



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 3 OF 2009

LESIIT J.

REPUBLIC.....PROSECUTOR

VERSUS

FREDA KANUI MUSA ALIAS FRIDA KARUGU.....RESPONDENT

J U D G M E N T

The accused FREDA KANUI MUSA ALIAS FRIDA KANUI is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 25th day of December, 2008 at Munithu Location in Meru Central District of the Eastern Province murdered MERCY KAGWIRIA. The prosecution called 5 witnesses. The facts of the prosecution case were that the deceased had separated with her husband and had left the home to live in Nairobi. She had a daughter whom she left with her estranged husband. On Christmas day in 2008 the deceased returned to her matrimonial home to take presents to her child when she found the accused having moved in with her husband. The prosecution case is that the accused armed herself with a knife and without any provocation or altering any word stabbed the deceased on the neck and ran to the house of an aunt to the husband to the deceased where she locked herself.

The accused in her defence admitted that she was living with the husband of the deceased one Murigi and that she was in his house on Christmas day 2008. She said that she woke up in the morning to go and fetch water and that on returning to the home while at the door she looked behind and saw somebody lifting a knife ready to stab her. She said that she was stabbed on her palm. She said that she struggled with the deceased whom she did not know before. She then ran into the house of the aunt to her husband where she hid herself until police came.

The accused person is charged with murder section 203 of the Penal Code stipulates

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

The elements of malice aforethought are established when evidence proves any one or more of the circumstances set out under section 206 of the Penal Code

“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) ...

(d) ...”

The prosecution is relying on the two eye witness of PW2, Doris sister of Mwirigi and PW3, Isaac brother of Mwirigi. Mwirigi was the estranged husband of the deceased. Their evidence was that the deceased had left her matrimonial home three months prior to the incident. On the material morning, she went to see her child with Mwirigi. As she spoke with PW2 in the latter’s house when the accused showed up. According to both witnesses there was a quarrel between them. PW2 said that the quarrel begun when the deceased demanded that she wanted her house back. PW2 explained that it was the deceased who had built the matrimonial house.

PW3 said that he was standing outside the door of his house within the same compound when he saw the accused running from Mwirigi’s house to PW2’s house where the deceased was standing talking to PW2. That is when he heard her ask the deceased whether she will ever abuse her again. What followed according to both PW2 and 3 was that the accused reached into her waist, removed a knife and stabbed the deceased on the neck. She left the knife still stuck on the deceased neck and ran to PW2 and 3’s aunt’s house where she locked herself. The knife was exhibit 2.

The prosecution adduced evidence to show that the injuries which led to the deceased death was a stab to the neck in which the major blood vessels of the neck were severed.

The prosecution has shown that the accused carried the knife in her waist before the attack. The prosecution evidence clearly establishes that the accused premeditated the attack on the deceased. The prosecution evidence also established that the accused struck the deceased on the neck. That was proof that the accused had formed the intention to either cause death or grievous harm to the deceased. Malice aforethought was therefore proved in all the circumstances of the case.

The accused in her sworn statement stated that it was the deceased who had a knife and who aimed the knife at her from behind. The accused claimed that the deceased had followed her to Mwirigi’s house when she attempted to stab her. The accused said there was a struggle between them before she escaped to Mwirigi’s aunt’s place.

The accused defence that it was the deceased who had the knife was not true. There was no evidence adduced that could suggest that PW2 and 3 were lying against the accused. Both witnesses said they had not seen the accused before that day and that they were unaware she was in Mwirigi’s house. I considered the demeanour of both witnesses and found them truthful witnesses who were worthy of belief.

The accused tried to impress the court that she had been living with Mwirigi at his home for six months before this incident, and for three years at her home before then. PW2 and 3 said they did not know her. PW4 father of Mwirigi also said ha did not know her. None of this witnesses had seen her before the day in question. I noted that none of this witnesses were cross examined on the point whether the accused was not infact living in that home prior to the incident. They were also not cross examined on the point

whether they had not met accused before and whether they were not aware of her existence in relation to Mwirigi. I find accused defence that she had been living at the material home a lie. I find her statement that Mwirigi was her long time husband also a lie. The lack of truthfulness was demonstrated clearly by the fact the accused did not know the names of Mwirigi's father and siblings. It was also very clear that the accused statement that she had lived with Mwirigi for three years at her home and for six months at his home was not possible. The prosecution witnesses all said that the deceased had lived with the deceased at his home and that they had a child who was in standard 3 this year when the witnesses testified. The incident occurred in 2008. If the child went to school at the age of six, then she must be 9 years today. If the parents were living amicably together until 2008, then they were together for at least five years. That rules out any possibility that the accused and Mwirigi ever lived together as the accused claimed.

I find that the accused was a dishonest person and her statement in defence was a concoction of falsehood to suit her case. I find that the evidence against the accused is overwhelming; that the accused armed herself with the knife, exhibit 2 and stabbed the deceased with it without provocation. The attack was sudden but calculated. I am convinced that the accused had formed the intention to cause death or grievous harm on the deceased. The offence was proved beyond any reasonable doubt. I reject the accused defence, find her guilty of murder as charged and convict her accordingly.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF NOVEMBER, 2011.

LESIIT, J.
JUDGE