



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Case 23 of 2005

REPUBLIC.....PROSECUTOR

Versus

ELIUD NJERU NYAGA.....ACCUSED

JUDGMENT

The Accused person is charged with murder contrary to section 203 as read with section 204 of the Penal Code particulars alleging that on the 6th day of June, 2005 at Matandara Village in Kirinyaga District the Accused murdered Jamlick Muturi Njeri.

The Accused person was a step father of the deceased child said to have been between four and five years old. The mother of the child, Rahab Wanja Njeru who gave evidence as PW5, having been married by the accused when she already had the deceased child. She subsequently got another child with the Accused and the four lived together in their house at Matandara Village, although today Rahab Wanja Njeru, who now lives at the home of her parents, says she is no longer the wife of the Accused but still wants the Accused to give her another child.

The issue of a bicycle was not brought out clearly during the trial Rahab Wanja Njeru saying that the Accused had a bicycle at the gate when he left with the child, while witnesses namely, Margaret Wambia Njoroge, PW6, and Benson Gatindi Ngando, PW7, told the court that they saw the Accused with the deceased without a bicycle.

In any case, the prosecution's case against the Accused is that during the evening of 6th June, 2005, the deceased child fell sick and Rahab Wanja Njeru requested the Accused to take the child for treatment that evening at Kimbimbi Sub-District Hospital. The Accused person accepted as the hospital does not seem to have been very far from their home and it is being said there was moonlight. The time was about 7.30 p.m. and Rahab Wanja Njeru told the court that she saw her husband and the child off for the hospital as she went up to the gate where she was in a position to see also Margaret Wambira Njoroge although the two did not talk to each other at that time.

Margaret Wambia Njoroge, PW6, added to what Rahab Wanja Njeru told the court by saying that she was returning to her home that evening at about 7.30 p.m walking along the road to Kimbimbi when she saw the Accused and the child emerging from the gate of their home up to the road walking towards the direction of Kimbimbi. The gate of her home was on the other side of the road but opposite the gate of the homestead where the rented house the Accused was. She was able to see the Accused and the child by means of an approaching tractor's bright headlights and also there was moonlight and the Accused and the child were people the witness already knew as close neighbours. As they walked going, she entered the gate of her home into her compound.

Benson Gatindi Ngando's evidence took the story further. He gave evidence as PW7 saying that he later the same evening met the Accused carrying the child on the shoulders as the Accused was walking on foot. That was after Margaret Wambia Njoroge had seen the Accused and the child and it seems to have been a long distance away from the home where the Accused lived. Benson Gatindi Ngando was a Matandara villager who knew the Accused very well.

But after all those people had seen the Accused with the child, the Accused later returned to his house without the child and when Rahab Wanja Njeru was inquiring what happened, she was not being given a satisfactory answer. As a result Rahab Wanja Njeru screamed attracting villagers to her house where they found her and the Accused and their younger child.

Explaining to the villagers why she was screaming, they confronted the Accused person with several questions as he dodged them with a line of unsatisfactory answers like:

“the child was crying and when he stopped crying, I left him on the road.”

That was during the night and they were talking to a father about a child not more than five years old.

Those villagers could not be amused and therefore asked the Accused to go, at that time, and show them where he had left the child. They included Benson Gatindi Ngando, PW7, Duncan Muriithi John, PW8; David Muiga Thika, PW9 and the journey proved to be long from 9.00 p.m. as the accused person would take them to one place where they would search and find nothing before he would take them to another place they would also search and still find nothing. Being tired of that conduct on the part of the Accused, the villagers took him to the chief's camp where they found an Administration Police officer who after listening to them advised them to go and check at the hospital first. They went. Checked in the wards. Failed to see the child. They were furious with the Accused after going through the wards and even a watchman in the compound supported them demanding a better explanation from the Accused person. In the end, the Accused volunteered useful information and since it was now late at night and some of the poor villagers must have become tired by then, they decided to return the Accused to the chief's Camp so that they could go and have some rest before continuing the search for the child the following day.

