



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 37 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

TITUS MURUNGA ERIC.....ACCUSED

J U D G M E N T

1. The accused herein was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence were that **on the 20th day of April 2012 at Kolongolo within Trans Nzoia County murdered Veronica Wafubwa**.

2. The accused denied the offence. The prosecution called several witnesses to prove its case whose evidence can be summarised as hereunder.

PW1 Tobias Mulongo Barasa testified that on 20th August 2012 at 6.15 am Elizabeth Kakai and a child called Rose told him that they have been attacked during the night and needed help. He then heard screams emanating from the deceased home and he rushed only to find that the deceased had been killed by strangling. The body was naked. The accused, a person known to him had been suspected.

3. **PW2 Peter Zablon Mukhwana** and a Police Reservist was called on 27/8/2012 at 10.00 am and informed that the accused had been spotted somewhere. He alerted his colleagues and went and apprehended him despite attempting to flee. They took him to the police station.

4. **PW3 Grace Khamala Matinyi** stated that the deceased was her sister in law and they lived in a separate houses within the same compound. She said that on 20th August 2012 a neighbour told them that thugs had invaded the deceased's house and killed her. She went to the scene with her husband and found her dead and naked. A child called Rose said that it was the accused who was responsible.

5. **PW4 Elizabeth Nasambu Kakai** stated that at around midnight on 19th August 20112 a child (Rose) came calling and told her that someone had come and threatened to kill her grandmother. They screamed together with the children but were afraid to go there. In the morning at around 6.00 am she went to the scene and found someone sleeping next to the deceased. He took off after seeing her. It was the accused as he uncovered his face and was a neighbour as well. By the time people came after hearing her screaming he had fled away. She saw the deceased body naked having been strangled.

6. **PW5 Rodgers Waswa Wakhungu** stated that he knew the accused whom they would meet at the market.

7. **PW6 Christopher Khamala Kamaiti** testified that the deceased was her follower. He said that on 20th August 2012 at 6.00 am he got information from rose concerning the death of the deceased. He went and saw her body which had injuries on the neck. There was also semen on her private parts.

8. **PW7 Dr. Okumu Moses** from Kitale Referral hospital produced the postmortem report on behalf of Dr. Kigen who opined that the cause of death was severe aphixia, as a result of fracture of the spinal column.

9. **PW8 Richard Wachie** is a village elder from Kolongolo market. He said that both the deceased and the accused were his subjects. That he was called on 30/8/2012 by the late Chief Inspector Galgalo the OCS Kitale to witness the accused person making his confession before him. In his confession he narrated how he and two others namely Jackton and Juma killed the deceased.

10. **PW9 Aggrey Mukhwana Barasa** a KPR testified that on 20/8/2012 at 6.30 am he received a call from Tobia Barasa his brother concerning the incident. He went to Kolongolo market and found that she had been killed. On 27/8/12 together with Peter Zablon were

told by CPI Mburu to go and arrest the accused at Maili Nane. They met him at Maili Kumi na moja where they apprehended him as he attempted to flee. The accused mentioned Grace Khamala and Sila Wambogo as his accomplices.

11. **PW10 Chief Inspector Daniel Kadei** OCS Kitale police station produced the accused confession made before the late Chief Inspector Bonaya Galgalo. In the confession the accused narrated how together with 2 others he was tasked by Grace Khamala to eliminate the deceased because of a land dispute. The said confession was made voluntarily without any coercion or threat and in the presence of Richard Wachiye his witness.

12. When placed on his defence the accused gave unsworn evidence denying the charge. He said that he was a brick layer by profession and that while working at Maridadi on 27/8/12 they went drinking alcohol. Police came and people took off. They short in the air and he stopped. He was the arrested and beaten and taken to Kwanza police station where he was accused of killing someone. He was taken to the hospital as he had been injured. Later he was charged. He said that he knew the deceased who had brought her up between 1992 and 2008.

Analysis and Determination

13. The court has perused the proceedings herein as well as the submissions by the defence counsel. The court has equally read fully the confession by the accused which was produced without any objection.

14. There was no direct eye witness to the incident. Rose, the young girl who was mentioned all through was not called to testify.

15. The only person who appeared to have seen the accused at the scene was PW4 who said;

“ We went to the deceased house and the door was still locked. I called her and I saw someone. Someone sat down and cleared his throat. The deceased was sleeping with the person. I knew him and I ran away. He was Murunga. He uncovered the face and I got to see him. He was my neighbour and a son to Jeremiah.”

16. The accused apparently in his confession stated that it was one Silas who was seen by PW4 and not himself.

17. Whichever way, PW4 saw someone and that was the accused. He was a person well known to her and a neighbour.

18. What is the strength then of the confession done before the Chief Inspector Galgalo viz a viz the accused unsworn evidence?

19. I have read the same as well as heard the evidence of PW8 Richard Wachiye the village elder who was present when the confession was made. The accused did not allude much as regards the authenticity or otherwise of the confession. He did not deny that he made the said confession. He did not state that he made the confession under any duress or coercion.

20. Looking at the said confession I am satisfied that the same complied with the Provisions of Section 25 and 25A(1) and 29 of the Evidence Act Cap 80 Laws of Kenya. The same was made in the presence of an Inspector of Police and PW8 a third party chosen by the accused.

21. The sum total of the confession points out to the fact that the accused and his accomplice raped and murdered the deceased. In a nutshell they were hired assassins.

Although for some reason the rest were not arrested and charged, it is clear that they were paid to commit the act.

22. There was sufficient evidence that the accused actually took off and went into hiding after this. As the time of his arrest, he attempted to flee but was apprehended.

23. The court is therefore satisfied that the case has been proved by the prosecution beyond any shadow of doubt. The accused is hereby convicted under the provisions of Section 203 as read with Section 204 of the Penal Code.

Delivered, signed and dated at Kitale this 25th day of March, 2019.

H.K. CHEMITEI

JUDGE

25/3/19

In the presence of:-

Mr Omoria for the State

Mr Bororio for the Accused

Accused – present

Court Assistant – Kirong

Judgment read in open court.