



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

Criminal Case 46 of 2002

REPUBLIC PROSECUTOR

V E R S U S

HARON KIPROTICH KIPKOROM ACCUSED

JUDGMENT

HARUN KIPROTICH KIPKOROM has been charged with the offence of murder contrary to *section 203* as read with *section 204* of the Penal Code.

The particulars of the offence are that on the 16th day of January 2002 at Emsea village in Keiyo district of the Rift Valley Province he murdered **JOSEPH KIBET MAINA**.

The aforementioned section 203 stipulates that “*any person who of malice aforethought causes the death of another person by an unlawful act or act of omission is guilty of murder*” and therefore, for a charge of murder to lie, the Republic must not only prove the three ingredients, but that they existed at the material time, for it has alleged that Kipkorom (hereinafter referred to as ‘the accused’), murdered Maina (whom I shall refer to as the deceased). The said ingredients are that death occurred, that the said death was occasioned by the accused’s unlawful act or omission, and that in committing the said act, the accused had formed malice aforethought.

It is trite law that the accused person does not have to prove anything.

The fact that death did occur is not in dispute, for as confirmed by PW11, the doctor who conducted the autopsy on the body of the deceased, at Iten District Hospital Mortuary on 21/1/2002, the cause of death was “*cardio-respiratory arrest resulting from massive hemorrhage from puncture on ventricle of the heart resulting from penetrating sharp object injury to the chest*”.

That being the case then, the next issue shall be whether Kipkorom was responsible for the said death, and if he was, whether his act or omission was unlawful and whether it would amount to murder.

A review of the evidence which was adduced for prosecution indicates that the body of the deceased was found lying by a public foot path at about 6.00am on 17/1/2002. Each of the witnesses who knew the deceased, testified how they had seen him on the previous day, so did his wife (PW7), who had last seen him as he left home for duty in the morning of the 16th. A brother to the deceased (PW1), who was the last person to see him testified how they parted ways on 16/1/2002 at about 7 p.m., as the deceased headed to his home. He learnt of the death at about 6.30 am the following morning, from their sister Rhoda Kibet, soon after she learnt of the death from a group of people whom she had found at the scene.

PW3 and 4 testified how the accused who, was then armed with a panga had gone looking for the

deceased at their place of work in the afternoon of 16/1/2002, but that he had left shortly after learning that the deceased was not in. PW5 who saw the accused later that evening testified that the accused who, was looking for the deceased was not armed, and that he had headed home when he failed to trace the deceased in the vehicle, which the witness had boarded after work.

The circumstances leading to the arrest of the accused can be found in the evidence of an Administration Police Constable of Cheptebo Camp (PW10), who testified that the accused had gone to the camp in the early morning of 17/1/2002, where he sought protection as his life was in danger, and that the accused had intimated that he had killed somebody and hence the requirement for protection; that he then escorted him to Tambach Police Station.

According to the Chief Inspector of Police who was then based at Tambach Police Station (PW12), the accused had been brought to the station on 17/1/2002, by the officers from Cheptebo Camp, who reported to him that the accused had submitted himself to their camp, as he had allegedly killed the deceased by use of a bow and arrow. He testified how he visited the scene immediately thereafter; how he found the body of the deceased, which he noted had lost a lot of blood though a wound on the left side of the chest; how he took the body from the scene, and how the accused was arraigned in court and charged with the murder of the deceased.

The above evidence, especially that of PWs 3, 4, 5 and 8 raises serious doubts on the aspects of malice aforethought on the part of the accused, one of the ingredients in this case, for they who were all village mates of both the deceased and the accused, were categorical that two were good friends, whose relationship had always been cordial and that they were not aware, nor had they ever witnessed any quarrel or disputes between the two.

It was not clear from the evidence before me, what object could have been used to inflict the injuries which led to the death of the deceased, for though PW 11 had noticed a single injury from a sharp object, which was however was not lodged in the body, and he could not tell what type of object had been used to inflict the injury, nor could he tell whether it was a self inflicted injury.

The State however urges the court to find that the accused had used an arrow, as per the evidence of PWs 10 and 12. PW12 produced by way of exhibits, a bow and arrow which were recovered from the home of the accused after his arrest, but they were not the murder weapons. In fact PW12 testified that his efforts to recover the arrow which the accused had allegedly used proved futile, and as it is, the murder weapon was never recovered. According to PW1 and all the other witnesses who saw the body as it lay on the footpath, the deceased's bag, torch and walking stick were lying at the scene, yet it was not established whether he was killed at that particular spot, or whether he was killed elsewhere and his body dumped there, neither was the time of death established.

It became clear from the evidence on record that PW12 relied heavily on the evidence of PW10. In my mind, the investigations that may have been carried out left a lot to be desired, and I would believe the accused, who denied any involvement in the murder, and whose evidence was that he had sought refuge at the Cheptebo Administration Camp after he was accosted by PW1 and his sister (PW9) who were then armed with stones, and who had threatened to kill him because their brother's body had been found on a foot path, and it was clear from her evidence that for some undisclosed reasons that he was the suspect.

Indeed this would be supported by PW 9 who testified that she had only heard people who were in a large crowd talk of her brother's death, and that she had gone to inform PW1 of the death before she had even seen the body. In fact it was her evidence, that *"I informed Michael that I had heard that Kibet had been killedas we talked, we saw many people walk towards the home of Kipkorom....."*

Bearing the above in mind, I find that the prosecution case is full of loopholes, which leave a lot of unexplained issues, and I have serious doubts in my mind. It is trite law, that the accused must be given the benefit of doubt, if there is, even a single element of doubt.

I therefore find that the State has failed to prove the ingredients of the charge of murder, and therefore it

has not proved the said charge against the accused and in the circumstances, the accused is accordingly acquitted of the charge of murder. He should be set at liberty forthwith.

Dated and delivered at Eldoret this 7th day of July 2005.

JEANNE GACHECHE

Judge

Delivered in the presence of: