



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCR NO. 8 OF 2017

[FORMERLY ELDORET HCCR 61 OF 2012]

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN CHERUTICH SIGOR ALIAS KENYA....ACCUSED

JUDGMENT

1. The accused who has been in custody since 17/8/2012, when he was remanded after first appearance before the court, was convicted on his own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code.
2. The facts of the case as presented by the prosecution and accepted by the accused upon his plea of guilty were as follows:

“7- The accused and the deceased in this matter are husband and wife. The two were married for 19 years and were blessed with three children. On the 12th day of August, 2012, at around midnight the accused was at home waiting for his wife who had not come back. He decided to look for her and went to a certain bar at Cereals not very far from their home. On entering the compound of the said bar, he heard the voice of his wife coming from outside the bar in the grass where it was dark. On approaching the place, the accused found the deceased with another man with whom they were having sex. The accused got angry and started beating both of them using a stick. Another man by the name Alex who was the friend to the accused joined him and together they beat up the man who was caught with the wife but the said man was later recognized as Joseph Kirwa managed to run away. The accused then turned to his wife and started beating her with a stick as they walked home. On the way the deceased fell down and on thinking that the deceased was drunk, he left her and went to his home where he slept until the next morning. As he was going to work, he met his employer who informed him that the deceased was lying on the road dead. He went to the scene where he was arrested by the police from Kabarnet police station. The body of the deceased was collected and taken to Kabarnet Hospital mortuary. Post-mortem was done on the body of the deceased on 24th August 2012 and it was established that the cause of death was cardiac arrest due to multiple trauma due to blunt force. The accused was charged with the offence of murder which has now been reduced to manslaughter. The accused was later taken to Moi Teaching and Referral Hospital for mental assessment and it was established that he was fit to plead.”

3. The prosecution indicated that the accused was a first offender and requested the Court to treat him as such. For the accused it was urged that the accused who is 40 years, an orphan and widower with (3) children to take care of following the death in the incident subject of this trial of his wife, and who has been in custody since 12/8/2012, be placed on a non-custodial sentence.
4. The probation Officer’s Pre-sentence Report noted that the deceased’s family had “no reservation over his sentencing in the community so that he can take responsibility over the children.” Probation sentence was recommended.

Determination

5. The circumstances of the case indicates that the killing of the deceased was committed in a state of extreme provocation when the accused found his wife of 19 years with another man having sex and his violence was primarily directed at the male adulterer only chastising his wife as they walked home when she fell down and thinking her drunk, he left her and went home and the following day to work, only to be told of her death by his employer.
6. In assessing his moral blame-worthiness of the offence of manslaughter, the court has to consider that there was no apparent intention to kill the deceased who he beat “with a stick as they walked home.”

7. I consider that a sentence of imprisonment for a period of 5 years would be appropriate sentence in the circumstances of this case. As the accused has been in custody for a period of close to 6 years and he has therefore served the full term of 5 years, there shall be an order for his release from custody.

Orders

8. Accordingly, having convicted the accused for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, the court sentences the accused to serve 5 years imprisonment.

9. As the accused has been in custody for a period close to 6 years as he awaited for his trial and has therefore served, pursuant to section 333 Proviso of the CPC, the full term of 5 years, there shall be an order for his immediate release unless he is otherwise lawfully held.

DATED AND DELIVERED THIS 21ST DAY OF MARCH 2018

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kandie for Mr. Mwaita for the Accused.

Ms. Macharia, Ass. Director of Public Prosecution.