



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE NO. 47 OF 2007

REPUBLICPROSECUTOR

VERSUS

CYNTHIA MUHONJA ELVIS ACCUSED

JUDGMENT

BACKGROUND

The accused herein Cynthia Muhonja Elvis is faced 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 3rd day of November 2007, at [particulars withheld] in Bungoma the accused murdered E N. The accused pleaded not guilty and the matter went to full trial with the prosecution calling 9 witnesses. On the part of the defence the accused gave her defence and did not call any witness.

Several judges heard this matter and different State Counsels appeared. The state counsel who last handled the matter at the defence level was Miss Odumba.. The first lawyer declined the pauper brief as the victims and accused come from his home area. Mrs. Chungu thereafter represented the accused.

PROSECUTION CASE

The prosecution's case is that on the 3rd of November, 2007 the accused Cynthia Muhonja Elvis went to the house of J N S and her husband E W in the morning after the two had left for work and fatally injured E N aged nine years a niece of the couple. After the attack the accused attempted to escape but she was apprehended by citizens.

The prosecution evidence may be summarized as follows;

PW1 J N S - on 3rd November, 2011 she left the house at 8 a.m. for work. She left the deceased E N aged 9 at home with her one year old son E. She later learnt from her husband that the girl had been assaulted. She headed back home and on the way she met a mob that had arrested the accused. She found the house had blood splashed all over. She headed to the Webuye District Hospital where the deceased had been rushed. She found the deceased on oxygen but the deceased died shortly thereafter. On returning home she found that her T.V set, one battery, clothes and beddings had been stolen. The said items were recovered in a nearby bush. PW1 later met the accused at the police station, and the accused told her that she had been sent to the house but did

not give details of who sent her.

PW2 Abdalla Mabonga Kulasi- recalled that on 3.11.2007 he had gone to H W's house to pick a gear box. On arrival he found a woman outside who informed the owners were away. The woman was at the door and pushing the same inside while a child was pushing the door outwards. He thought there was a problem and call the man of the house. He pointed to the accused as the woman he saw outside the house on the material day.

PW3, Centry Wamalwa – on the material day she took her key at PW1's house and gave to the deceased whom she found feeding the baby E. She also found a woman in the house. Later she received a call from PW1 to go back and check what was happening at the house. She went back called out the deceased 3 times. The woman she saw earlier got out carrying the key the witness had left, and spoke to the witness outside the house. She identified the accused as the woman. The witness asked for E N and the accused told her that E N had gone to the river. She saw blood stains on the accused clothes especially the sleeves of her sweater and the dress. The accused kept moving close to the witness who got scared and ran to her mother in laws house with the accused following her with the keys in hand. The accused threw the keys at her mother in law's feet, when the witness enquired what the accused had done to the children. The accused thereafter ran and the witness and her mother in law followed in toe calling for help. The accused was arrested by the public as she ran towards the road. The witness thereafter went to the house and found the sitting room full of blood and E N under the table with a jacket covering her, groaning in pain and with difficult breathing. E N was bleeding profusely. E stood near E N crying. E N was carried out of the house and the witness saw that she had stab wounds on the chest, neck, head and hands. An ambulance came and took her to hospital. E N died while being attended to. Near E N's body was a knife and a panga.

PW4 – Jacinta Nafula Wamalwa – she recalled that on 3.11.2007 she met the accused with blood all over her on the road. She later met a woman crying that some children had been killed at H's. She rushed to H's and found a girl bleeding. She accompanied those taking the girl to the hospital. The girl had injuries to her head and arms, the girl later died. The accused ran and hid in her toilet but she was flashed out and arrested by people.

PW5 – Mary Wafula –recalled that on the 3.11.07 a pregnant woman rushed to her house and asked to hide her. She declined and the woman asked to be shown a toilet. She pointed the toilet. A crowd arrested the woman in the toilet. The said woman had blood on her legs.

PW6 G N – she recalled that on 3.11.2007 at about 11.00.a.m. PW3 ran to her house and told her something had happened at H's house. They left for H's and on the way they met a woman running towards them who had blood all over her clothes. The woman dropped keys and did not talk to them. She ran towards the road. They got to H's and pushed the door open. She saw a child lying on the floor bleeding with an injury on her head and the small boy crying. There was no one at home. The girl was unconscious but breathing. She had injury on her head and neck. Besides the body the witness saw a panga and a knife. She identified both in court. It was her testimony also that the accused was arrested by citizens. As she tried to ran away. She identified the accused as the woman she saw. The deceased was her grandchild.

PW7 Simon Makokha Makhanu – he recalled the 3.11.200, a lady told her that another woman had killed children and was running away. He tried to follow failed on coming back he met a crowd that had arrested the woman who was taken to the police. He went to H's where a crowd had gathered outside. Inside the house he saw a knife and a panga. He did not see the deceased. He later went to the police. The killer was interrogated by the police and she said she was with two other boys whose names she gave Richard and Alex. The witness accompanied the police to Richard's house where Richard was arrested. Richard in turn took them to the house of Alex whom they did not find. He identified the accused whose clothes he said were soaked in blood on the material day.

