



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Criminal Case 28 of 2008

REPUBLIC PROSECUTOR

VERSUS

GEOFFREY KIRIMI M'MUTHURI..... ACCUSED

JUDGEMENT

The accused Geoffrey Kirimi M'Muthuri is charged with Murder contrary to section 203 as read with section 204. It is alleged that on 19th day of March, 2008 at BBC area in Meru Central District of the Eastern Province, he murdered Leah Kagwiria.

The prosecution called three witnesses. The prosecution case is that the accused and the deceased were living in the same house as husband and wife. On the material day PW3 CPL Javan Wambugu received the accused person at Subuiga Police Station at around 7am. The accused reported that he had hit his wife and that he had left her at home.. CPL Wambugu and other police officers accompanied the accused to his house where they found the deceased seated on a chair bleeding profusely. She was still alive. There was a fork *jembe* next to where she was seated. CPL. Wambugu produced it as P. exhibit 1. PW3 called PW2, a woman neighbor of the deceased, one Doris Kathure. Doris testified that on the request of police officers she assisted to carry the deceased from her house to the vehicle. PW2 testified that the deceased was bleeding from the left side of the head. PW2 accompanied the deceased to Isiolo District Hospital where she remained until 5pm when the deceased was referred to Kenyatta National Hospital for specialized treatment. She testified that she returned home but learnt later that the deceased died before she could be taken to Kenyatta.

PW1's testimony was that he was the Sub-Area of the sub location where the deceased and the accused lived. Pw1 testified that the accused and the deceased were living together amicably and peacefully as husband and wife. He testified that he received the report from villagers that the deceased had been injured and had been taken to hospital. PW1 said that he proceeded to Isiolo Hospital where he found the deceased still alive with a fork *jembe* injury on the head.

The post mortem report was produced by CPL. Wambugu, PW3, the investigation officer in this case who also attended the post mortem examination. It was P. exhibit 2. It shows that the deceased had several fractures; one at the base of the skull, a fracture of the left temporal bone and another of the frontal bone

of the head. She had two fractures on the mandible and bilateral dislocation of the temporal mandibular joints. The cause of death was cardiopulmonary arrest due to penetrating head injury.

The accused person gave a sworn statement in his defence. He told the court that the deceased was his wife and that they had lived together for 4 years. He said that on the material morning he woke up and found tea ready on the table. He said that he asked his wife to give him the KSh.110,000/- he had given her the night before. He stated that instead of giving him the money the deceased started insulting him and held him by the shirt and told him to leave her house and her plot. He said that she took a fold *jembe* which was nearby and tried to hit him with it. The accused stated that he held the *jembe* and as they struggled over it, the deceased fell on the *jembe* and it pierced her on the head. He said that he then went to the police to report. The Police collected the deceased who was still alive, and took her to Isiolo hospital where she later died.

I have carefully considered the evidence adduced by both the prosecution and the defence. The accused is facing a charge of murder. The burden lies on the prosecution to prove the case against the accused beyond any reasonable doubt. The prosecution must prove that the accused person committed an act which led to the injury that caused the death of the deceased. The prosecution must prove that at the time the accused inflicted the fatal injuries on the deceased he was motivated by malice aforethought.

Section 203 of the Penal Code describes murder in the following terms:

203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”.

The circumstances which constitute malice aforethought are set out under section 206 of the Penal Code in the following terms:

“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.”

There was no eye witness to the incident and therefore apart from what the accused said, there is no direct evidence of how the injury that caused the deceased death was inflicted. The witnesses who testified for the prosecution merely testified to what they saw at the scene after the accused person had reported the matter to the police.

CPL. Wambugu PW3 in addition to what he saw testified that the initial report made to him by the accused was that he hit his wife and that she was at home nursing the injury. Apart from what the accused told CPL. Wambugu, the only other information we have of how the deceased was injured is what the accused stated in his own defence.

The accused admits that he had a quarrel with his wife on the material morning. He admits that they struggled over a fork *jembe*. He claims that the deceased fell on the *jembe* and that it pierced the left side of her head.

I have considered the post mortem findings on the deceased body. The report shows that the deceased had several fractures. There was a fracture at the base of the skull, a fracture of the left temporal bone and another fracture of the frontal bone of the head. She had two fractures on the mandible and bilateral dislocation of the temporal mandibular joints. These were at least five fractures. That is excluding the penetrating head injury which was the immediate cause of death.

