



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.30 OF 2015

REPUBLIC.....PROSECUTION

VS

SARI LESAMAJA.....ACCUSED

JUDGEMENT

The accused Sari Lesamaja was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the penal code.

Particulars of the information are that the accused Sari Lesamaja on this 24th day of March 2015 at Embakasi Village, Wamba Location in Samburu East Sub-County jointly with others not before the court murdered Sitakweni Lelikina.

PW1 testified that the accused killed her husband. She said Sari was with his brother but she didn't know his name. She said incident took place at 11.00 am while the deceased was herding goats in the gully. She said she was there with her young son when the incident took place. She said it is her husband's knife which was used to kill him. She said the accused removed the sword from the deceased person and used it to hit him on the head and he fell and died. That after the deceased fell down accused and his brother stabbed him on the neck, back and ribs. PW1 said she ran away and left accused and his brother killing the deceased. She said the accused and his brother fled after killing the deceased. She said she raised alarm and people responded and police also came and collected the body. She said the accused was known to her but he had no dispute with the deceased. She said the accused and his brother came from a different village. PW1 confirmed that accused was injured on the head out of the incident.

PW2 Antoneta Lesiyei said that on 24th March 2015. She was on her way from Wamba when she met the accused and his brother. That the accused person's brother was helping him to go home as he was bleeding from the head and hand. That the accused and his brother told PW2 to go and pick their corpse which they had killed. She said about 80 to 100 metres away she found the body of the deceased lying in a pool of blood. She said there were 5 people at the scene. She said the deceased had cuts on the head and on the abdomen across. That police came and collected the body and later recorded her statement. She said Sari's brother is in Nairobi. That he has never come back to Wamba since they killed the deceased. PW2 said the deceased was her neighbour.

PW3 father of the accused testified that on 24th March 2015 the deceased and accused fought in the grazing field. He said accused came back with a cut and fracture of the skull. He said accused returned home alone. He said when he saw accused had blood stains all over and he said it was the deceased who had caused him to bleed. PW3 rushed the accused to hospital. He said that the accused left animals in the grazing field.

PW3 reported matter at the police station that his son had fought the deceased in the grazing field. Police visited his son in hospital. He said to the accused was treated and taken to police station. PW3 said he recorded a statement and said the accused told him the deceased attacked him but he had defeated him and wrestled him down and cut him severally. He said his son Ndeti is at large and he doesn't know his whereabouts.

PW4 Assistant chief Wamba sub-location testified that while he was attending Mobile court at Wamba. PW3 informed him about fight between the deceased and the accused while herding cattle in the field. He learnt from PW3 that he had taken accused to hospital and wanted to go and report to police.

PW4 assigned a village elder to accompany PW3 to police station. He learnt that it was also reported that the person who had fought with accused had died. PW4 said he witnessed post-mortem the following day at Wamba Hospital Mortuary. He said he learnt accused and the deceased had conflict over a long time as accused had an affair with the deceased person's wife.

PW5 Dr. Muoka produced Post Mortem Report prepared by Dr. Nyangenesi on 25th March 2015. The deceased persons cause of death was established as severe head injury with bleeding out due to multiple injuries secondary to assault with sharp object. The accused persons Medical report was also produced. It indicated accused suffered frontal scalp laceration approx. 10cm long as well as laceration to the right had approx. 7 cm long. His injuries were classified as harm.

PW6 Sergeant Optat investigated the offence and preferred charge against the accused person. He also produced exhibits in court

- Sheath
- Small axe
- Sword
- Twisted iron rod.

PW6 said the information that accused had an affair with the deceased persons wife came from the accused while giving statement under inquiry.

When placed on defence the accused in sworn statement said he was a herder and that on 24th March 2015 he went to the field to herd cattle. He said his cattle trespassed into deceased person's farm when he remained behind. That he went and drove them from the farm and went to the field. That the deceased went to look for him in the field. That he had sat down where the animals were resting and he saw the deceased one metre away armed with a sword which he used to cut him on the head. That he held the deceased and he was cut on the right head.

That they struggled and he snatched the knife and stabbed the deceased. He said he was bleeding from the head and blood was all over his face and he didn't see which part of the deceased person's body he stabbed. He said he didn't have any weapon. He said the deceased came to kill him. He said he used a scarf to tie the bleeding head as he felt dizzy and walked slowly back home and reported to his father PW3 that deceased had ambushed him. PW3 took him to hospital from where he was treated and later arrested.

He said his animals trespassed into deceased persons farm which had grass. He said there was no one else where he fought with the deceased. He denied that he had a relationship with deceased persons wife . He said he doesn't come from same village with deceased persons wife. He said he stayed at his fathers manyatta because he was not yet married. He said the deceased was not herding cattle but went to attack him. He said he had no grudge with the deceased but deceased ambushed him.

The state and the accused persons counsel filed written submissions. It was submitted that death of the deceased was as a result of self defence by the accused. It was submitted that all the weapons allegedly used in the fight belonged to the deceased. It was argued that the incident was not premeditated by the accused as he had no grudge with the deceased and he similarly suffered injuries in the incident. The state on the other hand submitted that they had proved beyond all reasonable doubt that accused murdered the deceased.

This court is determined whether the 3 ingredients of the offence of murder as stated in the authority of **RVS James Mwirigi (2016) eKLR – H.C.CR. C.No 11 of 2016** have been established by the prosecution. The fact of death has been proved by prosecution through all the witnesses as well as the accused person who had a confrontation with the deceased. Whether the death was caused by an unlawful act, the deceased persons wife said the accused and his brother attacked the deceased in the grazing field and murdered him. She said she witnessed the attack. Although the deceased persons weapon was used in the murder, evidence of PW1, the deceased persons wife PW1 was to the effect that it is accused and his brother who attacked the deceased and cut him with the sword which they snatched from him. If it is true that the deceased attacked the accused he could have had more serious injuries but not the superficial lacerations on the forehead and the hand. Accused told his father he cut the deceased severally and indeed post-mortem report indicates that the deceased had multiple injuries secondary to assault with sharp object on the head.

The injuries the accused and his brother inflicted on the deceased are not ones that can be said arose out of self defence as they were too severe. Even after overpowering the deceased they continued inflicting injuries on lower chest. This must have been aimed at his heart. The deceased bled into the thoracic cavity. There were injuries to the nervous system. When accused was being supported home his utterance to PW2 were not kind concerning the deceased. He bragged and felt heroic for killing the deceased it could not have been an accident. The accused intentionally and maliciously committed the offence with the help of his brother who is at large. PW2 said the accused persons brother escaped since committing the offence and even the accused person father was economical with the truth about the whereabouts of his son who also committed the offence.

This court is convinced by the evidence of the prosecution witnesses that the accused jointly with his brother who is at large committed the murder of the deceased. Accused is therefore found guilty as charged and is convicted under S.215 C.P.C.

HON. A.ONG'INJO

JUDGE

29.1.2019

Before Adwera –Ong'injo J

Kinoti – C/A

Mrs Mwathi for state Mr. Wamache Advocate holding brief for E. Kimathi for accused.

Accused- Present in person

JUDGMENT DELIVERED, DATED AND SIGNED IN COURT ON 29TH DAY OF JANUARY 2019.

Mrs mwathi for state

Accused maybe treated as 1st offender.

Mr. Wamache Advocate in Mitigation for accused.

Accused is remorseful. He is a 1st offender. He is a young man of 25 years. He is not yet married and he seeks courts mercy and also that the court considers non-custodial sentence as he has been in custody since 2015.

Order

M 28.2.2019 for Victim Impact Statement and Sentencing.

HON. A.ONG'INJO

JUDGE