PW8 – Raphael Ingati – a police officer stated that on 3.11.2007 while at the Webuye police station they received information of an assault at a Webuye home. They learnt that the victim had been rushed to hospital. Together with PC Kirui and one other officer, they rushed to the scene and found the girl had been rushed to the hospital and the assailant arrested and taken to the police station using a different route. They rushed to hospital where the girl had been admitted. The girl had injuries to her head and chest. After seeing the girl they went back to the police and found the assailant already there having been beaten by wananchi. They recovered a knife, a panga and jembe from the people. The arrested person had a T-shirt soaked in blood. They gave her another T-shirt and retained the one with blood. At 1p.m. the hospital called to inform them the girl had passed on.

PW9, Dr. Inwani Nicholas- of Webuye District hospital. He produced a post mortem report prepared by a colleague Dr. Ngugi who had since been transferred. The report indicated that the post mortem was conducted on 5.1.2007 on the body of one E N at 11.55 a.m. It indicated further that the deceased had stab wounds on the side of the chest measuring 2 x 5 cm penetrating to the lungs which had collapsed. There was hemorrhage, multiple cut wounds on the head on the parietal and occipital region and bruises on the scalp. Cause of death was stated as severe hemorrhage leading to cardio vascular collapse.

At the close of the prosecution case the court found that the accused had a case to answer. The accused opted to give an unsworn statement and did not call any witnesses.

DEFENCE CASE

Accused DW1 gave her name as Cynthia Muhonja Elvis. She stated that on the 3rd of November, 2007 while in a neighborhood of St. Joseph's, where she had recently moved to she went to a house where there were two children. On enquiring the children informed her that their mother was away and would be back by 11.00 a.m. she waited but the lady did not get back. As she left 3 boys came. She knew one of them. They told her they had gone to do some work in the house and she should go back with them. The boy she knew got a drink from his bag and shared with her. It was her first time to drink. Richard the boy she knew carried things from the house. As a result of the drink she felt weak and could not walk, Richard then threw her out of the house and asked her to leave. She saw Richard took one of the children to the bedroom and thereafter they left. A woman came and enquired who she was and then left, the house was ran sacked. Later several people came and she was arrested.

DETERMINATION.

Having considered the evidence before court, there is no doubt that E N was fatally wounded in the morning of 3rd November, 2007 and the sustained injuries gave a blow to her young life. From several witnesses who saw her immediately after the attack, she bled profusely, had sustained injuries to her head, neck, chest and arm. A knife and a panga were found next to her. E N succumbed to the injuries while undergoing treatment.

The only eye witness was a child aged one year who obviously could not narrate the incident. The issue now for the court's determination is whether the accused herein is the one murdered the young girl.

There was no eye witness to the incident and the court has to deduce evidence of how the murder occurred from the circumstantial evidence surrounding the case.

According to the prosecution witnesses, PW2 went to the house of H. He saw the accused and her behavior made him suspect her. He alerted the owner of the house. PW3 received a call from PW1 who had received a call from her husband as a result of PW2's call to him. PW3 went to the house a second time. During the earlier PW3 had found the deceased feeding the little boy and the accused in the house. The second time PW3 called out for the deceased and only the accused came

out with blood stains on her clothes. When the witness enquired the accused came towards her. The witness started running towards her mother in law's home with the accused following. Later the accused attempted to run and was apprehended by members of the public. PW5 stated that the accused asked her for a place to hide. The accused went to a toilet. She was removed from the toilet by a crowd; she had blood on her legs. PW6 also came across the accused when her daughter in law came calling so that they could go to H's house. They met the accused coming from the direction of H's house with blood all over her clothes. Accused attempted to run but was apprehended.

In *Abanga alias Onyango Vs. Republic CRA no. 32 of 199 (UR)* learned Judges of appeal set the principles which should be applied in order to test circumstantial evidence as follows;

“It is settled Law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within human probability the crime was committed by the accused and no one else.”

Evidence before court by prosecution witnesses clearly indicates that the accused was alone in the house with the two children at the material time. PW3 went to the house twice, before and after the heinous act and saw none other than the accused. On her second visit to the house PW3 found the accused with her clothes were soaked in blood. The accused came out with the witnesses keys; this in my view was so that the witness does not get into the house. Thereafter the accused went towards the witness as if to attack and when the witness started moving away, the accused followed her and on being asked what she had done to the child, the accused attempted to run. The accused asked PW4 for a place to hide, and ran into a toilet where she was accosted and arrested by members of the public.

It is my considered opinion that the evidence of the prosecution was credible and cogent. The defence by the accused introduced two other people and evidence of intoxication. The court does not find this evidence credible neither did it displace the evidence of the prosecution witnesses. The above summary of events narrated by the witnesses irresistibly point to the accused as the person who was found with the children before and after E N sustained injuries. The chain of events given by the prosecution is so complete, so clear, so credible, as to allow this court to arrive at no other conclusion other than that the accused herein is the one who brutally, mercilessly and severely injured E N on the fateful morning and that the said injuries were fatal leading to the loss of E N's life several hours after she sustained the same.

It is so evident that no one else but the accused herein cause the death of the young girl. I find her guilty of the offence of murder as charged. I accordingly convict her of the same.

SENTENCE

The court found the accused herein to be the author of the death of young E N who no doubt died a very painful death having been robbed of her childhood by the barbaric and inhuman act of the accused herein a person who in my view ought to have protected and preserved this young life. There was no justification for the death of E N.

The law under Section 204 of the Penal Code provides

“Any person convicted of murder shall be sentenced to death.”

In accordance with Section 204 of the Penal Code I accordingly sentence the accused. She will as by law provided suffer the death penalty.

Dated at Bungoma this 15th day of June 2015.

ALI-ARONI

JUDGE.