



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 159 OF 2016

CORAM: D.S.MAJANJA J.

BETWEEN

FRANCIS NYADENGE JUMA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon.G. Adhiambo, SRM dated 1st November 2015 in Criminal Case No. 524 of 2015 at the Senior Residents Magistrates' Court at Ukwala)

JUDGMENT

1. The appellant, **FRANCIS NYADENGE JUMA** was charged and convicted of the offence of manslaughter contrary to **section 202** as read with **section 205** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the offence are that on 29th September 2015 at Umaw Village Sifuyo West Sub-location in Ugenya Sub-County within Siaya County the appellant, unlawfully caused the death of his wife Jane Sophia Nyandenge.
2. In his petition of appeal, the appellant faulted the trial magistrate for basing his decision on evidence of a single child witness which lacked probative value. The appellant complained that the trial magistrate ignored his alibi defence and shifted the burden of proof to the accused. The State, on its part, supports the conviction and sentence and urged that the offence was proved beyond reasonable doubt.
3. The brief facts giving rise to these charges were that on the material night around 10.00pm the deceased was resting in the kitchen after a day of hard work. The appellant came and asked their daughter I A (PW 1) to call the deceased from the kitchen. The deceased's nephew, J A (PW 2) testified that PW 1 went to the kitchen to call the deceased but she said that she was tired. The appellant went into the kitchen and began hitting the deceased with a plastic pipe. After the pipe broke, the deceased took a guava stick and as the deceased tried to escape he hit her on the head and she collapsed near the door. PW 1 and PW 2 then ran from the home and went to their grandmother's house where they spent the night. In the morning, they returned to their home only to find the deceased dead. PW 1 told the court that the deceased had a wound on her chin when they found her lying in the kitchen.
4. The area Assistant Chief, Charles Dominic Onyango Ambacho (PW 3) testified that on 30th September 2015, he received a call from the appellant informing him that his wife had died. PW 4 immediately called Sergeant Abraham Kipruto (PW 4), an Administration Police from Ratado AP Camp who went to the scene in the company of other officers and arrested appellant and collected the deceased's body
5. Dr Willis Ochieng (PW 5) produced a post mortem report of an autopsy carried out by Dr Ojwang after the body was identified by deceased daughter, D A (PW 2). PW 5 testified that from the report, the deceased had bruises all over her head and face, a laceration on the lower limb and massive haemorrhage in the chest cavity. Dr Ojwang reached the conclusion that the cause of death was cardiac contusion from massive chest trauma with intracerebral haemorrhage from head injury.
6. The Investigating Officer, Mike Opicho (PW 6), testified that after he received information about the incident, he went to the scene in company of other police officers. They found the body of the deceased lying in the kitchen with a wound on the chin and bruises all over the face. After finalizing investigations, he charged the appellant.
7. When put on his defence opted to give a sworn statement and stated that on the material night he arrived home around 10:30pm. He found there was no one at home as everyone had gone to a funeral. He ate his supper and slept and on the following morning, his mother came to his house and asked him why he had not attended the funeral. When he asked his mother about the deceased, his mother told him that she had not seen her and that PW 1 and PW 2 slept in her house. He discovered the deceased's body when he opened the kitchen door.

8. This being a first appeal, it is the duty of this court to reconsider and to re-evaluate the evidence adduced so as to reach its own independent determination whether or not to uphold the conviction bearing in mind that I never saw or heard the witnesses testify (see *Njoroge v Republic* [1987] KLR 19).

9. The main issue in this appeal is whether the prosecution proved a case manslaughter against the appellant to the required standards. The essential elements of the offence of manslaughter are the fact and cause of death of the deceased and that the accused committed the unlawful act which caused the death of the deceased.

10. Having considered the evidence, I am satisfied the prosecution proved the death of the deceased through evidence PW 5 who produced the post mortem report confirming the death of the deceased. According to report, the deceased had injuries inflicted on her head causing internal bleeding and massive chest injuries resulting in cardiac arrest. These injuries are consistent with the beatings described by PW 1 and PW 2 and the observations of PW 6. I find and hold that the prosecution proved that the cause of death was neither voluntary or self-inflicted and it was caused by an unlawful act.

11. The issue then is whether the appellant assaulted the deceased leading to her death. His argument was that the trial magistrate erred in relying on the evidence of a single witness who was a child in convicting him. In criminal cases the prosecution is required to avail to the court all relevant evidence to enable court make an informed decision based on evidence available. However, there is no legal requirement in law on the number of witnesses to prove a fact.

12. The case against the appellant was grounded on the direct testimony of two children; PW 1 and PW 2. They were duly sworn and gave evidence of how the appellant assaulted the deceased. Although the incident took place at night and even though the prosecution did not lead evidence as to the circumstances of lighting, the appellant was not a stranger to the children, he was related to them and they were living together. They interacted before the incident and nothing emerged either from cross-examination or from the defence to suggest that the children were animated by a grudge or malice. Further, the children's testimony of the assault was corroborated by the post-mortem which confirmed that the deceased was beaten thoroughly leading to her death and that he body was found in the kitchen. The upshot is that the prosecution proved a case of manslaughter against the deceased beyond any reasonable doubt. The conviction is affirmed.

13. I now turn to the sentence. Sentencing is an exercise of discretion and the appellate court will not interfere in the sentence unless it is shown that the trial court took into account an irrelevant factor, or that a wrong principle was applied or short of that, the sentence was so harsh or excessive that it manifests an error of principle (see *Ogalo s/o Owuora v R* [1954] EACA 270, *Nilsson v R* [1970] EA 599 and *Wanjema v R* [1971] EA 493). In imposing a sentence, the court should always bear in mind the principles of proportionality, deterrence and rehabilitation and in considering these factors the court ought to weigh both mitigating and aggravating factors (see *Arthur Muya Muriuki v R* NYR HCCRA No, 31 of 2010 [2015]eKLR).

14. The maximum sentence for the offence of manslaughter is life imprisonment. In mitigation, the appellant stated that he had lived well with his wife and he had school going children. The trial magistrate took into account the fact that although he was a first offender, a custodial sentence was warranted in view of the fact that he assaulted a person who trusted him. Taking into account other sentences imposed in similar cases, I reduce the sentence from 20 years' imprisonment to **five (5) years** imprisonment to run from the date of conviction.

15. The appeal is allowed to the extent of the sentence.

SIGNED AT KISUMU

D.S. MAJANJA

JUDGE

DATED and DELIVERED at SIAYA this 20th day of APRIL 2018.

J. A. MAKAU

JUDGE

Appellant in person.

Mr Okach, Senior Prosecution Counsel, instructed by the Office of Director of Public Prosecutions for the respondent.