



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 52 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

EDWARD LANAYASAACCUSED

J U D G M E N T

1. **Edward Lenayasa (“the accused”)** has been charged with murder contrary to *section 203 as read with Section 204 of the Penal Code Cap. 63 Laws of Kenya*. It was alleged that on the 28th June, 2015 at Archers Post Trading centre in Samburu East District within Samburu County, the accused murdered **Stella Leaburia**.

2. In support of its case, the prosecution called eight (8) witnesses. **PW1, John Lenayasa** testified that on the material day at about 12 noon, he received a call from his brother, the accused, informing him that the deceased’s body was outside his house. He asked him to pass this information to the OCS Archers Police Station. He did as he had been requested and after 30 minutes, the OCS called him back and informed him that police officers were at the scene. When he went to the scene, he found that the body had been taken away.

3. **PW2 Agnes Ramaiyan Lenapangai** testified that the accused came to Archers Post Health Centre to ask for an ambulance to pick a body from his home and bring it to the mortuary. She called the OCS who informed her that he was already at the scene. The OCS asked her to tell the accused to go home as the police were waiting for him there.

4. On the material day, **PW3 P.C. Hassan Abdi Komba** accompanied the OCS, **CIP George Naibei, Corporal Salim** and the station driver to the scene. on arrival, they found a small dwelling place and outside there was a spade that was blood stained. On entering the house, they found blood spilled on the floor in the bedroom and sitting room. Behind the house, there was a body of a female lying on a nylon sheet and covered with a blanket. The body was lying on the side naturally. That the house was disturbed and things were all over the place. There was blood stained on the ground outside the house. The accused arrived shortly thereafter and he was arrested.

5. **PW4 Corporal Salim Kautu** accompanied **PW3** and the OCS to the scene. He observed what **PW3** had told the court and he took photographs of the body.

6. **PW5 CIP George Naibei**, the investigations officer, was the OCS of Archers Police Station at the time. On the material day at about noon, he received a call from **PW1** who informed him about the presence of a body at the accused’s residence. He asked **Lokiya Lodebe (PW7)**, a member of the public to go and confirm the information. After the information was confirmed, he accompanied **PW3** and **PW4** to the scene. While at the scene, he received a call from **PW2** who informed him that the accused was at the hospital requesting for an ambulance. He asked her to tell the accused to go to his home as the police were already there.

7. After examining the scene, he concluded that the death of the deceased happened on the night of 27th June, 2015 because the body of the deceased was cold and the blood was dry. He also stated that the deceased had prepared the scene to cover up the crime.

8. **PW6 Ambrose Lalampaa** told the court that he and **PW7 Lokiya Loldepe** were the first to arrive at the scene. That **PW7** had been asked by the OCS to confirm allegations of **PW1**. That on arrival at the homestead of the accused, they found the door to the house open. They saw blood on the floor of the house. They however partly entered the house.

9. **PW7 Lokiya Loldepe** confirmed the testimony of **PW6**. However, it was his testimony that they found the door to the house locked and he is the one who broke the padlock. He confirmed the blood stains on the door, window, floor of the house and on the ground outside. The body of the deceased was fully covered save for the feet. He uncovered the body and saw that it had head injuries. The Body was lying downward with overstretched hands.

10. **PW8 Mohammed Abdikadir** a medical doctor produced the post-mortem report which showed that the body had a deformed head on the posterior and frontal aspect. Blood clots were visible in the nose and mouth and a depressed skull fracture. The cause of death was opined to be due to severe head injury and excessive bleeding by a blunt object.

11. In his defence, the accused told the court that on the Saturday of 27th June, 2015, he and his wife, the deceased, went together to the area market. They parted ways at noon when the accused boarded a lorry to go and collect sand. Later in the evening when he came back to the market, he was informed that his child then aged 9 months had been thrown away by his wife. He went and collected his child from a member of the public went home.

12. The following morning at about 8.00am, the deceased came home drunk and bleeding on the head. She picked a nylon paper and went to sleep outside behind the house. He followed her outside and found that she was sleeping. He went back to the house and fell asleep. At around 11.00am, he went outside to call her so that she would take care of the crying child but he found that she was already dead. Since flies had started to collect in the house because of the blood stains, he decided to wipe the floor so as to rid the house of them. He did this using some water and a rag. He used the spade collected some soil and covered the floor and the blood on the ground. He denied that there was any commotion in the house. He also denied killing the deceased.

