



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 25 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOSECK ARIKA alias JUSTINE NYATURU.....ACCUSED

SENTENCE

1. The accused person herein, **JOSECK ARIKA alias JUSTINE NYATURU**, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**, but by a plea bargain agreement reached between himself and the state on 14th November 2017, the said charge was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **205 of the Penal Code**.
2. The particulars of the offence were that on 24th August 2016 at Nyangusu market in Nyangusu Sub-location in Nyamache Sub County within Kisii County in Republic of Kenya unlawfully caused the death of **T B N**.
3. As expected in such a plea bargain arrangement, the accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
4. The facts of the case, as narrated by Mr. Otieno learned counsel for the state, were that the accused and the deceased were husband and wife respectively and that on the material day the accused came back home and found that the deceased had packed all her belongings and had gone to her sister's home which was in the neighbourhood. The accused had reportedly assaulted the deceased the previous day and this is what prompted the deceased to pack and leave her matrimonial home.
5. The accused followed the deceased to her sister's home with a view to pleading with her to return to the matrimonial home but the deceased's response was that he allows her time out to enable her seek medical treatment for the injuries she had sustained from the previous night's assault as the deceased was said to be pregnant at the time.
6. The accused did not listen to the deceased's plea and all over sudden got hold of her and dragged her out of the sister's house. He then drew a knife which he had hidden in his trousers which he used to stab the deceased severally on the neck and chest thereby killing her on the spot.
7. In mitigation, Mr. Bigogo learned counsel for the accused submitted that he was a young man aged 22 years who was willing to undergo counseling in order to change his ways.

8. The probation officer's report filed in court on 29th January 2018 shows that the accused is not suitable for a probation sentence.

9. I have carefully considered the circumstances under which the deceased, whose apparent age was stated to be 17 years, met her death. The facts of the case, as narrated by the state counsel, leave no doubt in my mind that the accused was a serial wife batterer and that it was just a matter of time before he fatally attacked the deceased. The accused had no qualms about viciously attacking the deceased in broad daylight and in full view of her sister who witnessed the entire bizarre attack first hand. The accused's violent attack on his wife set in motion the sequence of events that led to her leaving her matrimonial home and I therefore find it quite ironical for the accused to claim that the deceased provoked him when she packed her belongings and left him.

10. The deceased did all that she could in order to save herself from her abusive marriage to the accused, but the accused still had the audacity to pursue her to her sister's house where he attacked her without any remorse or mercy. The fact that the accused concealed a knife in his trousers, which he used to attack the deceased, shows that he from the outset, had the intention of harming the deceased.

11. I find that the crime committed by the accused calls for a stiff custodial sentence as his untamed behavior led to the death of an innocent young lady. Manslaughter is a serious felony which attracts a maximum sentence of life imprisonment upon conviction.

12. Having regard to the circumstances of this case and the fact that the accused pleaded guilty to a lesser charge of manslaughter thereby saving this court the time that would have been spent on a protracted trial, I hereby sentence the accused herein to 15 years imprisonment which sentence shall begin to run from 15th September 2016 when the accused first appeared in court.

Delivered, dated and signed in at Kisii on 29th of January, 2018.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State

- N/A Ondari for the accused

Omwoyo court clerk