



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET
CRIMINAL CASE NO. 33 OF 2017

REPUBLIC

VERSUS

MWAJUMA BASHIR SALIM.....ACCUSED

JUDGMENT

[1] The ACCUSED who had originally been charged with murder contrary to section 203 as read with 204 of the Penal Code had her charge commuted to manslaughter following a plea agreement on the basis that the killing of the her deceased husband was unintentional.

[2] The facts of the case as presented to the accused were as follows:

*“The accused and the deceased herein were living together as husband and wife at Marigatini market since the year 2013. They had 2 children a daughter and a son aged 4 years and 1 year respectively. On the 15th day of September 2015, the deceased went to his house at about 7.00pm. The accused asked the deceased to give her money to buy food for the children but the deceased replied that he had no money. The accused went to her sister Rehema’s house to borrow some food for her children. Her sister gave her 2kgs of flour and 20 shilling which she used to buy tomatoes and sukuma wiki. The accused went back home and found the deceased sitting in a chair. The accused asked the deceased whether she had got the food stuffs from her boyfriends. The accused was angered by the question and in return asked the deceased whether he used to take his money to his girlfriends. An argument ensued between them. The accused had placed a knife on the table which he wanted to use to prepare sukuma wiki. The **accused** took a TV remote control and hit the **accused** on the face pushing her with it. **The accused** took a knife from the table and stabbed the accused once on the chest. He was rushed to Marigat District Hospital but was confirmed dead on arrival. The body was rushed to Marigat District Hospital mortuary where post mortem was done on the 21st September, 2015. The cause of death was established to be penetrating chest injury due to sharp force trauma following assault. The accused was arrested by officers from Marigat police station and charged with the offence of murder which has now been reduced to manslaughter. The accused person was thereafter presented before the doctor at Kabarnet District Hospital for mental assessment who confirmed she was mentally fit to stand trial.”*

[3] Clearly, the killing of the deceased was unintentional and the act of stabbing the deceased only once in the chest was provoked by the deceased’s hitting of the accused in the course of the domestic quarrel resulting from the deceased’s own neglect in providing food for his family and chiding the accused about getting food assistance from her boyfriends while she had obtained the 2kg flour and Ksh.20 that she used to buy tomatoes and Sukuma wiki [kales] from her sister.

Conviction

[4] Having confirmed the truth of the facts of the case as presented by the Prosecution and set out above, the accused was convicted of her own plea of guilty for the offence of manslaughter. The Court was satisfied of the accused's fitness to plead and voluntariness of the plea and of the basis for the plea bargain, and following the taking of plea in the new charge of manslaughter and confirmation of the facts of the case by the accused, the accused was convicted on her own plea of guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

Sentencing

[5] The accused's blameworthiness for the act constituting the offence herein is wholly diminished. Significantly the accused has until 15th March 2017 when she was released on bond pending trial been in custody since 6th October 2015 with her young child then aged 1 year. The accused has been in custody for almost one (1) year six (6) months.

[6] In *Omuse v. R* (2009) KLR 214, it was held that the **sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender** and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.

[7] The court is entitled to take into account the period that an accused has been in custody before sentence in case of an imprisonment term being considered appropriate in accordance with Proviso to section 333 (2) of the Criminal Procedure Code as follows:

“(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

[8] I consider the period of custodial remand as relevant while assessing other methods of sentencing as well because of liberty is incremental to any other treatment ordered by the court. In this case, I have also considered that the accused has lived in custody with her two and half year child for the period of almost 1 ½ year, the child suffering for the sins of her mother.

[9] On the principle of blameworthiness for the offence, and as an addition to the 1 ½ year period of custodial remand pending hearing already served by the accused, I would consider a probation sentence to be appropriate in this case to facilitate the rehabilitation of the accused under supervision of the Probation Officers and to allow the accused take care of her young child out of the prison walls.

Probation Officer's Report

[10] The Probation Officer's Report dated 18th April 2017 recommends as follows:

CONCLUSION

The offender is a young mother of two children of tender ages who solely rely on her, following father's demise. She deeply regrets her action which had robbed her of the father of her children. She has learned from the consequences of her action and is now more controlled in her interactions with others.

At time of commission of offence she was living as a wife to deceased, the union was troubled as offender felt the deceased's behaviour had changed as he never supported family as usual, she suspected he was having an illicit affair and could have been using the money on the alleged lover.

They had quarrelled over it earlier on, and when he could not give her the money for food and medication, she lost her control. Apart from this offence she is of good behaviour promising to be a change in advising friend about anger management.

RECOMMENDATION

Your honour, the offender is recommended for probation to facilitate counselling and enable her fend and care for the young children in a safe environment. She is willing to be placed on probation and to abide by all conditions entailed in supervision.

Orders

[11] For the reasons set out above, having convicted the accused on her own plea of guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code, and having considered the 1 ½ year period of accused's pre-trial detention, I sentence the accused to serve Probation for a period of three (3) years under the supervision of the County Probation Office, Baringo.

DATED AND DELIVERED THIS 18TH DAY OF APRIL 2017.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Chebii for the accused person

Ms. Macharia for DPP