13. To secure a conviction for murder, the prosecution must always prove beyond reasonable doubt ***the fact of death, the cause of death, that the death of the deceased was caused by the unlawful act or omission of the accused and that the accused had malice aforethought.***

14. On the fact and cause of death, **PW1** told the court that on the material day the accused, informed him **PW1** that the deceased had died at home. **PW3, PW4** and **PW5** went and found the body of the deceased lying on a nylon sheet (**PEXh.3**) at the back of the accused's house covered with a blanket (**PEXh.2**). The body had injuries on its head.

15. **PW8** told the court that after the body was examined, externally there was deformed head on the posterior and frontal aspect. Blood clots visible in the nose and mouth and a depressed skull fracture. The cause of death was opined to be due to severe head injury and excessive bleeding due to injury by a blunt object.

16. Accordingly, the fact and cause of death was proved beyond any reasonable doubt.

17. The next issue is whether the death of the deceased was caused by an unlawful act or omission of the accused. The evidence of **PW1** was that on the material day, the accused called him and told him that the deceased had passed on. That he should inform **PW5**, the OCS of the fact which he did. **PW3, 4 and 5** stated how they went to the scene and found the body of the deceased lying on a nylon sheet covered with a blanket. There was blood on the floor of the house, on the ground outside the house and on the nylon where the body lay.

18. The investigations officer, **PW5** informed the court that because of the blood stains found on the spade (**PEXh.1**), he concluded that there had been a scuffle between the accused and the deceased which led to the demise of the deceased. **PW2** told of the accused going to the local health centre to get an ambulance to ferry the body of the deceased to the mortuary. **PW6** and **PW7** confirmed finding the body behind the house of the accused.

19. The accused's answer was simple; that on the material day, the deceased came home at about 8.00am. She had an injury on her head which she had covered with her top. Despite inquiring from her, he did not tell him the cause of the injury but only picked the nylon sheet and went at the back of the house and slept there. He later found that she had passed on whereby he decided to cover her body with a blanket. That since flies had been attracted by the blood stained floor and ground, he used a rag to rub the floor and a spade to cover the blood stains on the ground with a spade (**PEXh.1**). He denied killing the deceased.

20. There was no eye witness to the incident. The prosecution relied on circumstantial evidence to link the accused to the incident. On the other hand, the accused's defence was that the deceased was injured before she came home where she succumbed to the fatality of the injuries.

21. In **R v. Kipkering arap Koske & Another 16 EACA 135** the Court held, inter alia, that :-

“In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt”

22. The same was adopted in **Sawe v Republic [2003] KLR 364** where it was held:-

“1. In order to justify circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.

2. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.

3. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.

4. ...

5. ...

6. ..

7. Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

23. **PW1** testified that the accused had told him that the deceased had come home with injuries. He repeated this to **PW5** when interviewed. This was the earliest opportunity the accused had to explain his position. He repeated the same to court as his defence. His position was consistent.

24. There seems to have been a dispute between the accused and the deceased because of the deceased action of abandoning their child the previous day, 27th June, 2015. The prosecution, through **PW5** alleged that this provided the intention of the accused to commit the offence.

25. Be that as it may, the testimony of the accused that the deceased came in the morning of the material day drunk and injured was not displaced by the prosecution. Further, the witnesses were in agreement that the body in which the body was found suggested that the same laid naturally on its side. It was not supported by anything thereby suggesting a death while the deceased was lying peacefully on her sleep.

26. To my mind, the state at which the body was found was consistent with the accused’s story that the deceased slept on the nylon sheet and may have died out of excessive bleeding. It is expected that if the body had been moved there after the demise of the deceased, the body would not be expected to lay peacefully on its side as it was. It would have required to be supported somehow.

27. Further, the evidence of **PW8** was that the head was deformed out of a head injury caused by a blunt object trauma. This contradicted the evidence of **PW3, PW4, PW5, PW6** and **PW7** that the head had several injuries. **PW5** was categorical that the spade, **PEXh.1** had sharp edges. The court saw the exhibit in court. Although out of passage of time the spade may have grown blunt, the type of injury described by **PW8** must have not been inflicted by the spade but some other blunt object that must have led to the deformity of the head.

28. Accordingly, the evidence of accused is plausible. It may have been that the deceased was injured elsewhere. She came home drunk with injuries. When she went to sleep on the nylon sheet (**PEXh.3**), she died out of excessive bleeding. It was not out of the ordinary that the accused slept while the deceased was succumbing to her injuries outside. He had had the infant cry overnight thereby losing sleep the previous night.

29. To my mind therefore, the prosecution have not proved beyond reasonable doubt that it is the act or omission of the accused that caused the death of the deceased.

30. Accordingly, I find that the accused is innocent and I acquit him of the charge of murder under **section 322 of the C.P.C.**

It is so ordered.

DATED and **DELIVERED** at Meru this 27th June, 2019.

A. MABEYA

JUDGE