



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE 32 OF 2010

REPUBLICPROSECUTOR

Versus

JOSEPH WAMAE MANYEKIACCUSED

SENTENCE

The accused JOSEPH WAMAE MANYEKI was convicted on his own plea of guilty to the offence of manslaughter contrary to section 202 of the Penal code as read together with section 205.

The particulars of the charge were that on 2nd September 2010 at Githwariga Village in Murang'a South District within Central province unlawfully killed PATRICK NG'ANG'A MANYEKI.

The fact that constituted the offence as stated by the state counsel Mr. Kaigai were that on 2nd day of September 2010 the accused who was drunk arrived home and quarreled with his wife who was in the kitchen. The deceased who was in the said compound tried to calm the accused down asking him to stop the disturbance and to go to sleep.

The accused and the deceased who was his brother quarreled for a while and the deceased left the home whereupon the accused followed him with a jembe hitting him on the head thereby causing his death.

It was stated by the state that there was bad blood between the accused and the deceased since the deceased had found the accused committing adultery and reported to the husband of the woman in question.

The postmortem was performed at Murang'a by Dr. K. Gitau on 7th September 2010 found the cause of death to be cardio pulmonary arrest due to severe head injury from a sharp object.

These facts were admitted by the accused person whom the state has asked to be treated as a first offender.

Miss Mwai in mitigation on behalf of the accused stated that the deceased who was an older brother of the accused had a habit of interfering with the business of his brother. She cited as an example the issue of the deceased reporting to the husband of the wife he had found the accused committing adultery with and also the issue of him abusing the wife calling her a prostitute. She stated that the accused was at the material time drunk and therefore his judgment was not expected to be at 100%. Though the blow was severe she noted that it was a single blow and that therefore the accused did not intend to kill the

deceased. The accused is 39 years old and a father of three (3) children should be given a chance to go on with his life. He has lost his brother from his action and has been in remand since September 2010. She therefore submitted that he should be given a lesser sentence.

In passing the sentence herein I have taken into account the submissions and note that though it is alleged the deceased had been interfering with the business of the accused person it seems to me that the deceased was a big brother who had the best interest of the accused even though he showed it in away not acceptable to the accused. I have also taken into account the fact that the deceased is alleged to have abused the wife of the accused on the material day but I note that the accused followed the deceased thereafter armed with a jembe. I have also taken into account the degree of the injury inflicted upon the deceased and the fact that the accused caused the death of his brother a consequence which he will live with for the rest of his life. The accused was drunk at the material time and therefore might not have been in full control of his actions at the said time.

Having taken into account the above factors I am of the considered opinion that the accused required a custodial sentence to enable him have time to reflect on the consequences of his action. I have also taken into account the fact that the accused has been in remand since September 2010. I therefore sentence the accused to five years imprisonment and it is so ordered.

There shall be 14 days right of appeal.

Dated and delivered at Nyeri this 4th day of July 2010.

J. WAKIAGA
JUDGE