



REPUBLIC OF KENYA

High Court at Nakuru

Murder Case 22 of 2011

REPUBLIC.....PROSECUTOR

VERSUS

ANDREW CHUMBA BETT.....ACCUSED

JUDGMENT

Andrew Chumba Bett was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge are that on 8/1/06 at Teret Location in Njoro,, he murdered Daniel Kipkemoi Koech. He denied committing the offence. The prosecution called a total of nine (9) witnesses in support of their case. The accused made an unsworn statement in his defence but called no witnesses.

Briefly, the prosecution evidence is as follows; Bernard Kibet (PW1) a resident of Simotwet recalled that on 18/1/06, at about 5.30 p.m., he was going to his friend's house when he saw Andrew, the accused person, running with a knife in his hand. The knife was blood stained. About 10 metres away was the deceased Daniel PW1 saw blood on deceased's clothes and the deceased told PW1 that he had been stabbed. PW1 left him lying by the road side and went to call for help. The deceased died before reaching hospital and the accused disappeared from home for about five (5) years. PW2, Philip Langat of Simotwet village in Njoro, heard noises from accused's home and went to find out what was going on. He found the deceased at the accused's gate, and he had been stabbed and he saw the accused running away. PW2 said that there were other people standing outside accused's house. According to PW2, the deceased had come from accused's home but he did not witness the stabbing.

Kiprono Letich (PW3) recalled that on the 18/1/2006 at about 8.00 p.m. he was going home, from a neighbour's house, he found eight (8) people fighting near accused's house. They included the accused, deceased and PW2. He saw deceased hit the accused, he fell down, that accused stood up and stabbed the deceased on the left side of the chest and ran off. PW3 tried to chase accused but he escaped with the knife he had used. The deceased died before he could be taken to hospital and police took away the body. The accused disappeared for 5 years. PW3 did not know the cause of the fight. PW3 denied the suggestion that he had been circumcised at that time and that him and others attacked the accused after circumcison seeking to be given alcohol. He said he was a grown up and could not have been circumcised at that time.

Nickson Kipkemoi Tuwei (PW4) went to take busaa when he met Daniel, the deceased, who asked where changaa was being sold and he directed him to the accused's home. Daniel went ahead of him as he passed through another home. When he arrived at accused's home, he found a fight between Charles and Geoffrey and many other people. He did not see accused or deceased. He was hit and fell and he lost

consciousness and when he came to, he was informed that his brother, the deceased had died. He denied that any of them had been circumcised. He denied knowing what caused the fight nor had they disagreed. PW5, Geoffrey Kibet recalled that on 18/1/06 at about 5.00 p.m. he was with Charles (PW7) they went to accused's home to take alcohol. At the gate they found Simeon and others. Simeon pushed Charles and he fell, accused's wife came out of the house and started to beat Simeon with a stick. Ngetich intervened, people gathered, and about 20 metres away he found that Daniel had been stabbed. He did not see who stabbed the deceased.

PW7, Chales Kipkurui was a brother to the deceased. He recalled that on the fateful day, he was with Geoffrey and Michael on their way to accused's home to take alcohol. They met Simeon, a fight broke out, he ran off but before reaching his home, he heard screams. He went back to the scene and found Daniel had been stabbed. He denied having been with the deceased before he was stabbed. He did not see who stabbed the deceased. They were about 100 metres from accused's house.

PW8, Grace Chepkurui, a neighbour of the accused recalled seeing the accused running past her house with a knife in his hand at about 5.30 p.m. The knife was blood stained. When she asked him what the problem was, he did not respond. She heard screams from the road, people came chasing and looking for the accused and asked her where the accused had entered. The accused had ran away from the direction where screams emanated from.

PC Musa Lekule (PW9) was stationed at Kaptigich Police Post as of 22/2/2011. He was accompanied by the area chief and they went to the Kaptigich Tea Factory where accused was working, he was arrested and taken to Njoro Police Station where he was wanted for the offence of murder.

