



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 13 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH NYAGA MURIUKI.....ACCUSED

J U D G M E N T

A. Introduction

1. The accused faces a charge of murder of contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on the 26th January 2015, at Rugusa village, Runyenjes Township within Embu County, he murdered one Peter Murimi Njiru. He pleaded not-guilty to the charge.
2. The prosecution called seven (7) witnesses in support of their case which is summarised herein.

B. Prosecution Case

3. PW1 she testified that on 25/01/2015 the accused threatened to kill her alleging that she had a love affair with another man. A day later, the accused told PW1 that he had killed whoever was preventing him from marrying her. He threatened PW1 that if she did not marry him, he would kill her and thereafter commit suicide. PW4, Dr. Joseph Thuo certified the accused mentally fit to stand trial. PW5 Dr. Phyllis Muhonja testified that the post-mortem results were that the deceased had died as a result of cardio-pulmonary arrest from cardiac insufficiency due to cardiac tamponade from a stab wound.
4. PW6, the government chemist who received various exhibits from the police testified that since he did not have any blood samples of the deceased or of accused to compare with the blood stains on the exhibits he received, he could not establish whose blood was on the exhibits.

C. Analysis of the Law & Evidence

5. After a careful analysis of all the evidence on record, the issues that arise for determination are the following; -

- a) Whether the deceased died and what the cause of death was;
- b) Whether the deceased died as a result of the unlawful act or omission on the part of the accused person and
- c) Whether the prosecution has proved that the accused had the necessary malice aforethought.

6. Section 203 of the Penal Code, Cap 63 Laws of Kenya provides that anyone who unlawfully and with malice aforethought causes death of another is guilty of the offence of murder. Section 206 defines what constitutes malice aforethought to the effect that once it is confirmed from the evidence on record that the death of the deceased resulted from the unlawful act or omission of the accused person, and that such act or omission falls within the ambit of the provisions of the said Section 206, the court need not go further and should make a finding that the accused person is guilty as charged.

7. The body of the deceased was identified to the doctor by PW2 a relative. PW5 Dr. Phyllis Muhonja testified that the cause of death was cardiopulmonary arrest from cardiac insufficiency due to cardiac tamponade from a stab wound. There is no doubt that the death of deceased was established through this evidence.

8. It is worth noting that this is a case in which there was no eye witness and as such the only evidence available for determining the cause of death of the deceased is mostly the medical evidence coupled with other indirect evidenced. PW5, Dr. Phyllis Muhonja produced the post

mortem report on behalf of Dr. Njiru who performed the post-mortem and found that he deceased had a stab wound on the chest that led to his death.

9. Though circumstantial evidence has been known to prove a crime with the precision of mathematics courts are cautioned to observe certain basic minimum standards before such evidence can form the basis of a conviction.

10. In the case of **Ndurya- vs- Republic [2005]KLR 135**, the court held, inter alia, that ***“circumstantial evidence was often the best evidence as it was evidence of surrounding circumstances which by intensified examination was capable of accurately proving a proposition.”***

11. In the case of **Mwathi –vs- Republic [2007] 2EA 334**, the court held the view that ***“in the absence of eye witnesses, the court must consider whether or not the inculpatory facts put forward by the prosecution are incompatible with the innocence of the appellant and incapable of explanation upon any other reasonable hypothesis than that of guilt (Rex v Kipkering Arap Koske 16 EACA135 and Teper v R [1952] AC 480 followed.)”***

12. The evidence of PW3 was that on 25/01/2015 around 10.00 p.m. he was walking home with the accused who was his friend. On the way, the two met with PW1 who was accused’s girlfriend and with whom he lived in one house. He stood aside as the accused and PW1 talked and which talk generated into a quarrel. PW3 said he noticed that all was not well when the accused removed his jacket and threw it on the tarmac road.

13. PW3 picked the jacket and went with the accused and his girlfriend to his house where he calmed them down before they left. At around 11.00 p.m., the accused called PW3 and asked him to take his jacket to him for his keys were in the jacket. He did as requested and went back to his house to sleep.

