



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL (MURDER) NO. 106 OF 2010**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**CKM..... ACCUSED**

**JUDGMENT**

1. **CKM**, (herein, the accused), is charged with murder, contrary to S. 203 as read with S. 204 of the Penal Code, in that on the 11<sup>th</sup> November 2010, at in Transmara West District, murdered **NM**.
  2. The case for the prosecution was that the deceased was the father of the accused and on the 9<sup>th</sup> November 2010, the two were found by **JM (PW 1)**, quarreling. The deceased was also her father and the accused her younger brother. She knew that they always quarrelled but did not understand why they quarrelled on that day. She also knew that the accused was always drunk and was not in favour of the deceased building a house for a grandson called D.
  3. In the evening of the material 9<sup>th</sup> November 2010, J (PW 1) was at home when her brother called R and a certain young man brought the deceased to her. She noted that he had three cut wounds on the head. His clothes were soaked in blood and he could not talk. She and others took him to Kilgoris General Hospital where he was admitted but died on the 11<sup>th</sup> November 2010, while undergoing treatment. She identified his body for post mortem purposes on the 15<sup>th</sup> November 2010.
  4. A girl called, **PK (PW 2)**, was at home with a child known as C, when the accused arrived and allegedly threw a stone and hit the deceased, her grandfather, with it. She witnessed the incident while she was near the house door and said that the deceased fell down after being hit but was carried and placed on a bed by the accused. She ran and reported the matter to R, who then appeared at the scene to help the deceased. She also knew R as her grandfather.
  5. The incident was reported to the police at Kilgoris Police Station on the 10<sup>th</sup> November 2010, but was said to have occurred on the 9<sup>th</sup> November 2010. The report received from the family of the deceased was that he had been assaulted by the accused.
- PC James Ngunjiri (PW 3)**, was one of the officers who investigated the matter. He indicated that the accused was arrested and charged with assault but the charge was enhanced to that of murder when the deceased passed away on 11<sup>th</sup> November 2010, while undergoing treatment for injuries inflicted on him.
6. On 14<sup>th</sup> November 2010, PC Ngunjiri (PW 3), visited the scene of the offence and recovered the alleged murder weapon i.e a stone (P.Ex 1). He later arranged for a post mortem examination on the body

of the deceased and produced the necessary report in court (P.Ex 2). He also produced a medical report (P.Ex 3) indicating that the accused is a mentally fit person.

7. In his defence, the accused denied the offence and contended that he was implicated without good cause and simply because he never got along well with the deceased in his lifetime.

He said that the deceased left home and was assaulted by unknown people and that none of his family members saw him assaulting the deceased. He therefore maintained that he did not commit the offence.

8. After the trial, the learned counsel for the accused, **MR. Soire**, submitted that the prosecution called three (3) witnesses and that PW 1, only played the role of taking the deceased to hospital and was not at the scene during the offence. That, the investigating officer (PW 3) produced the post mortem form or report as well as the medical examination report (P3 form). That, the accused was only implicated by a minor (PW 2) whose evidence was not corroborated as required of the evidence of a child.

9. Learned counsel, contended that the accused was implicated for no good reason and that his bad relationship with his late father was even confirmed by the prosecution through PW 1. Further, the prosecution evidence against the accused was generally insufficient for a conviction on a charge of murder.

10. While the learned defence counsel urged this court to acquit the accused, the learned prosecution counsel, **MR. Otieno**, urged this court to convict the accused as the prosecution evidence against him was sufficient.

The learned prosecution counsel submitted that the evidence by PW 2 was clear. It showed that the deceased was assaulted by the accused and this fact was corroborated by PW 1. Besides, lack of corroboration of the evidence by PW 2 did not lessen its weight.

11. Under S. 203 of the Penal Code, any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.

From the evidence and the submissions by both the prosecution and the defence, it was clearly undisputed that the deceased was murdered by being assaulted and injured on the head. The post mortem report (P.Ex 2) confirmed that the deceased sustained serious injury on the head which culminated in cardiopulmonary arrest due to haemorrhage due to assault.

12. The degree of injury was a clear indication that the assailant hit the deceased on the head with a heavy blow with the intention of causing grievous harm which unfortunately caused his death. The evidence indicated that the assault was intended to cause bodily harm rather than the death of the deceased. It was clear that the deceased was helpless at the time of the attack which appeared to have been sudden and unprovoked.

13. Basically, the issue that fell for determination by this court was whether the accused was identified as the assailant. He denied the offence and implied that he was framed because he never related well with the deceased.

His sister (PW 1) confirmed that the two often quarrelled and had disagreed over a house built by the deceased for his grandson. She however, was not at the scene when the assault occurred. The deceased was brought to her after being assaulted so that she could help in having him taken to hospital.

14. She (PW 1) said that the deceased was taken to her by her brother R and another person. She was not told who was responsible for the assault thereby implying that those who took the deceased to her did not know the assailant. Her brother, R, was not called to testify and shade light on the probable identity of the assailant.

15. The only witness who mentioned the accused as having been the assailant was the girl, K (PW 2),

who was aged about nine (9) years at the material time of the offence and eleven (11) years at the time she testified in court. She stated that the accused arrived at home and 'killed' the deceased by hitting him with a stone. The deceased fell down but was taken to a bed by the accused. It was then that she (PW 2) ran and reported the matter to R.

**16.** The investigating officer (PW 3) produced the stone which was allegedly used to assault the deceased (i.e P.Ex 1). He said that the accused was brought to the police station by members of his family for allegedly assaulting the deceased. A charge of assault was preferred against him but was later converted to murder after the deceased died while undergoing treatment.

**17.** Although the defence raised by the accused was a firm denial, the evidence adduced against him by K (PW 2), clearly identified him as the assailant. There was no reason why she could have implicated him without cause. Her evidence against him stood on its own but was reasonably credible such that it would be relied upon even without corroboration for a safe conviction for the offence of manslaughter rather than murder.

**18.** However, this court, although appreciates that there is no necessity in law for corroboration of the evidence of a minor, nonetheless cautions itself of the dangers of convicting on the uncorroborated evidence of K (PW 2). (See, **Kibangeny Vs. Republic (1959) EA 92**).

In any event, the evidence by Janet (PW 1) may have provided corroboration of K's (PW 2's) evidence in showing that the accused due to his frequent quarrels with his father had the necessary motive to cause him bodily harm only that he went too far this time round.

**19.** In essence, the prosecution has proved to the required standard the offence of manslaughter against the accused. Accordingly, he is hereby found guilty for manslaughter, contrary to S.202 of the Penal Code and convicted thereof.

**J.R. KARANJAH**

**JUDGE**

**[Delivered and signed this 21<sup>st</sup> day of June 2016]**