



**Republic v Ekirapa (Criminal Case E013 of 2022)
[2023] KEHC 879 (KLR) (14 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E013 OF 2022
JR KARANJA, J
FEBRUARY 14, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

BENEDICT EKIRAPA ACCUSED

JUDGMENT

1. The accused, Benedict Ekirapa, faces a charge of murder, contrary to s 203 as read with s 204 of the *Penal Code*, in that, on the July 28, 2022 at Apatit village, Teso South, Busia county, murdered Pamela Emase.
2. It was the prosecution case that the deceased and the accused were husband and wife. They lived together at their matrimonial home in the village of Apatit Teso South and on the material July 28, 2022, at about 10.00 pm in the night, their house help for one and a half years, Samuel Simiyu (PW 1), heard them quarrelling over what he thought were accusations of infidelity made against the accused. He (PW 1) did not think much of the quarrel and went to bed.
3. On the following day, while the house help was in the farm with the deceased, she complained of a terrible headache and told the house help that the accused had assaulted her. He then proceeded to purchase for her a pain killer but the headache persisted.
4. The accused's brother Robert Ekirapa (PW 2), whose home neighbours that of the accused was at his home on the material night when he heard a scream from his brother's home. He ventured outside his house and on hearing nothing returned to his bed. He opined that the scream was made by the deceased as she was at that time shouting that "whatever happens, I will not leave this home."
5. The deceased's brother, Isaac Emase Ogema (PW 4), was on the material date at 2.00pm informed that the deceased was unwell. He then proceeded to her home and took her to hospital with the help of



the accused who was at home. After being treated, the deceased was returned home but her condition worsened on the day that followed causing her to be taken to hospital again.

6. Isaac (PW 4) found her undergoing treatment at the hospital and upon enquiry, she told him that the accused had assaulted her, she eventually passed on while undergoing treatment. A post mortem carried out by Dr Dickson Mchana (PW 3), revealed that the deceased died from raised intracranial pressure secondary to right subdural haemorrhage following blunt force trauma. All this was documented in the post mortem report dated August 29, 2022 (P Ex 1).

7. Prior to the report, on the August 11, 2022, PC Charles Rono (PW 5), was instructed by his superior officer to conduct investigations on the death of the deceased who had allegedly been assaulted by her husband, the accused.

In the course of his investigations, the officer (PW 5) recorded statements from necessary witnesses and thereafter arrested and charged the accused with the present offence.

8. The case for the accused was essentially a denial and a contention that he did not murder his wife of thirty-five (35) years. He stated that she complained of a severe headache on the July 24, 2022 but indicated that she would seek treatment on the following day. She did proceed to hospital on that following day and was given some drugs for treatment of malaria. Thereafter, she recovered and proceeded to undertake her normal household chores.

9. On the material date (July 28, 2022), while the accused was away at Tangakona and Amukura selling bananas and purchasing fish he arrived near the homestead of his former member of parliament one Geoffrey Omuse on his way home and was informed that his wife, the deceased, had fallen on the road. He rushed to his home and learnt that the deceased had been taken to hospital. He went there and was told by a doctor that the deceased was under malaria treatment. She was given drugs to take for three days but after the three days her condition did not get any better thereby causing him to contact her sister called Mary.

10. The sister arranged her (deceased) to be taken to hospital where she was treated and released on July 31, 2022 with directions to return on the following August 1, 2022, on which date she indeed returned but the doctor recommended that she be taken to another hospital. It was then that she was taken to Amani hospital in Busia town where her blood pressure was found to be very high.

11. The accused stated further that despite the doctor's efforts to stabilize the deceased, she succumbed to her illness on the August 2, 2022 and was buried on September 3, 2022, after which he was required to contact the police on information relating to the post mortem results. He contended further that he did not assault his wife and had never ever assaulted her in the entire period of their marriage.

12. Basically, the evidence foregoing leaves no doubt that the events preceding the death of the deceased began on or immediately before the material July 28, 2022. Whereas the prosecution case was suggestive of the fact that the death of the deceased was as a result of the criminal act of assault committed against her by the accused, the defence case suggested that the cause of death was not as a result of a criminal act but a natural cause arising from an illness or disease of the human body.

13. It is trite law that an accused person, in normal circumstances assumes no burden to establish his defence. It's the court to consider whether on consideration of all the evidence before it, the prosecution has established the guilt of an accused person beyond all reasonable doubt.

In this case, with regard to the cause of death, there was sufficient and credible evidence from the doctor (PW 3) establishing that the deceased died from raised pressure in the brain occasioned by bleeding due to blunt trauma.



14. This was clearly and exhaustively documented in the post mortem report (P Ex 1) thereby proving beyond reasonable doubt that the cause of death was attributable to the criminal act of assault occasioned by an individual rather than to natural causes such as illness or disease of the human body. It was therefore not a coincidence that the deceased passed on a few weeks after she had been assaulted. She actually ultimately succumbed to a severe injury suffered by herself after being assaulted. The doctor's evidence overruled natural causes and/or illness as the immediate and probable cause of death and implied that the severe headache experienced by the deceased was occasioned by an act of assault occasioned upon her with a blunt object.
15. The accused vehemently denied that he was responsible for any form of assault against the deceased. However, the evidence by the house help (PW 1) indicated that a domestic dispute, quarrel or altercation occurred between the deceased and the accused inside their house on the material night and on the following day the deceased complained of a terrible headache attributing it to an assault against her by the accused. This therefore strongly implied that the deceased was assaulted by the accused as they were alone in their house on the material night.
16. The accused's brother (PW 2) corroborated the house help (PW 1) in indicating that there was indeed a domestic scuffle and/or disagreement between the deceased and the accused inside their house on the material night.
He (PW 2) stated that he heard the deceased scream and shouting words to the effect that "whatever happens, I will not leave this home".
17. Although the house help and the accused's brother did not witness the accused actually assaulting the deceased, their respective evidence strongly suggested that he must have gone physical with her by assaulting her and underestimating the degree of injury he may have inflicted on her. This had the effect of rebutting and discrediting his denial of having assaulted the deceased in any manner.
18. Further, there was the evidence of the deceased's brother (PW 4) which indicated that when he visited the deceased in hospital after being taken there on a second occasion, she told him that she had been assaulted by her husband i.e the accused. This in itself amounted to a dying declaration which under s 33 (a) of the Evidence Act, is a statement made by a deceased person relating to his/her death and is admissible in evidence.
19. Thus, s 33 (a) of the Evidence Act provides that:-

"When the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question and such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question".
20. This court must therefore find and hereby finds that the deceased died, as may be borne by the prosecution's cogent and credible evidence, as a result of a criminal act of assault committed against her by the accused during a domestic marital scuffle. The accused's defence was in the circumstances clearly resulted and discredited.
However, as indicated herein above, the accused underestimated the degree of injury he had caused upon the deceased. He did not comprehend or imagine that his unlawful action would lead to the death of his wife (deceased) of more than thirty (30) years.



21. According to his own evidence and that of the deceased's brother, the accused was instrumental in having the deceased medically attended to after her condition persisted and worsened. Such conduct of a person who could not have intended the death of the deceased.

Therefore, a further finding of this court is that the accused caused the death of the deceased by his unlawful act, but of no malice aforethought.

Consequently, the charge established against the accused by the prosecution beyond any reasonable doubt was not that of murder, but manslaughter, contrary to s 202 (1) of the *Penal Code*.

22. The accused is ultimately found guilty of manslaughter and is accordingly convicted.

J.R. KARANJAH

J U D G E

[DATED AND DELIVERED THIS 14TH DAY OF FEBRUARY, 2023]

