



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Case 20 of 2005

REPUBLIC**PROSECUTOR**

VERSUS

HARUN GITHINJI MUHORO **ACCUSED**

J U D G M E N T

Harun Githinji Muhoro (hereinafter referred to as the Accused) is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 20th day of September 2004 at Kiawambogo village in Murang'a District within Central Province he murdered Valentine Njeri. This being a criminal case, the burden is entirely upon the prosecution to prove beyond doubt that the Accused person did commit the offence.

The prosecution called 8 witnesses. Basically the evidence implicating the Accused is that of Monica Wairimu Magu (P.W.4). She was the mother of the deceased child. She testified that the child's names were Mary Mumbi but that she was also known as Valentine Njeri. According to the evidence of P.W.4 she was living with the Accused person as husband and wife. On the material day the Accused locked her in the bedroom, he then beat the deceased because he had sent the deceased to the shops and she had delayed. The Accused also complained that P.W.4 had reported him to the chief because of the child and yet the child was not even his. The Accused beat up the child until she stopped crying. He then threatened P.W.4 that if she reported that he had killed the child he would finish her. He also told P.W.4 that he had killed the child and had thrown the body in a pit latrine. P.W.4 promised not to report the matter.

A few days later they moved from Kiawambogo village where the incident occurred to Matara village. P.W.4 claimed that the Accused did not allow her to move freely and would often beat her and threaten to kill her.

Matters remained thus until 24th April 2005 when Jecinta Wangechi Muna (P.W.2) received information acting on which she and her mother Magdalene Wanjiru (P.W.3) and P.C. Jeremiah Masai (P.W.6) an officer then attached to Nyagaturu Patrol Base, went to where P.W.4 was staying. They found the Accused and P.W.4 but did not find the deceased child. When asked about the child P.W.4 and the Accused claimed the child had fallen sick and died. Not being satisfied the two were taken to the police station where they were subjected to further interrogation. On the 4th May 2005, the Accused and P.W.4 led officers to their previous home at Kiawambogo village where the officers recovered skeletal human remains from a pit latrine. P.C. Albert Kiarie of Murang'a Divisional CID Scenes of Crime went to the

scene and took photographs which were produced in evidence.

P.C. Joram Keritu (P.W.5) an officer from Nyakiangana police station collected the skeletal remains and escorted them to the city mortuary in Nairobi. The remains were examined by Dr. Moses Njue Gachoki (P.W.7) the chief government pathologist who formed the opinion that they were the remains of a 6 to 7 year old child and that the skull bone had several fractures. He found it difficult to determine the sex of the child or the cause of death but thought that the cause of death involved head injuries.

When put to his defence the Accused gave an unsworn statement and called no witness. He explained that he was living with P.W.4 as husband and wife but that, they had disagreed. The matter was reported to the Chief and Accused was put in the cells and P.W.4 asked to go and collect her clothing and two children. P.W.4 collected her things and the two children and left for her home.

Thereafter the Accused was released and he remained living alone for 2 weeks. During the Sunday of the 3rd week, P.W.4 went to the Accused with her one child, she threatened the Accused and forced him to move to Kiawambogo where P.W.4 was then staying. The Accused asked P.W.4 where her older child Njeri was and P.W.4 claimed she had remained at her grandmother's home. They remained at Kiawambogo working at the tea bushes for a short while after which on P.W.4's request they moved to Matara.

They had been at Matara for about 5 months when the police officers came and arrested them. They were asked about the child Njeri and he explained what his wife had told him i.e. that the child had remained with her grandmother. The Accused maintained that he did not know anything about the charge.

It is evident that the case against the Accused person rested on the evidence of his wife Monica Wairimu Magu (P.W.4). The offence being one alleged to have been committed against a child of the marriage, P.W.4 was a competent and compellable witness under section 127(3) (c) of the Evidence Act Cap. 80. The question is what role did this witness play, was she a mere victim of circumstances or was she an accomplice?

Although P.W.4 alleged that the Accused committed the offence several months before his arrest, P.W.4 did not make any attempt to report the matter. She alleged that she feared to do so as she was being threatened by the Accused. However when P.W.4 and her husband were first interrogated by the police, P.W.4 did not seek the protection of the police but initially claimed that the child had fallen sick and died and it was only after the Accused and P.W.4 had been locked in the cells and subjected to further interrogation that the two led the officers to a latrine in their former home in Kiawambogo where the body of the child was recovered. The conduct of P.W.4 was not that of an innocent victim. It was consistent with the conduct of a principal offender or an accomplice who was trying to conceal the offence.

The evidence of P.W.4 therefore requires material corroboration before the same can be acted upon. The recovery of the skeletal remains provided corroboration that the body of the child had been disposed off in the latrine. It did not however provide any corroboration of the allegation by P.W.4 that the body was disposed off by the Accused. In his defence the Accused appears to shift the blame onto P.W.4 as the person who knew what happened to the child. No evidence was adduced by the prosecution to disprove the defence of the Accused or to support the evidence of P.w.4. In the final analysis it is the word of P.W.4 against that of the Accused. In the circumstances of this case P.W.4 was not a reliable witness and her evidence cannot be the sole basis for a conviction. I find that the evidence adduced by the prosecution was not sufficient to prove that the Accused caused the death of the child Valentine Njeri. I therefore concur with the unanimous opinion of the Assessors and do find the Accused person not guilty of the offence charged. Accordingly Accused is acquitted under section 322(2) of the Criminal Procedure code. He shall be released forthwith unless otherwise lawfully held.

Dated signed and delivered this 9th day of October 2006.

H. M. OKWENGU

JUDGE