



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO. 7 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

KENNETH CHERUIYOT.....ACCUSED

SENTENCE

1. The accused, Kenneth Cheruiyot, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 16th of February 2014, at Turuguito village, Koitalel sub-location, at Sosiot within Kericho County, he murdered Irine Boiywo He pleaded not guilty to the offence and the case was scheduled for trial.
2. Thereafter, pursuant to a plea agreement with the state, he pleaded guilty and was convicted of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
3. The facts of the case as presented to the court and to which the accused pleaded guilty are that the accused and the deceased were in a relationship as boyfriend and girlfriend and were living together in a one roomed house at Turuguito village in Sosiot Kericho County. On the 16th of February 2014, at around 7.00 p.m., the accused returned home after a drinking spree within the village. He found that the deceased had brought home some illicit brew, chang'aa, which they started drinking together. As they were drinking, the accused decided to check on some money, Kshs.20,000/- which he had kept in the house, which he found was missing. He asked the deceased whether she had seen the money and she responded that she had not only seen the money but had taken and used it. The accused demanded to know from the deceased why she had taken the money without informing him first, and how she had spent it.
4. The deceased became arrogant and told the accused that since she had already used the money, there was nowhere he could take her. She went on further to insult the accused telling him he had been careless to put such a large amount of money in the house. She could not give a satisfactory answer to the accused on why or how she had spent the money. The accused became angry and slapped the deceased twice on the face. The deceased also hit the accused and the two got into a fight.
5. The accused, who was very angry at this time, took a sisal rope that was in the house, tied the deceased's neck with one end and pulled it. The deceased became unconscious and fell down. The accused took the deceased and placed her on the bed hoping she would wake up when she was sober and give him a clear explanation of how she spent the money. The accused also fell asleep as he was also drunk.
6. The following morning, at around 9.00 a.m., he tried to wake the deceased but she was not responding.

He discovered that there was blood oozing from the deceased's mouth and nose, and that she was not breathing. At that point, it occurred to him that he had killed her.

7. He locked the house and left for a nearby forest where he hid until 8.00 p.m., when he went back home. He went to his mother's store house as they lived within the same compound and took a pesticide known as triatix, which is used to control ticks, which his family had used when they had cattle. He went back to his house, made a solution of it, drank it and lay beside his girlfriend's body.

8. The following day at around 7.00 a.m. the accused's younger brother passed by the accused's house and saw the bottle of pesticide outside. He was alarmed as they did not have any cattle in the homestead which would require the use of the pesticide, which was known to be toxic. He knocked on the accused's door but there was no response. He tried opening the door but it was locked from inside. He peeped through the window and could see the deceased and accused lying on the bed, motionless, and what appeared like a discharge from the deceased's nose and mouth. The accused was alive but unconscious. There was a bowl with the pesticide solution that the accused had taken inside the room. The accused was rushed to Litein Mission Hospital.

9. A report on the matter was made at Sosiot Police Station. The deceased's body was moved to Kericho District Hospital where a post mortem was conducted on 19th February 2014 by Dr. Tom Oyoo. He established that the cause of death was asphyxia following strangulation. A copy of the post mortem report dated 19th February 2014 was produced in evidence.

10. The accused was also taken for a medical examination and it was established that he was fit to stand trial. He was thereafter charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code which has now been reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to the plea agreement. The state indicated that he may be treated as a first offender.

11. In mitigation, Learned Defence Counsel, Mr. Motanya, stated that the accused is 33 years and single at the time of his arrest. He is the first born son of peasant farmers, and his mother is disabled following a road traffic accident. The accused was a casual labourer at a sugar plantation, and his parents were largely dependent on him to help raise his siblings. He was in the habit of taking a lot of alcohol, and according to his counsel, that is why he did not realize that he had gone overboard in trying to 'discipline' his girlfriend. He had been in custody for the last three years and had had time to reflect on his actions and was very remorseful. He prayed to be given a non-custodial sentence.

12. A social inquiry report was prepared by the Probation Office, Kericho and filed in court on 16th March 2017. From interviews with the local administration, the Assistant Chief of the area, it appears that the accused was of bad character, and used to abuse alcohol, and probably bhang (*cannabis sativa*) as well.

13. We have in this case, only the offender's word for what transpired on the night of 16th February 2014 between the accused and the deceased. His version is that they quarreled over some money, that she was "arrogant" to him, and in the process of 'disciplining' her, to use the term applied by his Advocate, went too far.

14. The state has accepted the accused person's plea bargain, and he has been convicted by this court for the lesser offence of manslaughter. Nonetheless, there are elements of this case, the conduct of the accused person that led to the death of the deceased, that are disturbing. It is one thing to, in a fit of anger, grab a stick or stone and hit someone, thus causing their death. It is quite another to take a rope, tie it round someone's neck, tighten it and strangle them with it to death. The fact that the accused is remorseful and has seen the error of his ways, and that he even attempted to take his own life, does not lessen the enormity of his actions that led to the death of the deceased.

15. The offence of manslaughter carries a penalty of life in prison, but the accused has pleaded for leniency and a non-custodial sentence. However, notwithstanding the fact that the accused and the

deceased were drinking together, and that they fought over some money that the deceased had allegedly used without the consent of the accused, his is a case that is deserving of a custodial sentence during which he can properly reflect on his actions.

16. I therefore sentence the accused to serve a term of ten years imprisonment. He has a right of appeal within 14 days of today.

17. It is so ordered.

Dated, Delivered and Signed at Kericho this 12th day of April 2017.

MUMBI NGUGI

JUDGE