



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 37 OF 2012

REPUBLIC..... PROSECUTOR

VERSUS

ETHAN CHEGE WANJIRUACCUSED

JUDGMENT

ETHAN CHEGE WANJIRU is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars being that:-

“On the 8th day of July, 2012 at Majengo Mombasa County he murdered JOHN MAINA KAMAU”.

The Deceased and the Complainant were workmates at Majengo Kingorani. On the night of 8th July, 2012 they had gone to some Bar where they partook alcoholic beverages and later went to the makeshift structure where they were staying.

The Accused in his defence told the Court that he found the Deceased asleep. He took a knife and started repairing his cellphone. The Deceased went and held him from the back, he checked back but the knife he was holding found way into the Deceased abdomen and he noticed blood oozing from the Deceased stomach. They decided to take the Deceased to Hospital. He maintained that he stabbed the Deceased by mistake and or accident.

The Accused is charged with murder which is defined in Section 203 of the Penal Code in the following manner,

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”.

Section 206 of the Penal Code provides for malice aforethought thus,

“Malice a forethought shall be deemed to be established by evidence proving any one or more 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 the 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

(2) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or otherwise to commit a felony”.

In the present case the Accused and the Deceased had gone for refreshments and returned to their house. There is no evidence of any misunderstanding between the two which might have arisen before the stabbing incident.

PW 1 (PETER THUITA) in his evidence in chief did tell the Court that,

“The Deceased came home very drunk. I told him to go and sleep. John (the Deceased) rose up and started holding the Accused. The Accused told him to let go. The Accused slipped and fell on utensils. The Accused rose up and picking a knife he stabbed the Deceased. The Accused told me to go and tell any boss that he had stabbed the Deceased”.

Upon a careful analysis of the evidence before the Court, I am not satisfied that the Accused had malice aforethought in killing the Deceased as envisaged under Section 206 of the Penal Code. The facts and evidence before the Court satisfies the offence of manslaughter.

Manslaughter is defined under Section 202 of the Penal Code thus,

“Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed as manslaughter”.

Section 179(2) of the Criminal Procedure Code provides for Convictions for offences other than those charged in the following,

“When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be Convicted of the minor offence although he was not charged with it”.

I find that the charge of murder has not been proved but the evidence adduced proves the charge of manslaughter.

The Accused is found guilty of the offence of manslaughter contrary to Section 202 of the Penal Code and is Convicted accordingly.

Judgment delivered dated and signed this **21st** day of **May, 2014**.

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M. MUYA

JUDGE

21ST MAY, 2014

In the presence of:-

Learned State Counsel Mr. Dzumo

Learned Counsel for the defence Miss Odhiang

The Accused present

Court clerk Musundi

M. MUYA

JUDGE

Court: Mentioned for mitigation on **28th May, 2014.**

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M. MUYA

JUDGE

21ST MAY, 2014