



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 11 OF 2016

REPUBLIC.....PROSECUTOR

Versus

S C KACCUSED

JUDGMENT

1. The dawn of 24th March 2016 at [particulars withheld] village, in Laikipia Central Sub-County in Laikipia County, was far from normal for the family of S C K (S) . S is charged with the murder of his wife Jane Chelagat Kiprono (**deceased**) on that day. The witnesses in this case who were relatives and neighbours of S testified of a harmonious marriage of S and his wife. What happened in S home that day left them in disbelief. Their reaction is probably best captured by Jacob Marete Ruciaka P W 4, both a farmer and preacher at whose church the deceased was attending, when he said:

“What happened that day upto today has been a concern to us”.

2. On that day at 7 a.m. Janet Chepkoech Chemubo, P W 1 who is married to S nephew was at her home when she heard screams coming from S house. Her house is very near S house. She ran there and this is what she narrated in her evidence:

“I peeped, I saw him (accused) hit Jane (deceased) on the head with [a] pipe [which is] used to blow the fire. The accused and deceased were in their bedroom”.

Janet saw the deceased on the ground not making any noise. Janet’s reaction to what she saw was to scream. Her Screams attracted her husband Antony Kipyego Chemumbo, P W 2.

3. Anthony when he heard the first screams he was milking a cow. He saw his wife Janet go to S home to find out who was screaming. It was not until Janet screamed that he went to S home to inquire what was happening. When he got to S house he found S holding a pipe while the deceased was lying on the ground. Anthony held S in attempt to restrain him. They both fell down Anthony said of S:

“I held on to him because he wanted to hit me”.

Because Janet continued screaming more people arrived. One of those who arrived was a neighbour called Amos. Amos assisted Anthony to pacify S. They disarmed him and tied his hands with rope.

4. Neighbours Catherine Chebore, P W 5 and Selina Misikiyu, P W 6, carried the deceased out of the house. When they put her outside the house they noticed that she died. The medical doctor who did the post-mortem of the deceased found that she died of severe head injury.

5. The common evidence of almost all the prosecution's witnesses was that S had previously been treated for undisclosed mental illness. In particular his brother William Kipsege Chemumbo, P W 3, stated that the day prior to the incident he had taken S to hospital because of his mental problems. P W 3 said that on that day he took S to hospital, he noticed S looked **'fearful'** and even refused to be transported with a 'boda boda' (motor cycle).

6. The court on finding that Sammy had a case to answer called upon him to elect whether given evidence or not. S gave sworn evidence in his defence. In his testimony he stated that he could not recall what happened on the morning of 24th March, 2016. That he only found himself in police custody. He denied he assaulted his wife or that he had with him that day the pipe. He did acknowledge that his brother William, P W 3, used to take him to hospital for treatment for mental illness.

7. S called a witness in his defence. The witness was a sister Viginia Mwende a nurse from Mugunda Catholic Dispensary where S was treated on 23rd March, 2016. She produced the medical chit which showed that S complained of confusion a lot of thoughts and insomnia. He was prescribed some medicines.

8. S was described by all who knew him as a peaceful man. He had a good relationship with his family and neighbours. None had even seen him being violent. They however were all aware that sometimes he suffered metal illness which necessitated treatment. It is clear that on the subject day S was suffering from mental impairment. Even after he hit his wife with the pipe and people arrived at the scene he did not attempt to escape. The only thing he did was to try to resist being disarmed. To prove that he was not mentally well on that day the investigating officer Sergeant Evan Barongo, P W 9, in evidence said:

"Accused seemed to know he killed deceased but he could not explain how he did it. He said he found he had hit [the] deceased".

9. From the evidence tendered there is no doubt that it was S who assaulted the deceased which led to the deceased's death. Janet, P W 1, clearly saw S continually hitting the deceased on the head with a pipe while the deceased was on the ground of their house. Witnesses who came on the scene found the deceased on the ground bleeding. Deceased died at the scene.

10. In the case **REPUBLIC - V – PHILEMON CHEMA [2014] eKLR** it was held:

"To establish the defence of insanity, the court must clearly be satisfied that when the accused committed the act of which he is indicated, he was:

(i) suffering from a disease which affected his mind, and by reason thereof,

(ii) He was incapable of understanding what he is doing or knowing that he ought not to do the act or make the omission of the intention to do so..."

S proved both that he was suffering from disease and he was incapable of understanding what he was doing.

11. In view of the evidence tendered this court makes a special finding to the effect that S is guilty of murder as charged but that he was insane when he committed that murder. That finding is in accordance with Section 166 (1) of the Criminal Procedure Code, Cap 75. That Section provides:

"166. (1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission".

12. I hereby direct the Deputy Registrar of this court to report this case for the order of the H. E. the President. In the meanwhile S C K shall be kept in custody at Nanyuki G K Prison.

Dated and Delivered at Nanyuki this 2nd August 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

Accused: Sammy Chemumbo Kipkoech

For accused.....

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE