



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NUMBER 31 OF 2006

REPUBLIC.....PROSECUTION

-VERSUS-

JUSTIN KIPKOSGEI KIBITON.....ACCUSED

JUDGMENT

The accused has been charged for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code, Cap.63, Laws of Kenya. The particulars of the offence as stated in the information are as follows:

“On the 22nd June, 2005 along Kuwinda Raod, Hardy Estate, within the Nairobi Area Province, murdered REGINAH CHEMTAI CHEPKONGA”

In his evidence, PW1 – Richard Njenga Ndiho, the landlord to the deceased recalled that on 22nd June, 2005 at around 12.00 noon, he heard a woman shouting for help. On rushing to the scene, Reginah (now deceased) pleaded with him to go to her house since somebody was assaulting her with a knife. When PW1 entered the sitting-room, the deceased pleaded with him to go to the bedroom. On entering the same, PW1 found the accused standing by the door while the deceased was standing on the far corner while holding her handbag. While there, the deceased complained that the accused had knifed her and showed the injury on the upper part of the navel cord. The deceased also cautioned him to be careful since the accused was about to harm himself. According to PW1, he saw the accused holding a knife next to his chest. After PW1 persuaded him, the accused dropped the knife but never explained the reason for the fight. Subsequently, PW1 convinced the deceased to go out of her house. While walking towards the house of PW1, the deceased complained of dizziness and heat. Thereafter, PW1 took the deceased to St. Mary’s Hospital where she was admitted. On his way home, PW1 met the accused who was driving the deceased’s car. After explaining to the accused the hospital where the deceased was, they parted ways. PW1 concluded his evidence by stating that the deceased had been his tenant for about five years. In her medical evidence, PW2 – Dr. Jane Wasike Simiyu, a pathologist testified that on 19th October, 2005 she performed a post-mortem on the body of Reginah Chemtai Chepkonga. She observed a healed labaratomy scar which was 15cm long and right laceral abdominal wall scar. That apart, she also found abnormal fluid in the chest cavity (pleural effusion). Dr Simiyu also found that the lung was oedematus. Besides the above, she also found that the fibrinous adhesions of the intestines with septic ascites – about two liters – while the kidneys were congested. Eventually, Dr. Simiyu formed the opinion that the cause of death was peritonitis following penetrating abdominal stab wound. On his part, PW3 Peter Wairagu of Langata Police Station testified that on 22nd June, 2005 he received a report that the deceased had been stabbed. On going there, PW3 saw the deceased who was from the theatre where she had been stitched.

While there, the accused drove into the hospital and he was arrested by PW3 who later escorted him to Lang'ata Police Station. According to PW3, the deceased told him that the accused had gone to her house while drunk and that after an argument, the latter armed himself with a kitchen knife before stabbing her. In her evidence, PW4 – Juliette Jepleting Chemirmir testified that on 18th October, 2005 she went to Chiromo Mortuary where she identified the body of the deceased who is her cousin. On the other hand, PW5 – PC Kioki Muthungu testified that on 5th July, 2005, he took the accused to Kibera Law Courts for assaulting the deceased. PW5 also testified that he later learnt that the deceased had been discharged from hospital. However, after about a month, PW5 learnt that the deceased had been re-admitted at the Nairobi Women's Hospital where she later succumbed to her injuries. PW5 also explained how the accused was later arrested while admitted at Moi Referral Hospital. In his medical evidence, PW6 – Dr. Zephania Kamau testified that on 4th January, 2006 he examined Justin Kipkosgei Kibition whom he assessed his age to be 27 years. Apart from the above, he also found him to be mentally fit to stand trial. Besides the above, Dr. Kamau also observed that the accused had recent healed bruises on the right temporal and parietal areas, below the right lower eye lid and on the right eye brow. According to PW6, the above injuries were due to a road traffic accident that was alleged to have taken place on 16th October, 2005. Dr. Kamau also found a healing abscess between the upper part of the buttocks.

