



REPUBLIC OF KENYA

High Court at Kitale

Criminal Case 4 of 2011

REPUBLICPROSECUTOR.

V

NANCY NALIAKA WANJALA.....ACCUSED.

J U D G M E N T.

The accused, **Nancy Naliaka Wanjala**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 26th January, 2011 at Kipsongo village Trans Nzoia County murdered Jackline Nasimiyu.

The prosecution case was that on the material date, the deceased and the accused who were neighbours at Kipsongo village engaged in a scuffle over a matchbox allegedly taken from the accused's house by the deceased's child.

In the process, the deceased was allegedly hit with stones by the accused. She fell down and was taken to hospital where she passed away. The accused was later arrested and charged with the present offence. She denied the offence and stated that the deceased fell down when she was running after her with stones after she (accused) told her (deceased) to refrain from assaulting her (deceased's) child.

The accused further stated that after the deceased fell down, she was taken to hospital.

Later, she (accused) was summoned by a village elder and then taken to the police station where it was alleged that she had killed the deceased. She contended that she did not kill the deceased.

From the evidence adduced herein by both the prosecution and the defence, the issue that falls for determination is whether the death of the deceased was occasioned by the accused and if so, whether in so doing, the accused acted with malice aforethought.

The postmortem report (P.Ex.1) produced by Dr. Kakundi (PW4) on behalf of his colleague Dr. Nganga indicates that the deceased died from cardiorespiratory arrest secondary to severe haemorrhage. The report does not however indicate the cause of the haemorrhage and more particular if it was caused by injury occasioned by an individual's unlawful act against the deceased.

In essence, the postmortem report is not helpful with regard to the exact cause of death vis a vis the accused. In the circumstances, the accused cannot be held responsible for the unfortunate death of the deceased which may have been occasioned by her existing illness and state of pregnancy. Her husband, **Patrick Khaemba (PW1)** confirmed that she had undergone a medical operation in the year 2009 and her neighbour **Mary Naliaka (PW2)** confirmed that she had been unwell on that date and was bleeding from her private parts as she was expectant. It would therefore appear that the scuffle that the deceased and the accused had and the fact that the deceased ran after the accused resulting in her panting and sweating profusely may have worsened her existing sickly condition thereby causing her to fall down and be rushed to hospital.

There was insufficient evidence to show that the deceased was hit and injured with a stone or stones thrown at her by the accused. That segment of the evidence came from **Joyce Nekesa (PW3)** but it was completely discredited by the evidence adduced by Mary (PW2) which showed that it was actually the deceased who threw three stones at the accused while the accused threw only one stone at the deceased but it did not hit the target. The accused in her defence indicated that she did not hit the deceased with a stone but that it was the deceased who ran after her armed with stones.

Even if, as Joyce (PW3) indicated, the deceased was hit with a stone or stones thrown by the accused, the same landed on the deceased's shoulder and left rib thereby presenting a very remote possibility that the accused's action was the real cause of the death of the deceased and in particular, considering that the postmortem report did not indicate that the deceased suffered injury to the said upper regions of the body.

In sum, there was almost no evidence linking the accused to the death of the deceased. Therefore, the prosecution has herein failed to discharge its burden of proof. The accused is found not guilty as charged and is acquitted accordingly.

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

J.R. KARANJA.

JUDGE.