



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

Criminal Case 35 of 2003

REPUBLIC PROSECUTOR

VERSUS

MOSES ALILO LOKORU..... ACCUSED

JUDGMENT

MOSES ALILO LOKORU has been charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code.

The particulars of the charge are that on 18/8/2002, at Nakwameki village in Turkana District within the Rift Valley he murdered **KADOKOT NALING** whom I shall hereinafter refer to as ‘the deceased’

The onus of proof lies on the Republic which alleges all this. The standard of proof is beyond reasonable doubt.

The main ingredients in a charge of murder are that an accused must have formed the criminal intention and have had a motive to cause the death or bodily harm to the deceased. It is also for the Republic to prove that this particular death must have been as a result of an unlawful act or omission on the part of the accused.

I have taken the evidence of the seven prosecution witnesses into account including PW1, who was the only witness to state that she had learnt from the deceased that the accused had assisted her procure an abortion and though she did not actually witness the act, she however claimed to have accompanied the deceased to the home of the accused where she was left in the sitting room, as the deceased entered the bedroom with the accused, from where the two emerged after 1 hour; the deceased asked for her lesso from PW1, from which the deceased removed money and gave it to the accused. PW1 testified that as they left the home, but while they were still in the compound that the deceased had informed her that metals were inserted in her womb and that she had terminated the pregnancy. Unfortunately the deceased died early next morning.

According to Medical Officer of Health Turkana (PW6) who performed an autopsy on the body of Kadokot Kaling on 22/8/2002 at the Lodwar District Hospital Mortuary, the cause of death was cardio respiratory arrest due to severe shock due to excessive bleeding due to retained products of conception; that it was all due to abortion, which was not professionally done; that a hard blunt object had been used instead of use of drugs.

PW 2 testified how they had been left at the shops by the deceased and PW1 who returned later that

afternoon; how they had an uneventful evening, but that at 5 a.m., the deceased had woken up and gone outside after which she woke up PW3 and requested for bathing water and it was then that she (PW2) noticed blood on the mattress which the deceased had slept on, soon after which Naling died as they talked.

PW3 who had also accompanied PW1, 2 and the deceased to the shops, testified how PW1 and the deceased had left them at the shops and proceeded on; how they met at PW1's home later that afternoon. She also testified how the deceased had requested for water early next morning; at which point she noticed that her bedding was full of blood; and how Naling died later that morning.

The then acting as O.C.S. at Lodwar Police Station gave evidence as PW5, and confirmed having received the report of the death from PW1; that he instructed his officers to visit the scene and to arrest the accused as it was alleged that he had committed the offence, and how the arrest was made on 29/8/2002 at 8.30 a.m., after which he charged him with the offence, and later carried out the investigations. He did not see the body before it was taken to the mortuary, nor did he visit the scene. He however confirmed having sent one P.C Stanley Mwangi and others whose names he could not remember to the scene.

A police officer who visited the scene gave evidence as PW7. he testified how PW1, 2, 4 and a fourth person whose name he could not remember had reported the death; how the OCS had requested him to visit the scene with two other officers; where they were led by the four who had reported the incident; how they found the deceased lying in the house. He testified how he drew a sketch plan after which they took the body, which had no external injuries to Lodwar District Mortuary. He also testified how based on the evidence of PW1, 2 and 3 he searched for the accused, who was later arrested by one P.C. Eyanai.

The accused who denies this offence chose to give an unsworn statement in which he stated that he had gone to Lodwar town on 28/8/2002, where he met one Joseph Eyanai who was a police officer, who called him aside and informed him that he was required at the Police Station without disclosing why he was so required. Eyanai arrested him and took him to the Station and it was then that he learnt that he was to be charged with this offence. The said arresting officer (Eyanai) who was a material witness was not called to testify.

It is clear that it was only PW1 who implicated the accused, yet she did not witness the incident, nor was her evidence corroborated.

PW5 conceded during cross examination, that he never investigated this matter. It is therefore disturbing to note no steps were ever taken to visit the home of the accused with a view to investigating the alleged crime or to inspect the scene of the alleged crime and to recover the metal instruments, which were allegedly used by the accused. Of more interest is the fact that PW5 neither indicated in his statement that PW1 was the one who reported the matter nor had he recorded that he sent officers to arrest the accused.

The Assessors have returned a unanimous verdict of guilty of the lesser charge of manslaughter as the accused had no malice aforethought, but I find that the serious lapses on the part of the prosecution create serious doubts in my mind, doubts which can only be for the benefit of the accused.

Having found as I do, the only logical conclusion is that the prosecution has failed to prove its case against Lokoru beyond reasonable doubt, and in the circumstances I do hereby find him not guilty of the offence of murder and I acquit him accordingly.

Dated and delivered at Kitale this 2nd day of February 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of: