



NO. 2083

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 50 OF 2009

REPUBLIC PROSECUTOR

V E R S U S

DUKE RONALD KEREU ACCUSED

J U D G M E N T

Introduction

1. Duke Ronald Kereu is before this court on one count of murder contrary to **section 203** as read with **section 204** of the Penal Code, the particulars being that on the 15th day of June 2009 at Bobita village in Gucha South District of Nyanza Province he murdered TERESA NYANCHAMA. He pleaded not guilty to the charge. The case proceeded to hearing during which the prosecution called 6 witnesses, one of whom Edna Kareu who testified as PW1 turned hostile.

Facts of the Case

2. On the 15th June 2009 the accused person herein went to the home of the deceased and on arrival thereat, a quarrel ensued. The two quarreled over a debt owed to the deceased. After a while, the accused left the deceased's home. At around 8.00 p.m., the accused armed himself with a panga and went to the house of the deceased and slashed the deceased to death. The accused then fled. On 20th July 2009, a post mortem examination was done on the body of the deceased. The post mortem examination revealed the deceased suffered deep cuts on the head which led to brain damage and serious bleeding. The accused was subsequently arrested and charged with the present offence on the basis that he had malice aforethought.

Prosecution Evidence

3. From the 6 prosecution witnesses the prosecution case is as follows:- The deceased in this case was the accused's mother. On the day in question, and according to Edna Kareu, PW1 (hereinafter referred to as Edna), the family of the deceased was at home, among them Edna, Ezekiel, who was Edna's brother Happiness, Edna's sister, Zablon and Faith who were Edna's cousins and the deceased. The family had just taken supper and were preparing to sleep when at about 8.00 p.m., some people entered the house and ordered them to lie down. In the same breath, the deceased was cut with a panga and the attackers then ran away. When Edna refracted her statement saying that the accused was not at home on the material day, she was cross-examined by

- the State Counsel. She stated that she was forced to write and sign her statement and that she did not know the person who had killed her mother though in her statement to the police she had told the police it was the accused who cut the deceased with a panga.
4. Mauti Ondimu, PW2, told the court that on 15th June 2009 at about 8.00 p.m. she heard screams from the children of the deceased. He rushed to the scene and was informed by the deceased's children that the deceased who was injured was in the house. On entering the house, he noticed that the deceased had 2 cuts on the neck and the head. PW2 stated that he was not able to establish who had cut the deceased, although he confirmed that he knew the accused who was his grandson. PW2 also stated that he did not see the accused on 15th June 2009 although he stated in the same breath that on that fateful evening he saw Edna with the accused and another sibling by the name Ezekiel Kareu. PW2 also stated that when he asked the accused's wife about her husband's whereabouts, he was told that he (accused) had gone out.
 5. PW3 was Benson Nyamukeni Mokoro a brother to the deceased's husband. His testimony was that he attended the post mortem examination conducted on the body of the deceased on 20th June 2009.
 6. Doctor Omwoyo Willis testified as PW4. He is the one who carried out the post mortem examination on the body of the deceased on 20th June 2009 at Gucha South District Hospital. According to the witness, the deceased had 2 deep cuts one measuring 15 cm long and located at the rear left side of the jaw. The second deep cut was about 13 cm long and located at the level of the 6th cervical spine. Both cuts which were deep had bled profusely because the carotid artery had been damaged. Dr. Omwoyo formed the opinion that the cause of death was cardio respiratory arrest due to brain damage and acute haemorrhage. The post mortem report was produced as PExhibit I.
 7. During cross-examination, Dr. Omwoyo told the court that the likely object used to inflict the deep cuts on the deceased was sharp.
 8. PW5 was Ezekiel Kareu Mokuru who was aged 15 years at the time of his testimony on 24th October 2013. In his sworn testimony PW5 (Ezekiel) stated that on 15th June 2009 at about 8.00 p.m., he was seated inside his mother's house with his mother (the deceased) and his siblings among them Edna and his other sister called Happiness. As they sat in the house, the accused knocked on the door, and later entered the house after the door was opened for him. The accused sat down and tried to enquire from the deceased what her plans for the following day were. Then as the deceased was trying to explain her plans for the following day, the accused took out a panga, put off the light and struck the deceased twice with the panga. Ezekiel stated further that when the accused put out the light he (accused) switched on his torch so that as he struck the deceased, Ezekiel was able to clearly see what he (accused) was doing.
 9. During cross-examination, Ezekiel testified that he saw the panga as the accused struck the deceased with it.
 10. The investigating officer, Number 81855 Police Constable Silvanus Juma testified as PW6. His story was that on 15th June 2009 at about 8.00 p.m., he received a report concerning the murder of the deceased. The report which was made by Edna, and Benson Nyamukeni Mokoro, PW3, was to the effect that the deceased had been murdered by the accused. Upon receipt of the report, PW6 and other officers visited the scene where they found the body of the deceased lying in a chair. The body was then removed to Tabaka Mission Hospital for preservation and post mortem which was done on 20th June 2009. That the accused was on the run for some time before he was subsequently arrested and charged with the present offence. PW6 also produced a panga – Pexhibit 2 – which was the alleged murder weapon as identified by Ezekiel. The panga was taken to the police station by a village elder (not called as a witness) on 17th June 2009.
 11. When questioned about the panga by defence counsel, PW6 admitted that the panga produced as PExhibit 2 had not been subjected to any chemical analysis to establish if the blood allegedly found on it was human blood.

