



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 12 OF 2011.

REPUBLIC ::: PROSECUTOR.

VERSUS

HENRY KIPLAGAT CHEPSIROR ::: ACCUSED.

J U D G M E N T.

The accused, **Henry Kiplagat Chepsiror**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 1st January, 2011, at Maili Saba Trans Nzoia County, murdered Irene Cherotich.

The prosecution case was made of the facts that on the 31st December, 2010, the deceased, daughter to **Hellen Chemtai (PW1)**, left home for church in the company of a lady called Nabutuong but at midnight called her mother with information that she had been stabbed on her ribs by the accused. The call was made by phone and in the background the mother heard noise. She (mother) forwarded the phone number to the police. She did not at the time know the accused. She learnt on the following day at 8.00 a.m. that a dead body had been found at Maili Saba. She went there and found that the body was that of her daughter (deceased) and had stab wounds on the stomach, ribs and hands. The police were already at the scene.

On the same 31st December, 2010, **Leah Nyongesa Lungano (PW2)**, a bar maid at a place called Kwa Muthoni was on duty when the deceased went there and was later joined by the accused at about 5.00 p.m. She (PW2) had previously known both of them. The two drank alcohol and in the process, a woman in the company of the accused left. He was left behind in the company of a child and the deceased who finished her drink and went away.

The drinking group appeared to have parted ways briefly. Leah (PW2) indicated that the accused returned to the bar at 7.00 p.m. without the child but was shortly joined by the other woman called Mama Lembo who later left after the deceased and the accused remained behind but appear to have followed Mama Lembo outside the bar after a minor disagreement with Leah (PW2) over payment of a bill. She (PW2) left the three people outside the bar and did not know where they went. She was informed on the following day that the deceased had been murdered.

Still on the 31st December, 2010, **Fred Kituyi Walumbuye (PW3)**, was in a bar called Nangele bar in the Maili Saba area. He was ushering in the new year at midnight when he saw the accused quarrelling with another man. He knew the accused but not the other man. He (PW3) indicated that the accused was in the company of the deceased and two men. The four left the bar and it was at that juncture that when he (PW3), saw the accused stab the deceased with a knife after the men quarrelled over the women. This happened as they were walking away. He (PW3) was behind them at the time. He indicated that the incident occurred outside the verandah of the bar and that electric light enable him see

the accused. Many people had gathered there after the fracas involving the group of four. It was on the following day that he (PW3) learnt that the deceased had been killed.

Sgt. Lazarus Kiangeo (PW4), of Maili Saba police patrol base was on duty when he received a call from the area chief to the effect that a dead body of a lady had been seen near a store. He proceeded to the scene with his colleague and found that the body of the lady was naked and bleeding. Her clothes were a few kilometres away.

Matter was referred to the O.C.S. Kitale police station and investigations commenced.

On 11th February, 2011, Sgt. Lazarus (PW4) arrested the accused.

Dr. Edward Odhiambo (PW5), produced a post mortem report compiled and signed by his colleague Dr. Nganga, who conducted a post mortem on the body of the deceased.

The report indicated that he deceased died from cardiorespiratory arrest secondary to massive exsanguination and internal bleeding.

Christopher Naibei (PW6), identified the body of the deceased for post mortem purposes.

P.C. Philip Ekirapa (PW7), investigated the case and in the process visited the scene where the body of the deceased was found and removed it to the mortuary. He also recorded statements from witnesses and thereafter charged the accused with the present offence for he was suspected of having murdered the deceased.

The accused's defence was that he did not commit the offence. His child fell sick on 31st December, 2010, and took him to hospital. Thereafter, he went to Cherangani Nursing home to visit a sick sister called Teresa. He proceeded to Kwa Muthoni market from there. His child was taken home. He entered a bar at a place called Kwa Gatua at about 5.00 p.m. She met one Teresia Njoroge in the bar. She bought him beer and left after about two (2) hours. He remained in the bar upto 10.00 p.m. when he left to look for transport home. He boarded a motor cycle taxi (boda boda) upto Kitale town to fetch a taxi cab which then took him home. He woke up on the following day and proceeded to Kitale town from where he was called and told by his wife that some people were looking for him for allegedly being involved in a murder. He knew nothing about the murder. He was later on the 11th February, 2011, confronted and arrested by police officers who took him to Maili Saba police base and then to Kitale Police station where he was charged with the present offence. He contended that he was not known to the deceased and never met her anywhere on the 31st December, 2010. he knew nothing about the offence.

From the evidence in totality, there was no dispute that the deceased was killed in a manner which was unlawful apparently after having had a drinking spree while in the company of other persons who may have included the accused despite his denial of not knowing the deceased and not having been with her on the night of the 31st December, 2010.

Evidence by Leah (PW2) and Fred (PW3) clearly indicated that they had previously known the accused and that he was with the deceased and others on the said night. What really matter was not the accused being in the company of the deceased but rather what happened to the deceased after their group left the bar in which they were drinking alcohol.

Leah (PW2) indicated that the group left the bar after a minor disagreement with her over payment of a bill. Fred (PW3) indicated that the accused was involved in a scuffle with other men over the ladies in the company.

The post mortem report (P. Exh. 1) showed she died from internal bleeding caused by a stab wound in the digestive system affecting mostly the liver.

The basic issue for determination is whether the fatal stab wound was occasioned to the deceased by the

accused.

The obligation to establish the guilt of the accused beyond reasonable doubt lay with the prosecution. The accused was under no obligation to establish his innocence.

In her testimony, the deceased's mother (PW1) said that she had not previously known the accused. She could not tell for sure that it was the accused that the deceased was referring to when she called and informed her (mother) that she had been stabbed on the ribs.

She (mother) merely confirmed that the deceased was indeed stabbed but she could not tell by whom. Therefore, the information given to her by the deceased after she had been stabbed did not amount to a dying declaration against the accused.

Leah (PW2) did not know what happened to the deceased's drinking group when they left her bar. She however indicated that the deceased was very much intoxicated such that she pleaded with her not to drink any more.

Fred (PW3), was the key witness against the accused. He said that he witnessed the accused quarrelling with other men and then stabbing the deceased while they were all leaving the bar. He said that the stabbing occurred outside the verandah of the bar and that he had followed the accused when he was getting out of the bar. He also said that he was two (2) ft away from where the accused stabbed the deceased. He implied that the stabbing occurred when the drinking group engaged in a fight outside the bar.

Although the accused vehemently denied being involved in the offence or any other incident that occurred outside the material bar on the material date, the evidence by Fred (PW3) which was reasonable credible and firm indicated otherwise. It established that the fatal stab which led to the demise of the deceased was occasioned by no other person but the accused.

Therefore, the accused's defence was effectively discredited and invalidated. He was at the scene of the offence on the material night together with the deceased and others. He engaged in a drunken brawl with his drinking partners and in the process used excessive force against the deceased by stabbing her most probably with a sharp object. His action was most likely prompted by his state of intoxication and cannot therefore be said to have been premeditated. He was not possessed of any intention to kill the deceased.

Consequently, the offence established against him beyond reasonable doubt was that of manslaughter contrary to section 202 (1) of the penal code. He is hereby found guilty thereof and convicted accordingly.

[Delivered and signed this 5th day of August, 2014.]

J.R. KARANJA.

JUDGE.