



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KITALE

Criminal Case 17 of 2002

REPUBLIC PROSECUTOR

VERSUS

WILLIAM MAYWA KELAN ACCUSED

JUDGMENT

WILLIAM MANYWA KELAN was charged in this court on 20/6/2002 with the offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 of the Laws of Kenya.

The particulars of the charge were that on 2/3/2002 at Kamalei Village in Marakwet District of the Rift Valley Province, Kelan murdered EVERLINE CHEMURUNGU WILLIAM.

The Republic, which alleges all these, must prove it all, the standard being, beyond reasonable doubt.

I shall now refer to William Kelan as ‘the accused’ and to Everline William as ‘the deceased’.

Murder is defined in section 203 of the said code as:

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

As is clear from the above definition, the main ingredients in a charge of murder are that the accused must have formed the criminal intention and have had a motive to cause the death or bodily harm to the deceased, and that the said 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 10 prosecution witnesses and the submissions into account with a view to establishing whether the prosecution has proved its case to the required standard.

PW 4 a medical officer who was then stationed at Kitale District Hospital, narrated how his former colleague one Dr. Sirengo had performed an autopsy on Eveline’s body, on 12/3/2002, and how Dr. Sirengo formed the opinion that the cause of death was bleeding within the brain and that he had observed after observing that the deceased had sustained multiple bruises of various dimensions and varying sizes over her left hand, at the back and both legs; that she had fractured her right radius and that blood was oozing from her right ear. Based on that report, PW 4 had also formed the opinion that a blunt object had been used against the deceased to inflict the said injuries.

According to PW 1, many had attended a circumcision ceremony on 2/3/2002 at 10.00 am at Kamelei B

village and that as they continued with their merry making, they heard screams from the hills at about 6 p.m. They went to establish what was happening and they found the accused beating his wife with a walking stick and as he chased her, she ran towards people for her salvation. PW1 testified how he attempted to restrain him but the accused beat him on the hand. The accused then asked his wife to go home which she did. PW1 learnt of the death later that evening at around 10 p.m., after which he joined in the arrest of the accused whom he knew well, and later filed a report at the ASTU at Kamelei, whose officers rearrested the accused the following morning.

An officer working with the ASTU, in Kamelei, West Pokot District (PW5) testified how he was woken up by his Corporal on 3/3/2002, who informed him that some men had come to record a complaint. The said men informed him that the accused had beaten his wife at a ceremony. He visited the scene where he found the body of a woman and where the Area Chief namely Chesire, showed him the stick with which she had been beaten. The officers rearrested the accused and took him to their camp after which they handed him over to the Kapcherop Police. In his opinion, the accused was drunk and did not seem to understand what he was talking about.

PW 7 who was an ASTU officer then stationed Kamelei also testified how upon learning of the death from the Corporal; he was instructed to proceed to the scene, which he did while in the company of others; where they rearrested the accused who had been arrested by members of the public. It was also his evidence that at the time when they re-arrested him, the accused was '*obviously drunk at the time when we arrested him; that he had no idea what had happened*', which evidence was corroborated by PW 9 who testified how he attended the aforementioned ceremony and how by the time he left, he noted that the accused was very drunk.

PW 10 a Police Constable attached at Kapcherop Police Station produced the walking stick which the accused is said to have been used to inflict the fatal injuries on the deceased.

The accused gave an unsworn statement in which he confirmed having attended the aforementioned party with his late wife, where he consumed busaa, with tea; that he was invited to another party at 4 p.m. by a friend; where he found his wife who gave him changaa; that he stayed at the venue until 6 p.m. at which point his host escorted him to the home of one Kiprof Chepaipai, who had hosted the earlier party, where he consumed muratina; after which he found himself under arrest. He claimed that he did not know when or why he was arrested, but that he found himself at ASTU Station on 3/3/2002, at 6 p.m., when he was stunned to know that he had been arrested in connection with the death of his wife.

I am alive to the fact that in order to justify on circumstantial evidence "*the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains the prosecution. It is a burden which never shifts to the party accused.*" **Joan Chebichii Sawe vs. Republic (Nrb). CA. CR. A. 2 of 2002).**

The Assessors have returned a unanimous verdict of guilty of the lesser charge of manslaughter and I am inclined to agree with them for, the accused does not deny having inflicted the fatal injuries, all that he pleads is that he was intoxicated and did not know what happened. PW5 and 7 confirmed the fact that he was highly intoxicated. He did not deny ownership of the walking stick, which was produced in court as the offensive weapon, neither does he deny having inflicted the fatal injuries, all that he pleads, is that he was intoxicated and did not know what happened, a fact which was corroborated by PW5 and 7. He did not deny that the walking stick, which was produced as the weapon, was his stick. I find that he inflicted the fatal injuries on his wife and in the circumstances, though the evidence of PW1 who had seen the accused assault deceased was not corroborated by an eye-witness I do however find that there was sufficient circumstantial evidence to corroborate the same.

I do therefore find that he caused the death of his wife, unintentionally as he was intoxicated and he is thus guilty of the lesser charge of manslaughter and I convict him accordingly.

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

JEANNE GACHECHE

JUDGE

Delivered in the presence of: