



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO.234 OF 2003**

REPUBLICPROSECUTOR

VERSUS

JAMES NJOROGE NJENGA ACCUSED

JUDGMENT

The Accused before the court is charged that on 1st April 2003 at Gathangari Village in Kiambu District Central Province, he murdered Nancy Waithera Njage.

It has been sufficiently proved that the deceased was the wife of the Accused person and that she died of severe burns with sepsis.

The prosecution case was that the Accused killed the deceased by burning her with a stove (Ex.1) on the night of 1st April 2004 and the Defence contended that it was an accident by exploding stove when the deceased was warming food for the Accused with a stove on a table in the table room (as has been described by all witnesses) of their house.

To prove that the Accused killed his wife, the prosecution called three witnesses. The first witness was Beatrice Wanjiku a daughter aged 11 years of the Accused and the Deceased. She testified, after I ascertained her level of intelligence and her knowledge of meaning of an oath, that there was no fight or quarrel between her parents (Accused and the deceased) and that she went to the table room from the bedroom where she was when she saw the fire from the mirror of the table room. The fire was put off and her parents were outside. The deceased was crying and the accused was trying to put off the fire. She confirmed that clothes of the deceased were burnt. Thereafter the accused put on new clothes on the deceased and took her to the hospital. She identified the stove (Ex.1) which she found in the table room. She further stated during Cross-examination, that she could not hear what the deceased was saying while she was crying outside, but she was not crying when her clothes were changed by the Accused in their room.

PW.2 James Ngige Mbugua is neighbour to the Accused for about eight years. On the material date at about 10.00 p.m. while he was sleeping, he heard commotion from the next door house. He got up and went out to check. He said he was outside with his family and named them. However, none of them is a witness before me. He said while all of them were standing near fence, he heard the deceased telling and I quote "*was it this your int ention when you said you would kill me?*" He also saw the accused going in and out of the house with a bucket after filling it with water from outside tap. Then Accused and deceased went inside and he also went inside his house but was once again called by his daughter that the Accused wanted to see him. The Accused requested him to accompany him to take the deceased to the hospital. He assisted by removing the grass from his pick-up and then accompanied him to the hospital. The Accused on reaching the Kijabe Hospital, brought the wheel chair and the deceased was admitted to the hospital. They came back home at about 2.00 a.m. and found PW.1 waiting for them and also saw sofa which was

still burning and table room full of water. His averment that the deceased was complaining that it was the Accused who burnt her was repeated during Cross-examination. However, he added that during eight years of their association as neighbours he had not seen or heard the couple seriously quarrelling or fighting and that he was surprised at the complaint of the deceased.

Lastly PW.3 Harun Mbugi Mbugua who is deceased's brother testified, among other things, that when, after receiving message of his sister's position, he went to Kijabe Hospital he saw the deceased burnt beyond recognition. After initial comforting talks, he asked the deceased how she got burnt, she, on seeing the Accused entering the room, told him it was he who did it.

During his testimony he also alleged that a doctor and a Chaplain from Kijabe Street also called him and informed him that they were told by the deceased that it was the accused who burnt her despite the initial information she recorded when admitted to the hospital that she was burnt by a stove. However, this part of his testimony became inadmissible when after assuring the court that the aforesaid two members of the staff of the hospital will be called to testify, none was called. PW.3 also did not give (as he did not know) names of the two.

Other two witnesses are police officers, who arrested the Accused on the report made by PW.3 and was later charged. PW.5 Inspector Gladys Gituku also went to visit the deceased at Kenyatta National Hospital but could not get any information as per her evidence, the deceased was unable to talk.

The accused gave sworn testimony. He said on 1st April, 2003 after borrowing a pick-up to transport Napier grass for cattle feed, he reached home at about 9.00 p.m. He parked the pick-up with its contents along the road and deceased came to pick up groceries he had bought for home. She also gave him hot water to wash his hands and feet and started warming his supper (which was the same prepared for the children) on a table in table room. She was sitting at the corner of a sofa, (Ex.3), and the stove with its stand was on the table in front of the sofa. He went inside the kitchen, which was next to the table room, to wash and when he was about to come back to the table room, he saw stove explode and clothes of the deceased catching fire. He poured water on her which he used to wash himself. The sofa also caught fire which also caught the curtains. He took the deceased and three children out of the house. He then started putting off fire by water from outside tap. He thereafter narrated what was stated by PW.2 except the fact that deceased was complaining that it was him who burnt her. He also narrated how on the next day he went to look for money and went back to Kijabe Hospital where he was told that deceased needed to be transferred to Kenyatta National Hospital. He accompanied the staff and the deceased in the ambulance which took them there. PW.3 gave him lift after she was admitted to Kenyatta National Hospital. He went back to the hospital next day when he was informed that the deceased was transferred to Intensive Care Unit. Then he returned home. That night police came in company of PW.3 and he was arrested.

The testimony of PW.1 the daughter, and that of PW.2 the neighbour is contradicting in very material aspect namely the deceased was complaining that the accused burnt her. There is no further corroboration to that accusation from any of the staff of Kijabe Hospital even though there is an averment made by PW.3, brother to the deceased. I am aware that PW.1 is not only a minor, but also a daughter to the Accused. However, she is a prosecution witness and the onus of the prosecution to establish the accusation in this case rests squarely on the prosecution. PW.2 had stated that he was with his family members when Accused was crying and blaming the Accused. None of the other members is before this court to corroborate his testimony. This becomes more evitable when he stated that the couple were leading a normal life and did not have any serious quarrel or fight, during all eight years of being neighbours.

Moreover, looking to the action of the Accused after the fire, which is corroborate in most part is not commensurate with a person with guilty mind. Would he ask a neighbour to accompany him, if he knew the deceased was accusing him of killing her? The exhibits were recovered after two days from his house with curtains still hanging on the windows, and stove, still lying in the table room.

In view of the above, it becomes clear that the prosecution has failed to prove the charge leveled against the Accused beyond reasonable doubt. In the premises, I have no option but to give the benefit of

that doubt to the Accused person as per that embedded law of criminal system of justice.

I thus find that the Accused is not guilty of offence of murder as charged and acquit him accordingly.

The Accused shall be released forthwith unless otherwise held as per law.

Right of Appeal within 14 days.

Dated and delivered at Nairobi this 18th day of October, 2004.

K.H. RAWAL

JUDGE