In his defence, Justin Kipkosgei Kibiton (hereinafter referred to as the accused) explained that he used to stay with the deceased as husband and wife from February, 2002. During their stay, they were blessed with one child. Further to the above, he also explained that they used to stay in the house of the deceased who was by then, an air hostess with Kenya Airways. According to the accused, from January, 2005 the deceased started drinking heavily and slept outside twice – on the pretext that she was with friends. Further to the above, the accused recalled that on 21st June, 2005 he accompanied the deceased to a local bar where they drank up to 1.00a.m. On the following day, though the accused went on duty, he returned home at 11.00a.m, since he could not stand the hangover. On the way home, the accused drank four beers. On going back to the house, the accused found the deceased drinking vodka while reading newspapers. Later, while the deceased was preparing lunch, the accused was “flashed” twice through his mobile phone. Subsequently, the deceased asked the accused about the love message that he had received on the previous day. After some arguments, the accused complained that the deceased was sleeping outside (meaning that she was unfaithful). At that stage, the deceased hit him with a handbag on the back. According to the accused, he later held the bag and the deceased ran to the kitchen and grabbed a knife. When the accused tried to grab the knife, he got cut on the left hand. While struggling they fell down and the accused heard her screaming. Consequently, the deceased complained that the knife had cut her on the stomach. The accused conceded that when the landlord went to the house he threatened to kill himself by using the knife. The accused also confirmed that the deceased had told the landlord to restrain him from killing himself. Apart from the above, the accused explained how he was arrested at St. Mary's Hospital where he had gone to visit the deceased. Thereafter, the accused was arraigned in Kibera Law Courts on assault charges. The accused reckoned that after three weeks, the deceased was discharged from hospital. However, on 10th October, 2005 the accused was informed that the deceased had died. In conclusion, the accused denied having had any intentions to kill the deceased. He explained that both of them were drunk and that the deceased was annoyed.

After the summing-up, both assessors unanimously returned a verdict of “not guilty” against the accused. The first assessor took issue with the fact that PW1 was not present when the offence took place. He was of the opinion that the above evidence was hearsay and that it was the deceased who first assaulted the accused. The second assessor concurred with the above reasoning. A review of the evidence on record, clearly show that the accused and deceased were alone in the bedroom before the offence took place. None of the witnesses who gave evidence in court were present when the alleged offence was committed. In fact, by the time that PW1 entered the couple's bedroom, the deceased had already been assaulted. Despite the above, the deceased complained openly to PW1 that the accused had assaulted her using a knife. Apart from the above, the deceased also went ahead and showed PW1 the injury that she sustained that was on the upper part of the naval cord. Significantly, the accused never denied the allegations nor give any explanation. Besides the above, PW1 explained explicitly that when he entered that bedroom he found the deceased standing on the far corner of the room while holding up her handbag. On the other hand, the accused was standing next to the door. The above positions and

gestures, clearly show that the deceased was trying to defend herself from attacks by the accused who was by then armed with a knife. Given the above, I hereby find that it was actually the accused who stabbed the deceased with a knife on the material day. Subsequently, the deceased died following the infections from the wound. Had the accused not stabbed the deceased then it is unlikely that she would have had the said infections.

Though I have no doubts whatsoever, that the accused stabbed the deceased, the evidence on record does not clearly show that the above was premeditated. All the indications are that there was a domestic quarrel which later culminated in a fight between the couple. Other than the above, the court cannot state specifically what led the accused to stab the deceased. That is also because the court cannot entirely rely on the evidence of the accused who seemed to be economical with the truth. Due to the above, I hereby reduce the charge of murder, contrary to Section 203 as read with Section 204 of the Penal Code – to a lesser but cognate offence of manslaughter, contrary to Section 202 as read with Section 205 of the Penal Code, Cap 63, Laws of Kenya. It is due to the above analysis that I wish to differ with the verdict of the assessor. I hereby find that the prosecution has proved their case beyond any reasonable doubt for the offence of manslaughter. The accused is hereby convicted accordingly.

MUGA APONDI

JUDGE

Judgment read signed and delivered in open court in the presence of the accused:

.....Defence Counsel

.....State Counsel

Order: Assessors to be paid allowances.

MUGA APONDI

JUDGE.

22ND APRIL, 2008