14. It was the further testimony of PW3 that the following morning around 7.30 a.m., on the request of the accused, he went to accused’s house and opened he house for him using the key that was outside the house which accused said had dropped off from inside as he locked the door. PW3 proceeded to the house of the accused, opened the door for them and found the accused with PW1therein.

15. On 27/01/2015, PW3 learnt that the accused and the deceased had fought and injured one another. It turned out to be that the accused was alive and admitted in hospital but his counterpart was dead.

16. PW1 narrated how on 25/01/2015 around 10.00 p.m. she met with PW3 and the accused person. The accused told her that she had to give her consent to marry him failure to which he would kill her. He shouted attracting people including PW3 to where they stood on the road as he shouted that PW1 was his wife. The accused forced PW1 to go to his house. The accused locked PW1 in his house against her will till morning. On 26/01/2015, around 11.00 p.m. PW1went to her house where she found the accused armed with a knife. He pushed her to the floor and put a knife on her chest threatening to kill her. The lights were not on and the house was dark. The accused told PW1 that he had already killed the man who was preventing PW1 from marrying him. PW1 later noticed that the floor was wet and a short while later she saw that the floor was full of blood.

17. PW1 testified that the accused stabbed himself with the knife on the chest and stomach as she set out to go outside to call for help. When police officers came to the house they found the body of the deceased on the bed. The accused was taken to hospital after the scene was attended to.

18. From the evidence of PW1 and PW3, the inculpatory facts that arise are that: -

- a) The accused and PW1 were intimate friends for about one year and that they lived in one house.
- b) That the accused suspected PW1 of cheating on him and declared he was ready to deal with the deceased with whom he believed was interfering with his relationship with PW1.
- c) That the accused had recently become disturbed and eventually violent to PW1 for their love for each other had gone sour.
- d) That the accused who had the key of the PW1’s house went there in her absence and found the man he believed to have befriended PW1 in the house and fatally injured him.
- e) That the accused injured himself in the presence of PW1 after threatening to kill her.
- f) The lifeless body of the deceased was found in PW1’s house in the presence of the accused.

19. In his defence the accused said he was married to PW1 for a period of one (1) year and eight (8) months. He said that on 26/01/2015 in the evening hours, he went to PW1’s house and found the house locked from inside. PW1 refused to open for him even after knocking the door consistently. He then forced the door open and on entering the house, PW1 stabbed him with a sharp object. This was after he asked her why she had refused to open the door. He denies killing the deceased or even seeing him on the material evening.

20. From the defence, it is evident that the accused and PW1 were not in good terms as lovers and that the deceased was suspected of having an affair with PW1 which infuriated the accused. This state of affairs explains the motive of the killing.

21. Preceding the death of the deceased, PW1 and the accused had quarreled bitterly over existence of another lover of PW1 who had

prevented her from marrying him. The deceased was killed in the house of PW1 only one day after the heated quarrel that led the accused to locking PW1 in his house the whole night.

22. I have considered the incalpatory facts which in my view point the guilt at none other person but the accused. The defence of the accused did not shake the overwhelming evidence of the prosecution. It actually put him at the scene of crime at the material time in the same state of anger that he had for the last two days. The deceased was found dead in this same house by police a short while later.

23. I find that the prosecution have established that the accused caused the *actus reus* that led to the death of the deceased.

24. The prosecution are obligated to prove malice aforethought on part of the accused. PW6 said that the cause of death was cardio-pulmonary arrest due to the stab wound. He had a stab wound on the upper chest which had bled profusely for the body was pale.

25. The deceased died of the stab wound which was strategically inflicted with an intention to cause death or grievous harm. This conclusion is guided by the gravity and the nature of the wound, the part of the body injured which was the left side of the chest and the sudden death that followed the act of stabbing.

26. As described under Section 206 (a) of the Penal Code, the accused had the intention of bringing the life of the deceased to an end from the evidence adduced. Consequently, I find that malice aforethought has been accordingly established.

27. It is my finding that the prosecution have proved the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code** against the accused beyond any reasonable doubt.

28. I find him guilty of the offence and convict him accordingly.

29. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 24TH DAY OF OCTOBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for State

Mr. Eddie Njiru for Accused

Accused present