



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 61 of 2007

ROBERT KIPKEMBOI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant was charged with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He was arraigned in Court on 30th July, 2007. The particulars of the offence were that on 26th February, 2006 at Katapseron Village in Marakwet District of the Rift Valley Province, unlawfully killed Jeremiah Rutto Kirop.

The Appellant pleaded guilty and accepted the facts to be true. He was then convicted and sentenced to 10 years imprisonment.

The Appellant subsequently lodged this appeal on the following grounds:-

1. That he was coerced or forced to plead guilty by the police.
2. That he was innocent.
3. That the sentence was excessive in the circumstances.

During his submissions, the Appellant asked for a re-trial of the case. The Respondent opposed the appeal on the ground that the plea was unequivocal and the sentence was not excessive.

I have considered the appeal, the grounds, the proceedings and judgment. I have also considered the submissions.

From the facts, it is clear that the deceased is the one who provoked the Appellant and created the situation in which he died. The deceased armed himself with a panga and threatened his family with it. He was extremely violent that the Appellant intervened. There was a fight in which the deceased sustained massive and serious injuries to the extent that his spinal cord was severed.

The Accused ran away after the incident and only arrested one and a half (1½) years later.

From the record, I find no evidence that the Appellant was threatened, unduly influenced or coerced to plead guilty. There is no evidence on the allegations against the police. The Appellant did not inform the

Court of the coercion.

After the plea was taken in Kiswahili, he pleaded guilty. There was no hesitation. There is no claim that he did not understand the language.

The facts were read to him and he admitted the same without any hesitation.

I do find that the plea was unequivocal and proper. There was no compromise or prejudice to the accused's rights.

I find and hold that the conviction was sound, proper and valid.

With regard to the sentence, the maximum sentence is life imprisonment. The force that the accused used was so violent and forceful that the deceased was almost beheaded. The neck was cut so badly that the spinal cord was severed completely.

The Appellant went beyond self-defence for restraining the deceased. He did not have to become more violent than the deceased. Once he took the panga in his hands, he should have gone away from the deceased. Instead, he took hold of it and went almost berserk to chop off the head of the deceased.

The Appellant's actions were reckless, wanton and almost inexplicable. I do find that the sentence of ten (10) years was in fact not excessive. To the contrary it was lenient considering the violence and degree of injuries of the deceased leading to his death. The cut ran through the mid-neck and was 20 cm in length.

I have also considered the fact that the accused did not submit himself to the law and went underground for 1½ years. I also think that there is need for a deterrent sentence. A message ought to go out that the life of another human being is priceless and precious. No person has the right to take it away and in such a manner to show contempt for God's creation who gave that person life.

The maximum sentence of life imprisonment shows how seriously and gravely the offence of manslaughter is viewed by the law.

As a result and considering all circumstances I do hereby enhance and increase the sentence from ten (10) years to twenty (20) years imprisonment. The sentence is accordingly varied.

Right of appeal within fourteen (14) days.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF JANUARY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Chirchir for the State

Appellant in person