



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL/MURDER CASE NUMBER 18 OF 2015

CORAM: JUSTICE S.M GITHINJI

REPUBLIC.....PROSECUTION

VERSUS

LONGIROI ATIDONG.....ACCUSED

JUDGMENT

LONGIROI ATIDONG is charged with the offence of **Murder, Contrary to Section 203 as read with Section 204 of the Penal Code.**

The particulars of this offence are that on the 11th day of December, 2015, at Kodich Location within North Pokot Sub-county, the accused jointly with others not before court murdered Felix Amedo.

The prosecution case is that the deceased in this case, One Felix Amedo, was the Assistant Chief of Kodich. He was married to PW-1 and were living in Kodich, Kacheliba. They had 12 children, among them the PW-3 in this case. On 11.12.2015 at 8.00pm, the deceased was at his home with his wife and children. They heard noises in a neighbouring home, of people who were vowing to do something in the deceased's homestead. They mentioned the name of the deceased (Amedo) and said someone will have to die in his homestead for them to know who the assailants were. Those who were talking were four and were well known to PW-1 and PW-3 as neighbours and their relatives. They were cousins to PW-3. They were recognized by their voices by PW-1 and PW-3 as Peter Lodou, Joseph Lengole, Longoi Atidong and Tuliareng Lokai. The deceased had warned them to stop dealing in chang'aa and were alleging the deceased was too strict on them. PW-1 sensed danger. She had a small child and decided to take her in the grandmother's house. The deceased asked his son Riongole whether he had quarreled with the assailants and he said he had not, but Domong'ole had. Domong'ole is an uncle to PW-3. The deceased told the assailant to wait for the day to resolve the issue instead of visiting at night. The accused was standing ahead of the other three. He was armed with a stone. He threw it at the deceased and hit him with it on the left side of the chest. The deceased fell down and PW-3 rushed to support him as she screamed for help. PW-1 who was at the time knocking on the door of the grandmother's house, heard PW-3 screaming saying, "**the have killed my father.**" She rushed back to the scene and found her husband lying on the ground. She tried to lift him up and realized that he was dead. There was a stone near the body. She used her phone light to see. Using her phone, she called Fred Ameme, (PW-4) who is their neighbour and told him about the incident. PW-4 called a doctor namely Immanuel and two other persons and they all rushed to the scene using a motorbike. They found the deceased held by a woman and the present children were all crying. They noted the deceased was dead. They took the body to Kodich Dispensary. Mr. Lorkino, a nurse at Kodich Dispensary called PW-5 who's also an assistant

chief. He told him about the incident. PW-5 rushed to the dispensary where he found the deceased on bed, lying dead. He was shocked and immediately called D.O Brian Wafula, reporting to him about the incident. Soon thereafter the DCIO Kacheliba arrived. They visited the scene and found the children crying. DCIO talked to the family members before they returned to the dispensary where they took the body to the mortuary. The body had one visible injury in front of the chest.

The accused's three brothers who were also suspects went underground. The accused was however arrested before he managed to escape.

On 16.12.2015 PW-6 who's a relative of the deceased was called at Kapenguria County Referral Hospital Mortuary to identify the deceased's body for postmortem. He identified it. The postmortem was conducted by PW-7 on 17.12.2015. He noted that the body had a bruise on the left side of chest wall measuring 7x7cm. He touched on the chest and felt that some ribs were broken. He opened the chest and noted ribs number 7, 8 and 9 on the left side were broken. Due to that the left side of the lung was moving irregularly (Flail chest). Blood had collected on the left side of chest – Haemothorax 1.5 litres. Other areas were normal. He was of the opinion that the cause of death was cardiorespiratory arrest, secondary to haemothorax and flail chest due to blunt chest injury.

PW-8 investigated the case. He recorded witnesses' statements and visited the scene where he collected the stone allegedly used to hit the deceased. He as well had the suspect mentally assessed and was found to be of sound mind. He was then charged with the offence. The stone, postmortem report and accused's mental assessment report were produced in court as exhibits.

