



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 18 OF 2010.

REPUBLIC:::PROSECUTOR.

VERSUS

JOSEPH WANGILA TOILI:::ACCUSED.

J U D G M E N T.

Joseph Wanjala Toili, (herein, the accused), is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 15th March, 2010, at Nabiswa Trans Nzoia West District, he murdered Sarah Mukhwana Wangila.

The case for the prosecution was that the accused and the deceased were a married couple with children and grand children.

Victor Wafula (PW1), a church bishop was the accused's brother-in-law. He was informed of the death of the deceased on 10th March, 2010, and proceeded to the couple's home on the 16th March, 2010. He learnt that the deceased had died suddenly and on the 19th March, 2010, she was buried. But, during the burial, rumours spread that the deceased had been killed by the accused. Matter was then reported to the police.

A step sister of the deceased, **Florence Nanjala (PW3)**, was prior to the burial of the deceased informed at the mortuary that the body of the deceased had injury marks on the head and back. She confirmed as much but did not take any action. She noted that the marks ran from the neck to the back and appeared to have been made by an iron-rod. She was later informed by the accused that the deceased had a relationship with another man.

Samson Webi Makokha (PW4), an assistant chief of Nabiswa sub-location issued a burial permit to the accused after he reported to him that the deceased had died from T.B.

Fred Kundu Mahani (PW5), heard from Florence (PW3) that the deceased had been beaten. This was when he was at the mortuary where they had taken the body of the deceased.

Gladys Nasimiyu Mwanja (PW6) and **Elimina Nanjibia Wakhungu (PW7)**, both neighbours of the accused arrived at the accused's homestead after they were informed by the accused on the 15th March, 2010, that his wife had died. They saw the body of the deceased at the scene half naked and lying on its back. They did not see any injuries on the body.

Patrick Wafula Khaemba (PW8), also went to the accused's homestead on the 15th March, 2010, after receiving information of the death of the deceased. He did not know what caused the death.

Cpl. Daniel Njoroge (PW10), of the CID Kitale investigated the matter and in the process obtained an order from the court to exhume the body of the deceased. This was done on the 27th March, 2010, after which a post mortem was conducted after **Benjamin Shikombe (PW2)**, had identified the body.

Dr. Pavin Patel (PW9), produced the post mortem report prepared and signed by his colleague Dr. Nganga who formed the opinion that the cause of death was cardiorespiratory arrest secondary to severe head injury brought about by blunt Trauma.

The finding by the doctor resulted in the present charge against the accused.

The defence case was that the accused did not commit the offence and that the deceased had been suffering from T.B. From which she died on 13th March, 2011 and was buried at their farm. However, on the 21st May, 2011, the accused was arrested and taken to Kitale police station before being arraigned in court. He contended that he did not assault and fatally injure the deceased with whom he had lived as a wife from 1957 and with whom they had thirteen (13) children. He said that she often went for treatment in hospital and was a habitual smoker.

From all the foregoing evidence, the issue arising for determination is whether the deceased died from injury inflicted upon her and if so, whether the accused was responsible for the injury.

The defence raised was that the deceased may have died from a disease of the body (i.e. T.B) rather than injury occasioned upon her by any person let alone the accused.

However, the post mortem report overruled death as a result of T.B. or any other disease and zeroed in on death as a result of severe head injury arising from blunt trauma. This therefore meant that the deceased died at the hands of an individual and not due to natural causes.

Florence (PW3) reported having seen injuries on the body of the deceased prior to her burial. She said that the injuries were on the head and the back but this was disproved or discredited by Gladys (PW6) and Elimina (PW7) who never saw any injuries when they saw the body of the deceased at her home.

Be that as it may, the conclusion arrived at by the doctor who performed the post mortem report was not disputed whatsoever. The question would therefore be whether the accused was responsible for the death of the deceased. He denied responsibility and implied that her smoking habit may have killed her. Smoking was however not to blame. At the time she died, nobody was at the scene save the accused. He was the last person with her prior to her death. He informed neighbours of her death and later proceeded to the assistant chief (PW4) to obtain a burial permit saying that the deceased had died from T.B even without first reporting to the police and arranging for a post mortem since death occurred suddenly at home. All these factors raised a strong and credible inference that most likely than not, it was the accused who inflicted fatal injury upon the deceased. His defence was not credible in the light of the strong prosecution evidence hitherto circumstantial.

The fact that the deceased suffered severe head injury which ultimately led to her death and that the accused attempted to hide the circumstances leading to the death was strong indication that his intention was to cause and did cause the death of the deceased.

The prosecution case has thus been proved beyond reasonable doubt.

The accused is found guilty as charged and convicted accordingly.

[Delivered and signed this 22nd day of July, 2014.]

J.R. KARANJA.

JUDGE.