



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
CRIMINAL CASE NO. 62 OF 2011

REPUBLIC PROSECUTOR

VERSUS

REUBEN MULONGO NYONGESA1ST ACCUSED

JOSEPH MAHERA KIPLIMO2ND ACCUSED

AMOS WEKESA SIMIYU3RD ACCUSED

BENSON BARASA WANJALA4TH ACCUSED

MOSES WEKESA MATETE5TH ACCUSED

J U D G M E N T

The accused 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 was that **on the night of 5th December 2011 at Mbai Farm Kiminini village within Trans Nzoia unlawfully murdered Peter Kiprotich**.

The accused denied the charge.

The prosecution called 6 witnesses to establish its case. It must also be noted that the other 4 co-accused were acquitted as the court found them not culpable.

The evidence so far presented herein can be summarised as hereunder.

PW1 Mildred Masinde is the area Chief Baraton Location. On 6th December 2011 he received a call from the village elder concerning a person killed and his body thrown into a water well. She went to the scene and notice blood stains heading to the well from a nearby house. He called the D.O as well as police from Kitale who came and retrieved the body which had deep cuts on the head.

The body was then taken to the mortuary.

PW2 Francis Sumbuli told the court that he was a casual farm worker. On 6/12/2011 he went to the homestead of Lusalia where he noticed blood stains in the house occupied by the deceased. He reported the same to the village elder. The body was later retrieved from the well.

PW3 APC Eric Omondi told the court that he received a phone call from the area chief concerning the incident. They proceeded to the scene and saw the bloodstains in the house which led to the well. They retrieved the body from the well which had deep cuts on the head. Later he received information from one Jane Wekulo that the accused who was her neighbour had arrived home with blood stained items and a mobile phone. He arrested him and he led them to arresting the other co-accused. They also recovered several assorted items belonging to the deceased from the accused.

When cross-examined he said that the accused told him that the deceased had brought the items to his house as he was moving house.

PW4 Richard Boiyo a brother to the deceased identified the deceased properties found with the accused as well as his body for post mortem purposes.

PW5 Dr. Blastus Kakundi carried out postmortem on the deceased body and concluded that the cause of death was cardio-pulmonary failure due to severe head injury with severe hemorrhage.

PW6 P.C. Kenneth Kahindi took over the investigation from his colleague who was transferred. From the investigation it was found that the accused was staying with one William Wamalwa who became suspicious when he saw the accused arrive home at 5 am with blood stained clothes.

When put on his defence the accused gave unsworn evidence .

He explained that he was a lorry turnboy dealing with loading and offloading maize . That on the material day 6/12/2011 they travelled to Kakamega where after offloading maize they came back. When he arrived home was told by his pastor that the deceased had been attacked and his body dumped in a water well. He went to the scene where there were many people including police officers.

He said that on the same day one William Wamalwa a brother to his landlord came to his house. He became quarrelsome and refused to leave. He said that he had differed with him as he wanted his sister to occupy that house. After supper the said Wamalwa did not leave the house but slept. At around 9 pm he had a loud bang at the door and on inquiring he was told to open by the intruders who were administration police officers. He was arrested and taken to Toll AP Camp. One of the people who arrested him was one Eric Omondi an AP. He was assaulted and when asked he would vacate the house. At the station he was told to mention the names of his friends which he did and they were arrested too. He denied the charge arguing that the deceased was his friend as well as a fellow church member.

Analysis and Determination

Having gone through the entire evidence its clear that there was no eye witness to the entire offence. The only evidence is circumstantial and its based on the fact that the deceased items were found in the accused house.

Although from the evidence on record the said items were marked and not produced it was never disputed that the same were found under the custody of the accused. Infact in his unsworn evidence the accused did not give any explanation as to how he came into possession of the deceased's personal effects. Although the accused had no obligation to explain, but certainly by giving unsworn testimony he ought to have given an explanation as this was the only nexus between him and the deceased.

Further in his evidence the accused simply explained his movements on 6th December 2011 but not 5th December 2011 when the alleged incident took place.

Circumstantially therefore I hold that the evidence on record clearly points to the accused guilt. He was clearly seen by his neighbour washing blood stained clothes and above all the deceased items were found in his custody.

I find that although Jane Wekulo was not called to testify, it was the information she gave to PW3 that led to the recovery of the items and subsequent arrest of the accused.

In the premise I find that the prosecution has proved the case beyond any shadow of doubt and I proceed to convict the accused under the provisions of Section 203 of the Penal Code.

Delivered this 31st day of October, 2016.

H.K. CHEMITEI

JUDGE

In the presence of;

Kakoi for State

Bororio for accused

Accused present

Kirong – Court Assistant