At the Chief's Camp, they were advised to take the Accused person to Wanguru Police Station and they did so before the determined villagers returned to their respective homes at Matandara around 2.00 a.m.

The next day 7th June, 2005, the same villagers, and others including relatives, converged to a water canal near Muthangautha Primary school to search for the child following the information the Accused had volunteered to villagers the previous night while at Kimbimbi Sub-District Hospital before they returned him to the Chief's Camp. This time the search yielded good results as the body of the child was retrieved from the water in the canal and the police at Wanguru were called and went and collected the body and took it to Kerugorya District Hospital mortuary.

Dr. Andrew Gatangi, PW1, who performed the postmortem on the body of the child told the court that he found that the child had died by drowning in water. The stomach was full of water and the lungs full off air with palms and fingers greenish, suggestive of deprivation of oxygen.

Dr. Peter Ndirangu of the Provincial General Hospital, Embu examined the Accused person as to his mental status and found him normal and fit to stand trial.

In his defence, the Accused person told the court that on the 6th June, 2005 he returned to his house from where he had gone to work, looking very dirty. He therefore went to the bathroom to take bath as his wife, carrying the small child, went to a shop to buy some food. He finished bathing before his wife returned and he decided to go somewhere to take two cups of beer. As he was going, the deceased child who had remained at the house started following him. But as he did not want to go with the child, he started running and disappeared from the child. He did not take long to finish the two cups of beer and

therefore returned to his house sober only to find that his wife was asking him where the deceased was. His explanation that he ran away and left the child behind did not satisfy his wife who as a result, screamed and people went to their house and started to handle him as already described above. He denied that he murdered the deceased adding that their family relationship had been very good. Indeed Rahab Wanja Njeru also said their relation ship was good and that the accused was not taking beer although their Landlady Emmaculate Wambui Maina, PW4, spoke as if the Accused and Rahab Wanja Njeru were having some quarrels.

To conclude this judgement, I should say that I have carefully considered what was said on both sides. I was impressed by prosecution witnesses as they looked to me to be truthful and I find their evidence cohesive. That evidence, in my view, is not shaken by the defence of the Accused which I think has no truth. The Accused person was with the child ostensibly to take the child for Medical treatment at the hospital. Instead of doing that noble job, the Accused person turned his human nature into that of a beast and must have thrown the child into water to drown and conceal it. Unfortunately for him, he was confronted by resilient villagers.

The three assessors in this case were unanimous that the Accused person is guilty of murder. I have no good reason to disagree with them – as I am satisfied that the prosecution has proved this case against the accused person beyond reasonable doubt. I find the Accused guilty as charged and convict him.

Dated, delivered and signed at Nyeri this 22nd day of May, 2006.

J. M. KHAMONI

JUDGE

Present:

Mr. Orinda for the Republic

Mr. Macharia for the Accused

The Accused in the Dock

Mr. Orinda

The Accused person is a first offender.

J. M. KHAMONI

JUDGE

Mr. Macharia

In mitigation the Accused is 40½ years old. For rest of his life he has suffered the stigma of having lost the child. It is a loss for the family. He is a first offender. Has been in remand since arrested.

J. M. KHAMONI

JUDGE

SENTENCE

The Accused person has been convicted and he is said to be a first offender. I have heard and do consider what has been said in mitigation by Mr. Macharia counsel for the Accused.

But I have to remind myself that the Accused committed a very serious offence which ought not to be condoned and the mitigation given has not lessened the seriousness of the offence.

The Accused has been convicted and since the law provides for only one sentence, I have no alternative in the circumstance, but to order as I do hereby order the accused person is sentenced to suffer death as provided by the law.

Right of appeal within 14 days.

Dated this 22nd day of May, 2006.

J. M. KHAMONI

JUDGE