



REPUBLIC OF KENYA

High Court at Kitale

Criminal Case 30 of 2011

REPUBLIC ::: PROSECUTOR.

VERSUS

ALEX MUKHWANA WASIKE ::: ACCUSED.

J U D G M E N T.

Alex Mukhwana Wasike (herein, the accused), is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 12th May, 2011, at Chemi Chemi village, Trans Nzoia, murdered Elizabeth Nekesa Mukhwana.

It was the prosecution case that on the material date at about 3.00 p.m., the accused's neighbour, **Teresa Nafula (PW1)** spotted the accused beating his imbecile child (the deceased herein). She attempted to restrain him but all in vain. He later pulled the deceased and threw her into a pool of water where he left her for sometime prior to carrying her from the house with a blanket. He informed Teresa (PW1) that the child was gone. Police officers arrived at the scene after being notified.

APC Simba Momanyi (PW2), arrived at the scene and found a crowd of people under a shed surrounding the dead body of the deceased. The accused was also present. He was arrested and taken to Kitale Police Station.

Dr. Paul Njamwe (PW3), carried out a postmortem on the body of the deceased and formed the opinion that the cause of death was cardiorespiratory failure due to severe head injury with epidural haematoma and multiple injuries.

P.C. Mathews Otieno (PW4), investigated the case and in the process recovered a wooden stick (P.Exh. 1) allegedly used by the accused to assault his sickly child. He (pw4) completed investigations and preferred the present charge against the accused who in his defence denied the offence and stated that the deceased was sickly and vomited all the time despite his efforts to take her to hospital. He even tried traditional healing but all in vain. The child could not stand on her own and together with his wife they took care of her bath.

On the material date, he left the deceased at home and went to work as a cobbler. He returned home and found the deceased sleeping. He was informed that she was feeling sickly. He attempted to awaken her and realized that she was dead. Neighbours arrived at the scene and so did the police. He was then arrested on allegation that he had assaulted the deceased. He denied the allegation.

From all the foregoing evidence, it is apparent that the cause of the death of the deceased from

injuries inflicted upon her is not disputed whatsoever and was indeed established the evidence of Dr. Njamwe (PW3).

The issue falling for determination is whether the accused was responsible for inflicting the fatal injuries upon the deceased.

Apart from Teresa (PW2), the rest of the prosecution witnesses did not see the accused in the act of assaulting the deceased. The evidence of Teresa was however firm and capable of being believed as she had no reason to lie against the accused who was her neighbour. She clearly testified that it was the accused who seriously assaulted his own disabled child such that she believed that he was determined to kill her. She implied that the cause of the accused's irrational behaviour was that the deceased child had defecated on herself.

Although the accused denied the offence, his defence was clearly discredited by Teresa's (PW2) evidence such that it appeared more of an afterthought than anything else.

Even in the absence of corroboration, the evidence against the accused by Teresa was cogent and credible to the extent that it established beyond reasonable doubt that the accused was responsible for inflicting fatal injuries upon his daughter.

Consequently, the prosecution has discharged its burden of proof.

The accused is found guilty as charged and is convicted accordingly.

[Delivered and signed this 30th day of April, 2013.]

J.R. KARANJA.

JUDGE.