The deceased's body was examined by Dr. Mungatana and the post mortem report was produced in court by Dr. Ngulungu. On examination, the doctor found that the deceased had lost a lot of blood, had a longitudinal incision of 6cm on the left side of the abdomen through which the large and small intestines were exposed with multiple evisceration of the small and large intestines and a 2cm incision of the spleen. The doctor formed the opinion that the cause of death was massive haemorrhage into the peritoneum due to incision wound to the spleen. The cause of death was shock.

In his unsown defence, the accused stated that he hails from Njoro, used to work at Kaptigich Tea Factory. He denied knowing the deceased. He however, recalled that on 16/1/06 he had gone to his home in Teret Location for the weekend, he took changaa on 18/1/06. He went to sleep. Charles and Michael went to enquire from him if he had alcohol but it was finished. They went away. He slept till next day and he went back to work. It is not until 22/2/2011 that he was arrested from his place of work. He denied knowing about the deceased's death.

Apart from PW3, the other witness did not see who inflicted injuries on the deceased. PW3 explained vividly what happened; that there was a fight between accused and the deceased, whereby the deceased first hit the accused with a stick, he fell down and upon getting up, the accused stabbed the deceased with a knife. PW3 recalled that accused ran off with the knife. PW1 corroborated PW3's evidence that he met the accused running away from the place where the deceased had just been stabbed. PW8, a neighbour to the accused also saw accused ran past her house armed with a blood stained knife in his hand and was pursued by people from the scene of the stabbing. PW2 said he saw the deceased come out of accused's home while already injured. PW4 went to accused's house, found a commotion, he too was hit and fell only to come to find the deceased already stabbed. PW7 also conformed that there was a commotion or fight, he ran off only to come back to find the deceased injured.

I am satisfied from the evidence of these witnesses that there was fight or commotion at the home of the accused. It is also evident that there had been alcohol on sale at the accused's house. I am satisfied beyond any doubt that it is the accused who stabbed the deceased person after some fight or commotion in his home. All the witnesses knew each other including the accused. Accused denied of knowing the deceased is not truthful because from the evidence of all the witnesses they hailed from the same village and PW4 and PW7. deceased's brother confirmed they were going to take alcohol at accused's home on that day.

All through the prosecution case, the defence alleged that PW1, PW2, PW3 had gone to accused's house to demand alcohol forcefully because they had just undergone circumcision. PW3 specifically said that the deceased was too old to have been circumcised at that time. The deceased's age was estimated to be 34 years. In his defence however, the accused totally departed from that line of defence and denied any knowledge of the incident leading to the deceased being stabbed. The accused cannot be telling the truth. The variance in his defence is evident that he was not truthful. In addition to the above there is evidence on record that the accused disappeared from his home from 2006 till his arrest on 22/2/2011 a

period of 6 years. Accused's disappearance from home for that long period confirm that he was a fugitive escaping from the long hand of the law but it caught up with him. The doctor who examined the deceased's body found only one stab wound although it was very deep and caused the exposure of all the intestines and rupture of the spleen. I have found above that it seems the accused attacked the deceased during a fight after they had been drinking alcohol. It is not clear exactly what prompted the fight. Under the circumstances, this court cannot impute malice aforethought against the accused.

Section 206 of the **Pena Code** provides as follows:-

“S. 206. Malice aforethought 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;

(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.”

Whereas I have no doubt that the accused stabbed the deceased as a result of which the deceased met his death, I find that malice aforethought, which is a necessary ingredient to prove a charge of murder has not been proved.

In the instant case, there was a fight after a drinking spree, the deceased first hit the accused with a stick. For some reason the accused was armed with a knife which he used to stab the deceased. There is no evidence that the accused premeditated his actions. In addition it seems the accused only struck the deceased once though the nature of the injury was very serious. For the above reason, I find that the accused committed a lesser offence of manslaughter and I find him guilty of that offence under **Section 202** of the **Penal Code**. I convict him accordingly.

DATED and DELIVERED this 15th day of March, 2013.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Mongeri for the accused

Mr. Chrichir for the state

Kennedy – Court Clerk