



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 86 OF 2013

REPUBLIC.....PROSECUTION

VS

SAMUEL MWANDIKI CYPRIAN.....ACCUSED

JUDGMENT

The accused Samuel Mwandiki Cyprian was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code particulars are that Samuel Mwandiki on the 5th day of October 2013 at about 03.30 am at Taita village, in Imenti South District within Meru County murdered Isaya Bundi Cyprian.

PW1 the deceased and accused person's mother got out of the house at 3.30 am to find out what commotion she heard was about and she found her son the deceased lying dead. She woke up her 2 grandchildren and a young man who was living with them and they went to scene and later went and made a report at Nkubu police station.

Police accompanied them back home and collected the body after conducting search in the home. She said she was in the cells together with Moses and Samuel for one week PW1 said she didn't know whether accused was involved in murder of Isayah. She said she didn't wake up accused when she found the deceased dead at night. She said she didn't find Samuel at scene and she didn't see who injured and killed Isayah.

PW2 Moses Mugambi said PW1 woke him up at 2.30 am and told him to take her to the police station. He said when he woke up they found the body of Bundi at the gate. He said Bundi had injury at the back of his neck and cut on left leg. PW2 reiterated evidence given by PW1 as to what happened after they reported to police at Nkubu. He said that police searched the home and found accused in his house and a panga and iron bar were recovered. He said both weapons had blood stains. PW2 said that accused and deceased persons late brother Lawrence was his friend and he had died 3 months prior to this incident.

PW3 nephew to both the accused and deceased also testified how PW1 woke him up together with PW2 and they accompanied her to go and report death of the deceased. He said that after placing the deceased body in the car police searched the home.

PW4 P.C.Charles Nyongesa investigated the murder. In company of P.C. Kipruto and P.C Driver Ogoti they went to scene and collected body. He said the body was within the compound. He said the deceased had multiple cuts on the head and left leg had been fractured. That the body lay about 14 to 15 M away from PW1's house.

That they followed traces/trail of blood to a nearby house which belonged to the accused. That there was no response when they knocked and they broke into the house and found accused who was deep asleep.

That they woke him up and he had minor injuries on his head. On conducting search in the house they recovered one panga EX P1 and twisted metal rod EX P2. That the panga and metal iron rod had blood stains. The body was taken to mortuary and on 15th October 2013 post mortem was conducted –EX P3 P.C Nyongesa PW5 produced sketch he drew at the house – EXP4. He said the blood stained panga and iron rod were recovered hidden under the bed. He said accused and the deceased had a history of frequent fights because of drunkardness.

PW5 Dr Njeru also testified and produced post mortem Report prepared by Dr Koome who conducted post mortem on the body of the deceased on 15th October 2013. The report showed the deceased had 3 ribs broken.

When accused was place on defence he gave sworn statement and said that on 5th October 2013 he worked upto 4.00 pm and when he returned home he had a bath. That thereafter he went to meet his employer one Nyagah to discuss the next days job. He said he returned home and went to sleep at 10.00 pm. That while sleeping at midnight he heard a knock at his door and voice warned him "Usijaribu kupiga

nduru au kuongea". His wife cautioned him not to make noise. That he got iron rod from where he kept tools and in the course of it sustained a cut. That he put chairs against the door and wanted for attackers until morning as nobody spoke again.

That at 5.00 am he said he heard another knock and heard his mother's voice asking whether he was alive. That he opened and found police officers and he told them what transpired at night. That police held him roughly and wrestled him down and told him to confess who killed his brother. He said he didn't know what happened to the deceased because he was in the house and was warned not to raise alarm. He said he was arrested together with his mother and other boys but he is the one who was charged. He said blood stains on the panga recovered from him was from the cut in his hand. He urged the court to acquit him. Accused said he could not tell how the trail of blood from scene to his house came to be.

From the evidence on record the issue for this courts determination is whether the prosecution has proved that the deceased person's death arose out of the action on a mission by the accused and that such actions and/or omissions were as a result of malice aforethought.

When PW1 heard commotion in her compound at night and later came out after 30 minutes and found her son Isaiah Bundi dead she called PW2 and PW3 but not he accused person herein who she knew lived with them in the same compound.

When PW1, PW2 and PW3 went to report murder and police accompanied them back to the scene a trail of blood was traced from where the deceased person's body lay to the accused persons house and a panga and iron rod recovered from under his bed also had blood stain. The police said they found accused deep asleep. They didn't say they found him in the house with his wife and allegations of accused wife arising now are an afterthought. Accused persons defence that blood on panga and iron rod was from a finger cut with a tool in his box is quite ingenious but he didn't show the police the alleged injury that bled on the panga. He didn't also show the court the injury he allegedly suffered. The trail of blood from scene of his brother's murder to his house speaks volumes of identity of the assailant and he cannot explain it away. Failure by PW1 to call her son -Accused- on finding another son dead within the compound is a very strong indicator that accused murdered his brother.

This court finds in the circumstances that the prosecution witnesses have proved the charge against accused person beyond all reasonable doubt. Accused person is guilty as charged and is convicted under section 215 C.P.C

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 28th DAY OF JUNE 2018.

IN THE PRESENCE OF:

C/A:- Penina

Mr Nyenyire Advocate for accused.

Prosecution: - Mr Kinyua for state

Accused:-Present in person.

Mr Kinyua

There is no previous records.

Mr Nyenyire Advocate in mitigation

We wish to mitigate for leniency on behalf of accused. Accused is a young man aged 38 years. He has been in custody since 2013. We pray that the court takes into account the time he has been in custody. He is remorseful for what happened. In his time in remand he completed his education. The accused person's mother is in court.

Order

Mitigation is considered. However the accused person's brother blood still cries for justice for the senseless murder committed by the accused.

There was completely no justification for what he died. He went ahead to sleep soundly after killing his brother in cold blood. He deserves no mercy from this court. Accused will suffer death as prescribed by the law.

Right of Appeal 14 days explained.

HON. A.ONG'INJO

JUDGE