The Defence Case

12. When put on his defence, the accused gave an unsworn statement in Kiswahili, a language he confirmed to the court was well understood by him. He testified that he was arrested on 23rd July

2009 when he was on his way from Kericho where he worked as a tailor. He was taken to the police station and soon thereafter his area chief by the name Omambia appeared at the station and spoke to him before he (chief) left. Using the telephone handset from his cousin Evans Otongi the accused informed his people that he was under arrest. He also gave KShs.15,200/= to his (accused's) wife and parents. At about 2.00 a.m. on the same day, he was taken to Kisii Police Station. On the 25th July 2009, he was taken to Ogembo Police Station where he remained in cells for about 1 week before he was taken to the CID office for finger printing. He was then arraigned before court.

13. The accused denied all the allegations made against him. It was his evidence that on the day of the alleged offence he was away in Kericho where he worked as a tailor. He stated that he does not know the person who killed his mother, the deceased. He said he had been made to suffer for an offence he did not commit. He also testified that his parents had been separated for a long time and that he learnt to fend for himself from an early age. He urged the court to make a finding that he was not guilty especially in view of the fact that both his father and his wife were not called to shed some light on the prosecution case. He said he could not have killed the deceased because she was the one who built a house for him and also paid dowry for him.

The Law

14. **Section 206** of the **Penal Code** provides the back-bone for the offence of murder which can never be proved unless the State establishes the presence of malice aforethought on the part of an accused person. The section reads:-

“206. Malice aforethought shall be deemed to be established by evidence proving any one of the following circumstances.

- a. ***an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not***
- b. ***knowledge that the act or omission causing death will probably cause death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not or by a wish that it may not be caused;***
- c. ***an intent to commit a felony;***
- d. ***an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”***

15. What is clear from the above provision is that any of the circumstances (a) – (d) once proved by the prosecution establishes malice aforethought on the part of an accused. The only other issue would then be, whether from the evidence on record, it is clear that it is the accused who committed the deed that resulted in the death of the deceased. That is the task that is before me now.

Analysis of the Evidence

16. The evidence on record shows that the deceased whose age was about 40 years old at time of her death died from severe bleeding from 2 deep cuts inflicted upon her by a sharp object. The question that arises for determination is who inflicted those injuries? According to PW6, the investigating officer, he received a report from Edna (PW1 turned hostile), and PW3 and Ezekiel that the deceased had been killed by the accused herein. The accused has put forward a defence of alibi alleging that on the day of the alleged, murder he was away at work in Kericho and that he was arrested on 23rd July 2009 on his way home from Kericho. Ezekiel says that he saw the accused strike the deceased with a panga twice on the head after the accused had engaged the deceased in a little conversation about the plans she had for the following day. Although Edna denied that the accused was at home on the material night I have reached the conclusion that Edna perjured herself when she denied that the accused was not at home at 8.00 p.m. on 15th July 2009. I took the evidence of Ezekiel. I observed his demeanor both during examination in chief and

- during cross-examination. He remained steady throughout his testimony in chief and remained unmoved even with rigorous cross-examination. I have no reason to doubt his testimony which is supported by that of PW4 and PW6.
17. I have also given careful consideration to the defence given by the accused, but find no substance in it. The available evidence places him squarely at the scene of crime and what is clear to me is that the accused tried to confuse the deceased by engaging her in apparently innocent conversation before he struck. I am satisfied by the evidence given by Ezekiel that just before he struck the deceased with a panga the accused switched off the tin lamp, turned on his torch and then struck the deceased in very strategic places in the head and neck. The two blows were so serious that the deceased suffered damage to the spinal cord at C6-C7 and subsequent nervous system damage. The deceased had no chance of survival.
18. There is no doubt in my mind that the accused knew that his act of cutting the deceased with a sharp panga on the head and neck and thereby shattering the main blood vessel would probably cause the deceased's death or cause her grievous harm as set out in section 206 (b) of the Penal Code.
19. In a nutshell therefore, the accused in this case had both actus reus and the malice aforethought, the two ingredients that are required to prove the offence of murder contrary to section 203 of the Penal Code and as detailed under section 206 of the Penal Code. I proceed to make such a finding.

Conclusion

20. The upshot of what I have stated above is that the accused person herein, Duke Ronald Kareu is guilty of the murder of the deceased herein, Teresa Nyanchama. I accordingly find him guilty as charged and convict him accordingly in accordance with section 322(1) of the Criminal Procedure Code.
21. Orders accordingly.

Judgment written and signed by

R.N. SITATI

JUDGE.

Judgment delivered, dated and countersigned in open court at Kisii this 9th day of January 2015

C. NAGILLAH

J U D G E

In the presence of:-

Otieno for State

Abobo h/b for Kaburu for Accused

Edwin Mongare Court Assistant