced himself as an officer from Moi's Bridge police station and asked him whether he was aware of what was going on. He said he was not. He was then informed that something wrong had happened to Elizabeth. He told the caller to be straight and state what had happened. He was then told that she was found dead. The accused got confused and frustrated. The caller told him to be strong and do him a favour of going to the nearest police station and give the officer in charge his phone so that they could communicate. The accused went to Kabete police station. He met the OCS and told him about the death of his wife. He gave him the phone as had been advised. The OCS talked with the officer from Moi's Bridge. The OCS then told the accused that he'll be placed in custody as a suspect in the murder. He was arrested and placed in custody. He is not the one who murdered his wife. He never confessed about the offence. He alleged he loved his wife, still misses her and is not yet married as he is still mourning her death.

At this juncture the court must determine as to whether the offence against the accused is proved by the prosecution beyond reasonable doubt.

There are three ingredients of the offence of Murder which the prosecution must prove beyond reasonable doubt, namely:-

- (i) The death of the deceased and the cause of the said death.
- (ii) That the accused person by act of commission or omission, unlawfully caused the death of the deceased; and,
- (iii) That the accused had malice aforethought.

In this case there is no dispute as to the death of the deceased and the cause of her death. All the prosecution witnesses, save for PW-5, witnessed the dead body of the deceased. The post mortem report shows she died out of strangulation. It therefore follows that as to the first element of the offence, it is well established beyond reasonable doubt.

On the 2nd element, the available evidence is that the accused had the opportunity to commit the offence as he was with the deceased on the night she was murdered. The evidence of PW-2, a minor, establishes so.

The accused himself does not deny that he was with her, but alleges that he left her for Nairobi at about 8.00 p.m. However, the evidence that he left at that time, and the deceased was alive then, is not corroborated by any other evidence. Even a mere bus ticket was not produced to show the time he booked the bus and left.

The circumstantial evidence which is well corroborated by the evidence of PW-1, PW-2, PW-3, PW-4 and PW-6, points irresistibly to his guilt. He made calls separately to PW-4 and PW-6 using a private number and urged them to go for the child as he (the child) was alone. When he was asked where the mother was, he disconnected the phone in both instances. This was at 6.00 a.m and shows he was aware of the death of his wife at the time and had no courage to say she was dead. He later texted PW-4 using the deceased's phone, stating that she was dead. This evidence of which is natural and logical, and therefore cannot be doubted, implies strongly that the accused was still at the scene and had the deceased's phone. If not so, he had carried the deceased's phone after killing her, knowing it was of no use to her. The evidence of PW-1 as to what the accused later told PW-3 on phone, though the said words were not well and fully corroborated by

PW-3 himself, did not appear as just a created story. It sounds real and true. The accused allegedly said in Swahili that, "If it is that one, I have killed her, she tried to stab me with a knife but I was stronger than her and killed her." These words raises a possible defence of "self defence" and if they were not true could not have been crafted that way by the father of the deceased. Failure of PW-3 to corroborate the words could have been an oversight as he corroborated the rest of the evidence. The words are not out of place as at the scene there was a pen knife in its sheath. I am convinced beyond reasonable doubt that the accused uttered the said words.

As was held in the case of *Republic –vs- Elizabeth Anyango Ojwang [2018]Eklr*, the circumstantial evidence is justified if the inference of guilt, the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of his guilt. The circumstantial evidence available in this case meets the said legal standard.

Malice aforethought is the intention to kill or harm. Strangulation of a person using a necklace as it happened in this case, must have been intended to kill the deceased or cause her great bodily harm.

I am aware that the investigating officer never gave evidence, but the issue is whether the available evidence is adequate, sufficient for the offence, and establishes the offence beyond reasonable doubt. I do find the evidence complete as far as the ingredients of the offence are concerned.

The accused defence is a well crafted story which is exaggerated in terms of the love he had for the deceased and the blissfulness of their relationship or marriage. Disclosure of that they shopped together, cooked together, ate together, prayed together and that he misses her and is still mourning her, was made to hoodwink the court that he had no cause to kill her, and never did it. However, the evidence dictates otherwise. The defence raises no doubt on the truth of the prosecution case and its therefore dismissed.

The upshot is that the offence of murder against the accused, is proved by the prosecution beyond reasonable doubt and the accused is convicted of the same.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 12th day of March, 2020.

In the presence of:-

- (1) Mr.Kagunza for the accused
- (2) Ms Limo for State
- (3) Mr. Eululo - Court assistant

Prosecution:

We don't have previous records. He is a first offender.

Mr. Kagunza in Mitigation:-

I pray for leniency in sentencing the accused. He is a first offender. He has a young family he is taking care of. He also has a medical condition. We pray for a lenient sentence.

Court:-

I have considered the mitigation and circumstances in which the offence was committed. It was in a brutal manner by the accused using own hands against a lady they had been in love. A young boy out of the crime was left without a mother and will be forever traumatized by the memory of the body of his mother which he witnessed when he woke up. The accused in my view deserves no leniency.

He is sentenced to serve 20 years in prison.

Right of Appeal 14 days.

S.M GITHINJI

JUDGE