The accused gave unsworn testimony in his defence and called one witness. His case is briefly that on 11.12.2015 at 8.00pm he was at home. He was with his wife and mother, the DW-2 in this case. They were having dinner when they heard screams in a neighbouring home. They got outside. When the screams died they went to sleep. At midnight accused's house door was knocked at. There were 3 persons outside who were all his neighbours. He recognized them by their voices as Mryo, Moter and Nguriang'i. Nguriang'i told Mryo not to lynch the accused in his house. They said they'll call more people. Assistant Chief, Ibrahim Lodomu arrived. The accused opened the door and he was handcuffed. He was led to the road where he was got into a police vehicle. He was taken to Kacheliba Police Station where he was held for 2 days and then charged.

The court, at this juncture, must determine as to whether the offence against the accused person is proved by the prosecution beyond reasonable doubt. In an offence of Murder, the ingredients that need be established by the prosecution beyond reasonable doubt are:-

1. The facts of death of the deceased.

2. The cause of such death; proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person; and

3. Proof that the said unlawful act or omission was committed with malice aforethought.

On the first issue, all the prosecution witnesses' evidence establishes beyond reasonable doubt that the victim died at the scene of the attack. The postmortem report sealed the fact of his death. The issue of his death is not at all disputed in the case.

On the second issue the crucial evidence is that of PW-1 and PW-3. The incident took place at 8.00pm of which was at night. They recognized the assailants by their voices. The assailants are relatives (cousins to PW-3) and neighbours who have grown in the place and were therefore well known by the two witnesses. The defence case also alluded to the fact that they are neighbours, known to each other well as even the accused could recognize their voices. There's therefore no doubt that the assailants, who were allegedly four in number, all brothers, inclusive of the accused herein, were properly recognized by their voices beyond reasonable doubt. The only issue where there is discrepancy between the evidence of PW-1 and PW-3 is on who among them hurled the stone which injured the deceased on the left side of the

chest, leading to his death. The evidence by PW-1 that she heard the accused, Longiroi Atidong asking, **“How did you hit that person and with what?”** suggests that the accused is not the one who threw the stone. This position is also taken PW-8, the investigating officer. The question also suggests there was no enough light if any, which would have enabled one to see. However PW-3 stated, **“They were near the gate. Longoroi Atidong was armed with a stone. He threw it at my father and hit him with it. He fell down. He was hit on the left side of the rib.”** On cross-examination she said, **“It was at 8.00pm. It was dark but not very dark. There was moon light. I was able to see them. I saw accused hit my father with the stone.”** PW-1’s evidence suggests there was no enough light to enable one see. Even after she got back to the scene after the incident, she used her mobile phone light in order to see. We can’t tell how good was the claimed moonlight to enable one see. The evidence by PW-3 that it is the accused person who hurled the stone which hit and killed the deceased, given the circumstances, is not safe to rely on. However there is no doubt that accused was among the four assailants. They had expressed by way of talking that someone had to die in the home of the deceased. There is no doubt given the circumstances that it’s one of them who hit the deceased with a stone leading to his death. The four had common intention and acted in concert in commission of the said offence. In law it does not matter who inflicted the killing blow. The accused person and his b 3 brothers were out to cause the death of the deceased or grievous harm to him or to any other member of his family. They therefore had malice aforethought in terms of **section 206 of the Penal Code.**

The accused’s defence cannot be true. He could not have been picked together with his brothers as the culprits out of no reason. The fact that his other brothers went underground after the incident, and the accused was arrested while about to, shows they were guilty conscious. The mere denial defence is untrue and is hereby dismissed.

The upshot is that the offence of murder is proved against the accused by the prosecution beyond reasonable doubt. He is convicted of it under section 203 as read with section 204 of the Penal Code.

Judgment read and signed in the open court in the presence of the convict and Mr. Muriuki the state prosecutor this 20th day of March, 2018.

S. M. GITHINJI

JUDGE

20.3.2018

MR. MURIUKI

He’s a first offender

ACCUSED

I am the sole bread winner for my wife and my child. That’s all.

COURT

Have considered mitigation, convict to serve 30 years imprisonment.

Right of appeal within 14 days

S. M. GITHINJI

JUDGE

20.3.2018