



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE NO. 05 OF 2017

REPUBLIC.....PLAINTIFF

VERSUS

MATAYO WAFULA CHEBOI.....DEFENDANT

JUDGMENT

The accused **MATAYO WAFULA CHEBOI** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (cap 63) Laws of Kenya.

Particulars are that **MATAYO WAFULA CHEBOI** on the 20th day of February, 2017, at Kisioyi village, in Bumula Sub-county within Bungoma County murdered **MARY NANJALA MATAYO**.

The case for the prosecution is that on 20.2.2017 PW1 Protus Nyongesa Orido was in his house at 7 a.m. when he heard dogs barking outside chasing a person. He came out and saw a person running away. He chased him and got hold of him. The person he got hold of is accused. Shortly later people came also following the accused. They informed him (Protus) that accused, his father and mother had killed the deceased. They apprehended accused. On checking him he saw accused had a blood stained knife. They took accused to the home of the deceased where they confirmed deceased had been cut in the abdomen with intestines protruding outside. Police officers were called and who came to the scene and re-arrest the accused.

PW2 Gabriel Wekesa was at his house when he heard screams from home of deceased. He went there and found deceased in her house dead with injuries on the abdomen with intestines protruding. He reported the matter to Mayanja police station. Police came and arrested accused. PW3 Gabriel Wamba Werunga was in his house when he saw accused's mother and sisters wailing saying deceased had died. He then saw accused having been arrested. He then accompanied the police and village elder to the scene. He testified that they had arbitrated a dispute between the accused and deceased; when the deceased chased accused from her house where he was staying. At that time accused had threatened that he will kill somebody.

PW5 Ann Naliaka Cheboi the step mother of the accused was at her house at 7 a.m. when he heard accused talking to someone. She came out and went to the house of deceased which was about 20 metres away. She found deceased lying down dead with injuries. She screamed and people came. When the crowd came, they mistook her and her husband to be the people who had injured the deceased. She confirmed that she saw accused running away from the house of the deceased when she came out of her house.

PW11 NO. 231103 Chief Inspector Abalae Wako took a statement under inquiry which he produced an Exh.3. In the statement under inquiry the accused admitted strangling the deceased. PW2 Segnt Harrison Gikandi Mugomo accompanied the deputy DCIO and other officers to the scene of murder. On arrival they found deceased lying on the floor of the house. She had a stab wound on the abdomen. He was given a knife recovered from the accused which was blood stained. He forwarded the blood stained knife and sample of blood of deceased to Government analyst Kisumu for DNA analysis. He later received a report which confirmed that blood samples on the knife belonged to the deceased.

The accused upon being placed on his defence gave sworn evidence. He testified that he was at Mayanja stage on 20.2.2017 when he received information that his grandmother the deceased had died. He went home. On arrival he was told the body had been taken by police. He went to the police station where he was arrested. He denied going to the home of deceased or even quarrelling with her.

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

203.Murder

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

The prosecution to prove an offence of murder against the accused must tender evidence to prove:

(a) The fact and cause of death.

(b) The unlawful act or omission causing the death.

(c) The existence of malice aforethought.

(d) Positive identification of the accused as the person who inflicted the injury or committed the unlawful act or omission that cause the death of the deceased.

PW4 Dr. Harun Ombongi who performed the post mortem on body of the deceased on 24.2.2017 testified that the deceased had a penetrating abdominal injury wound measuring 6 cm by 15 cm deep. She had 4 bruises on the neck. On opening up the body he found the penetrating wound had perforated the small gut and the aorta leading to massive collection of blood in the peritoneum cavity. He formed opinion that cause of death was due to haemorrhic shock as a result of the penetrating injury. The fact and cause of death was therefore proved by evidence of this witness.

PW1 Protus Nyongesa Ondo testified that having arrested the accused who was being chased by the dogs he asked him to raise his arms and he noticed that accused had a knife on his waist. He took the knife and notices it was blood stained when they reached deceased's house he saw that deceased had stab wound on the abdomen. PW2 Gabriel Wekesa, PW3 Gabriel Wamba Werunga and PW5 Ann Naliaka Cheboi all testified that the deceased had a stab wound on the abdomen leaving the intestines protruding outside. PW4 on Heron Ombongi who performed the post mortem found deceased had a stab wound 6cm long and 15 cm deep on the abdomen. PW 12 segnt Harison Onkondi testified that the blood stained knife recovered from the accused and blood sample of deceased was taken to Government Analyst for analysis and the report showed that the blood stained on the knife matched that of the deceased. The report therefore confirmed that the knife Exh. 1 was the one used to stab the deceased. The unlawful act causing the death of deceased was by stabbing.

The prosecution must also tender evidence to proof existence at Malice aforethought. Malice aforethought is defined in Section 206 of the Penal Code as follows:

206. Malice aforethought

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

The person who inflicted the injuries on the deceased used a sharp object, a knife, stabbed her at vulnerable part of the body the abdomen and exerted such force and led the stab wound to go 15 cm deep in the abdomen. These circumstances show that the person intended to cause grievous harm or death of the deceased. These confirms the existence of the malice aforethought or mensreas to cause death.

The final ingredient to be proved is whether it is accused who inflicted he injuries. PW1 testified how he got hold of the accused and together with others on checking him recovered a blood stained knife. The sample of the blood from the knife upon analysis matched that of the deceased, in the DNA analysis. It therefore showed that is the knife used in stabbing the deceased.

PW5 Anne Naliaka the step mother of the accused testified that when she came out of the house she saw accused running away from the house of deceased. It was while running away that the accused was apprehended and knife recovered from him.

The accused defence is that on the material day he was not even at the scene, did not stab deceased and was only arrested when he went to the police station where the body had been taken by police. He testified that he was arrested at the police station. This is not true. The prosecution witness particularly PW1, PW2 and PW5 all testified that accused was arrested while running away from the scene. He was actually re-arrested by police officers at the scene. I therefore find his evidence not truthful and reject it.

After considering all the evidence, I am satisfied that the prosecution has proved beyond reasonable doubt that the accused murdered the deceased. I therefore find accused guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code and convict him accordingly.

Dated and Delivered at Bungoma this 2nd day of March, 2021

S.N. RIECHI

JUDGE