



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT KITALE

CRIMINAL CASE NO. 19 OF 2011

REPUBLICPROSECUTOR

VERSUS

SAMUEL KIPKOECH CHUMBAACCUSED

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 were that **on the 27th February 2011 at Murkuywa Farm in Trans -Nzoia County murdered William Kimeli Singoei**.

The accused denied the charge. The prosecution called 5 witnesses whose evidence can be summarised as hereunder.

PW1 Henry Tuwei is the village elder. He testified that on 27/2/2011 at around 6 am the accused came to his house with a knife. He told him that he had killed someone and the body was in his house. He called Zablou and David Malakuya and went to the scene with police from Cherengany police station.

At the scene he saw the deceased body and other people who had gathered including the accused wife.

PW2 Philip Kiplimo Kirwa was at home that morning at around 8 am when his neighbours Ibrahim Kiplimo and William Waliaula informed him of the incident. They went to the scene and saw the deceased body. The police then came and picked the body.

PW3 Dr Blastus Kakundi carried out postmortem on the deceased body and found the cause of death to be severe penetration chest injury. There were two stab injury. There were two stab wounds on the neck and the chest.

PW4 P.C. Charles Were carried out investigation after his colleague the original investigation was transferred. He said that the knife used to assault the deceased was handed over to the police. It was alleged that there was a love triangle between the deceased, accused and the deceased wife. The deceased armed himself with the knife and attacked the accused. He was however overpowered and the accused stabbed him fatally and reported the incident to the village elder.

When put on his defence the accused gave unsworn testimony. He slept upto around 5 am when he went for a short call. Certainly from behind someone attacked him and stabbed him on the left hand. He felt down but continued to struggle. In the process he stabbed him but according to him he did not know where. He then went to the village elder and reported the incident. He also took the knife which apparently according to him belonged to the deceased. He admitted that the cause of the dispute was his wife who was the deceased wife previously.

Previously. He also produced the treatment chit showing that he had also suffered some injuries during the scuffle.

During cross-examination he said that he was staying in the house of one Lawrence Kibet and that is when the incident took place.

He was also staying with his wife together with the deceased children and his as well as his.

Analysis and Determination

Having heard the prosecution as well as the defence evidence there is no doubt that the accused killed the deceased as he confessed to PW1 that morning. The murder weapon was taken to PW1 by the accused.

The big question however is whether there was malice aforethought which is a crucial ingredient as per the provisions of Section 206 of the Penal Code. It appears that the dispute between the deceased and the accused was to do with one Hellen who was previously the deceased wife and now the accused. By his own admission the accused confirmed that he was having the deceased children.

Be it as it may I do find that there was no malice aforethought which one can prove against the accused. There is nothing to show that indeed he prepared himself, by arming himself with a knife and then attacked the deceased. The only eye witness Hellen was not called to testify.

Nevertheless I do find that the accused must have used excessive force to attack the deceased. There is no evidence that he called for any help from any other 3rd Party at all.

Consequently I think this is a case where the proper charge would have been manslaughter. In the premises I shall reduce the charge of Murder to Manslaughter and convict the accused accordingly under the provisions of Section 205 of the Penal Code.

Order accordingly.

Delivered this 31st day of October, 2016.

H.K. CHEMITEI

JUDGE

In the presence of;

Kakoi for State

Ingosi holding brief for Karani for Accused

Accused present

Kirong – Court Assistant