The accused person only admitted that the deceased suffered a penetrating injury to the head. The accused claimed that the injury was caused when the deceased fell on the folk *jembe*. His statement does not account for how the deceased suffered the five fractures on the head and the face. Even though the doctor did not testify due to a doctors' strike that was going on at the time the case was heard, the court can take into account the various fractures on the deceased head. It will not be far-fetched to make a finding that the fractures suffered by the deceased could not have been caused by one blow, neither could it be accounted for in the manner alleged by the accused. This is because there was fracture at the back of the head, a fracture on the front of the head, a fracture on the left side of the head and two fractures and dislocation of the jaws. These were very severe injuries that could not have been caused by a mere fall on the fork *jembe*.

The accused had admitted that he was the only other person present when the deceased suffered the injuries that led to her death. I accept his confession that he was present. However, I find his allegation of how the deceased got injured a mere allegation which was a self-serving statement which statement was inconsistent with the injuries that the deceased suffered.

PW2 was a neighbour of the accused and deceased. She did not hear any commotion or quarreling the home of the accused and the deceased until CPL. Wambugu called her to assist to carry the deceased to the police vehicle. PW1 the Sub-Area said that he had never heard of any marital problems between the accused and the deceased. He said that the two lived amicably together. That means that the accused and the deceased lived peacefully as far as the neighbours were concerned.

I have considered the evidence of PW1 and 2 that the accused and deceased lived safely. I have also considered the accused first report to the police together with his defence. I find that the accused defence remained unchallenged that a quarrel ensued between him and the deceased that morning. There was no evidence of pre-meditation to commit the offence. That notwithstanding, there is proof from the post mortem finding of the deceased body that the deceased had at least five fractures. The accused did not offer any explanation of how these fractures were caused yet it was within his knowledge to know and in his interest to explain how the injuries were caused. The accused person told an obvious and deliberate lie that the deceased was injured when she fell on a fork *jembe*, which lie I did not believe. In the circumstances, the lie is capable of providing corroboration to other independent evidence available. This evidence is found in the doctor's findings at post mortem as per the report, P exhibit 1. The deceased had severe injuries caused by both blunt and sharp objects, which were proof of repeated blows to the deceased.

For these prepositions I am guided by the Court of Appeal case of **ERNEST ABANGA ALIAS ONYANGO VS REPUBLIC CA NO. 32 OF 1990**, the court of appeal observed:

“In RAFAERI MUNYA alias RAFAERI KIBUKA V REGINAM (1953) 20 EACA 226, the appellant there was convicted of murder and the case against him was mainly based on circumstantial evidence. In his sworn evidence at the trial, he made some denials which were obviously false. It was held that:

The force of suspicious circumstances is augmented where the person accused attempts no explanation of facts which he may reasonably be expected to be able and interested to explain; false, incredible or contradictory statements given by way of explanation, if disapproved or disbelieved become of substantive inculpatory effect.

This case in our view, does not in any way go against the basic legal principle that the burden of proving a criminal charge beyond doubt is solely and squarely upon the prosecution. But its basic

holding, namely that when an accused person tells an obvious and deliberate lie which is disproved or disbelieved, then such a lie is capable of providing corroboration to other independent evidence available”.

Section 206 of the Penal Code gives instances from which malice aforethought can be inferred. I am guided by the court of appeal decision of **DANIEL MUTHEE -V- REP. CA NO. 218 OF 2005 (UR)**, BOSIRE, O’KUBASU and ONYANGO OTIENO JJA., where that court, while considering what constitutes malice aforethought observed as follows:

“When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan in similar manner, he must have known that the act of cutting the deceased persons on the head with a sharp instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206(b) of the Penal Code.”

I find that malice aforethought can be inferred against the accused on the basis of the several blows and severe injuries he caused on the deceased. I find that the charge against the accused is proved beyond any reasonable doubt. I find the accused guilty of murder as charged and convict him under section 306 of the Penal Code.

DATED SIGNED AND DELIVERED THIS 7th DAY OF JUNE, 2012.

LESIT, J.

JUDGE.