



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Criminal Case 24 of 2002

REPUBLIC.....PROSECUTOR

VERSUS

FLORENCE MBULA PHILIP.....ACCUSED

JUDGMENT

The accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge state that on the 10th November 2001 at Swaminarayan Apartment along Desai Road-Ngara in Nairobi within Nairobi Area she murdered VIMLA NINAYAKA GANATRA.

The prosecution case is that the accused was employed by the deceased as a house help. She had worked for the family for about 3 months. She stayed away and she used to report at work at 8.30 a.m. and report off duty at 5 p.m.

On the material date 10th November 2001 she reported on duty as usual at 8.30 a.m. She met the deceased and her husband CHOTALAL GANATRA who operates business in town. The husband left at about 11.30 a.m. At about 12.15 p.m. the daughter of the deceased who is married and stays away with her husband rang the deceased but there was no response which was unusual. She rang her father and informed him about it. He rushed home and on arrival he found the deceased had been murdered and her body was on the floor at the dining room with both legs and hands tied. There was also a socks stuffed in her mouth. He reported the matter to the police.

The prosecution called 11 witnesses who gave evidence. PW 1 the husband of the deceased in his evidence told the court that the accused had been employed by the family as a house help and she had worked for them for about 3 months. She used to report on duty at about 8.30 a.m. and report off duty at about 5 p.m. as she stayed away.

On the material date 10th November 2001 the accused reported on duty at about 8.30 a.m. He stayed around up to about 11.30 a.m. when he left for town leaving the deceased alone with the accused. The apartment is fenced with only one gate manned by a watchman. When he left the watchman was at the gate. At about 12.15 p.m. he received a telephone call from his daughter (PW 8) who informed him that she had tried to call home but there was no response. He immediately left town for home. On arrival he found the deceased had been murdered and her body was on the floor at the dinning room with both her legs and hands tied and there was a socks staffed in her mouth. He immediately suspected the accused because she had disappeared. He reported the matter to the police who visited the scene took photographs of the body and removed it to City Mortuary. On cross-examination he said that the relationship between

the deceased and the accused was good and her work was good too.

PW 7 MRS RINA SODHA in her evidence told the court that the deceased was her mother but she is married and stays away with her husband. On the material date the 10th November 2001 she tried to ring the deceased to inform her that her son the grandson of the deceased was on the way to pay her a visit but there was no response. She became worried because this is unusual and normally her mother never leaves home. She rang her father who was in

town and informed him about it. Her father left town immediately and on reaching house he rang her and informed her that her mother had been murdered. She rushed there immediately and on arrival she confirmed the murder. She checked with the watchman at the gate who informed her that the accused had left the house at about 12.00 noon. The matter was reported to the police. She checked the house and discovered that one camera, one green blouse a watch and a wallet belonging to the deceased were missing. Later these items were recovered from the accused and when she was called to the police station she was able to identify them.

PW 2 ISABELLA MACHARIA in her evidence told the court that the accused had rented one of her father's houses from 15th September 2001. On 12th November 2001 when the accused wanted to remove her belongings, she refused her because the accused had not paid the rent. The accused went away and later she came with her boy friend, paid the rent and collected her belongings.

PW 3 REBECCA MUNYAO in her evidence told the court that the accused was her friend and before she was employed by the

deceased she had housed her. On 10th November 2001 police went to her house looking for the accused but she was not there. Police asked her to inform the accused if she saw her that she was wanted by the police. On 30th November 2001 accused came to her house and she informed her that she was wanted by the police and that police had been to her house looking for her. She advised her to report to the police and she agreed. She escorted her to the D.O.'s office where she was arrested by the administration police attached to the D.O.'s Office. PW 8 AP SGT Kamau is the one who arrested the accused when she brought herself to the D.O.'s Office and escorted her to the police station.

PW 6 DR JANE WASIKE gave evidence on behalf of **DR KELASI OLUMBE** who had performed the post mortem on the body of the deceased. In her evidence she told the court that the post mortem was performed by Dr. Kilasi Olumbe who had worked with her and whose handwriting and signature she knew well.

The body was identified to the doctor by PW 1. The body had lacerations and bruises on the neck, mouth and nose. The doctor had after the post mortem formed opinion that the cause of death was due to manual strangulation. The rest of the evidence was formal. The accused FLORENCE MBULA PHILIP in her sworn defence denied the charge and she told the court that she was employed by the deceased as a house help on 1st August 2001.

She related well with the deceased who was very kind and friendly to her. They never disagreed at any time. She used to report on duty at 8.30 am and report off duty at 5 pm as she stayed away. On the material date she reported on duty as usual at 8.30 am. She worked up to around 12 noon when she asked for permission to go away and the deceased granted her, and she went away. On 30th November 2001 when she went to visit her friend Rebecca PW 3, Rebecca informed her that police were looking for her. She took herself to the DO'S Office which was nearby and surrendered herself to PW 8 AP SGT KAMAU who arrested her and escorted her to the police station. She denied to have murdered the deceased whom she described as a kind lady and who was very friendly to her. On cross examination she admitted that exhibits which were identified by PW 7 that they belonged to the deceased were recovered from her but she said those items were given to her as presents within the duration she had worked for her.

The accused is charged with the murder of the deceased **VIMLA NINAYAKA GANATRA**. But there is

no eye witness who saw her murder the deceased. The prosecution relies purely on circumstantial evidence. In order for circumstantial evidence to sustain a conviction it must point irresistibly to the accused as the one who committed the murder. There should be a chain of evidence so far complete to lead to the conclusion in consistent with the innocence of the accused and it must be such as to show that within human probability the act must have been done by the accused. The watchman who was manning the gate at the material time could have given a good lead but he was never traced to come and give evidence.

The onus of proof is upon the prosecution to proof its case beyond any reasonable doubt as required in criminal law. This they have failed to do and the assessors having returned a unanimous verdict of 'Not Guilty'. I have no sufficient reason to differ with them. The evidence against the accused is far below what is required to warrant a conviction. Accordingly I dismiss the murder case against the accused and I acquit her.

DATED and delivered at Nairobi this 16th day of June 2005.

J.L.A. OSIEMO

JUDGE