



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL CASE NO. 17 OF 2008

REPUBLIC PROSECUTOR

VERSUS

EDNA CHEPKURGAT CHEBOI ACCUSED

JUDGMENT

The accused is charged with murder contrary to S. 203 as read with S. 204 of the Penal Code, in that on the 28th March 2008 at Kaptik Farm Uasin Gishu District murdered Daisy Jepchumba.

The case for the prosecution is that the deceased was a daughter of the accused from a failed marriage.

After the failure of the marriage, the accused proceeded to her step mother's home accompanied by the deceased.

On the material date at about 6.00 a.m., the accused's step brother **VINCENT KIMAIYO CHEBOI (PW 1)**, was informed by his younger brother Henry that the accused had informed him (Henry) that the deceased had died from pneumonia. He (PW 1) approached the accused at the home of their step mother. The accused also informed him that the deceased had died from pneumonia. At the time, the body of the deceased was lying in an unfinished house covered with a baby shawl and a lessso. Vincent (PW 1) confirmed that the deceased aged about two (2) years was dead. Neighbours arrived at the scene and started beating up the accused. It is then that she said that she had strangled the child with a thread. She was thereafter taken to Moiben Police Station.

TAMUREI CHEBOI (PW 2), is the accused's step mother. She said that on the 28th March 2008 at about 9.00 p.m., the accused as usual took the deceased to go and sleep with her. She (PW 2) did not know where mother and daughter went to sleep but on the following morning, the accused returned alone and informed Henry that her child had died. Henry in turn informed Vincent (PW 1).

Tamurei (PW 2) accompanied Henry and Vincent to an unfinished house where the body of the deceased lay. They questioned the deceased but she kept quiet. Tamurei indicated that the deceased was not sick when she was in her house. **HENRY CHEBOI (PW 3)**, confirmed that the accused informed him that the deceased died from pneumonia. He woke up his mother (PW 2) and passed over the information. He then went and called Vincent (PW 1).

A pathologist **MACHARIA BENSON NDEGWA (PW 4)**, performed a post mortem on the body

of the deceased and compiled the necessary post mortem form (P.Ex.1) indicating that the cause of death was asphyxia due to ligature strangulation.

P.C SIMON LIKONYI (PW 5), of the Scenes of Crime Eldoret took photographs of the deceased showing strangulation marks on the neck.

A clinical officer at Moiben Health Centre, **PHYLIS TOROITICH (PW 6)** examined the accused and confirmed that she was mentally stable.

P.C OBED NGARI KIGUTU (PW 7) of Moiben Police Station arrested the accused after she was brought to the police station by members of the public.

P.C MICHEAL KIMUTEI (PW 8) also of Moiben Police Station investigated the case. He visited the scene of the offence and removed the body of the deceased to the Moi Teaching and Referral Hospital. His investigations revealed that the accused had been married for two years in Nandi North. She divorced her husband and went to her mother's homestead at Kaptik Village Marakwet. She was not welcome there and went to her step mother at Kaptik where she was also not welcome. Consequently, she murdered her daughter and be left alone.

P.C Micheal (PW 8) found that the deceased had been strangled with a string.

The accused was placed on her defence on the basis of the foregoing evidence which formed the prosecution case against her. Her case was that the deceased was aged 1½ years old and on 27th March 2008 she left her and proceeded to the home of her sister by name Rispa where she was to take care of her (Rispa's) children. This action did not please her step brother (PW 1) who always rebuked her for reason that the child was born out of wedlock. He wanted her to take the child to her father. On 28th March 2008 she returned home and this angered her said step-brother. He accused her of leaving the child alone and reported to the police that she had killed the child. She was not all that time aware that her child was dead. She denied having killed the child and contended that her step-brothers (PW 1 and PW 3) lied against her.

Basically, the accused's defence is a denial and a suggestion that the offence could have been committed by another person within the material homestead.

Indeed, there was no dispute that the deceased was killed by being strangled with what was suspected to be a string.

The post mortem report shows that the cause of death was asphyxia due to ligature strangulation. The pathologist (PW 4) said that ligature strangulation implied that something like a string or rope was tied around the neck.

P.C Likonyi (PW 5) stated that the body of the deceased had strangulation marks around the neck.

It is apparent from the foregoing that the manner in which the deceased was killed strongly implied that the assailant acted with malice aforethought in doing what he/she did. Consequently, the issue for determination by this Court is whether the accused was the culprit. In that regard, there was no direct evidence showing that the accused was seen in the act of killing the deceased. The evidence against her is essentially circumstantial in the sense that she was the mother of the deceased and was the last person seen with her alive yet on the morning of the material date informed her relatives that the deceased had died from pneumonia. In her defence, the accused implied that she had gone to her sister's place leaving the deceased behind and because of that incident, her step brother (PW 1) became angry and reported to the police that she had killed her daughter.

However, there was evidence from the accused's step mother Tamurei (PW 2) that the accused took away the deceased from her and the two went to sleep at an unknown place only for the accused to report in the morning that the deceased had died.

The accused informed her step brothers (PW 1 and PW 3) that the deceased had died from pneumonia yet the post mortem report overruled the fact and showed that the deceased had been strangled to death.

The fact that the accused was the last person to be seen with the deceased prior to her death and the fact that she (accused) reported that the deceased died from pneumonia provided strong circumstantial evidence against her. These factors irresistibly pointed to the guilt of the accused to the exclusion of any other person. Indeed, the accused owned up to the offence when she stated in the presence of her step brother (PW 1) that she had killed the deceased and pointed out the thread used in the killing. The said thread was recovered and produced herein (P. Ex.3).

In essence, the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of her guilt (**see, REPUBLIC VS. KIPKERING ARAP KOSKE AND ANOTHER (1949) 16 EACA 135 and SAWE VS. REPUBLIC (2003) KLR. 364**).

This Court must therefore find and hold that the accused is the person who murdered her own daughter for reasons best known to herself. The attempt she made herein to implicate her step brother (PW 1) was futile. The circumstantial evidence against her was strong and credible enough as to leave no doubt in the mind of this Court that she was the culprit. Consequently, she is found guilty as charged and convicted accordingly.

J. R. KARANJA
JUDGE

[Delivered and signed this 19th day of July 2011]

19/7/11

Before – J. R. Karanja – Judge

Court Clerk – Andrew

Mr. Kabaka for State

Mr. Baraza holding brief for Esikuri for accused

J. R. KARANJA
JUDGE

Court:

Judgment delivered to accused.

J. R. KARANJA
JUDGE
19/7/11

State Counsel:

Action of the accused was selfish. She murdered her child. Punishment prescribed by law should be imposed.

J. R. KARANJA
JUDGE

Mr. Baraza:

Accused is remorseful. She is a young woman. She has been in custody since 2008. May she be accorded leniency. She is aged twenty one (21) years old.

J. R. KARANJA
JUDGE

Court:

Accused is a first offender. Mitigation noted. Accused is a young woman. It cannot be comprehended why she decided to take away the life of her only daughter. We may only opine that her failed marriage and the resulting stress may have pushed her into doing what she did. It has been shown herein that she was married at the tender age of 15 years. At such an age a person would require guidance before entering into a marital relationship which comes with its stresses which could easily lead to ugly situations such as what happened herein.

Therefore, pursuant to S. 329 of the CPC and on the authority of **GODFREY NGOTHO MUTISO VS. REPUBLIC (2010) e KLR** the accused is sentenced to serve three (3) years imprisonment.

J. R. KARANJA
JUDGE

Right of appeal.

J. R. KARANJA
JUDGE