



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

HIGH COURT CRIMINAL CASE NO.7 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

SC.....ACCUSED

J U D G M E N T

1. The Accused Person in this case SC pleaded guilty to a charge of INFANTICIDE Contrary to Section 210 as read with Section 205 of the Penal Code.
2. The Accused was initially charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code but the charge was reduced to one of INFANTICIDE following a successful plea bargain agreement signed on 2/6/2020.
3. The particulars of the offence were that on 8th March, 2019 at Tendwet Village of Rungut Sub-Location of Bureti Sub-County within Kericho County, the Accused Person unlawfully killed her Baby by name MK.
4. The facts of the case were as follows:-

In the year, 2016, the Accused met SS and cohabited with him as husband and wife.

The Accused had another child from her previous relationship and moved to live with S together with her child in Keringet Nakuru County.

On 23rd January, 2019, they were blessed with a child and named him MK who was born prematurely after 7 months pregnancy.

S's mother visited them in Keringet Nakuru County and took the Accused and her two children and went with them to their home in Bomet to take good care of them.

After about a week, S also travelled to their home in Bomet and joined them.

While they were living in Bomet, S and the Accused developed some domestic problems.

On 6th day of February, 2019, the Accused and S had a bitter quarrel leading to their separation. The Accused then left her matrimonial home and travelled to Chebaraa Village, Belgut Sub-County within Kericho County to go and live with her elder sister called WC.

On the 8th day of March, 2019, the Accused Person's child (infant) fell sick and her sisters and neighbours contributed some money and gave her to take the sick infant to hospital.

At around 11.00 a.m. the same day, the Accused who was still bitter with S, left with the infant to take her to hospital but along the way where she made sure she was alone, she then strangled the infant using a cloth till the infant died.

The Accused Person then went to pit latrine belonging to her aunt SC and threw the body of the dead infant inside the pit latrine.

The Accused then called her elder sister W and informed her that the infant died on her way to hospital and now at Kericho County Referral Hospital.

The Accused then called S and informed him of the same. When she was asked about the whereabouts of the body of the deceased infant by S, the Accused said it had been burned at Kericho County and Referral Hospital and buried. She declined to give more details.

Three days later on the 9th day of March, 2019, a neighbor by the name Nancy Mutai informed SC that her daughter has seen a body of a baby in her pit latrine.

They both went to the pit latrine and saw the body of a child by use of a mobile phone spot light.

They went and informed the Assistant Chief and reported the matter at Litein Police Station.

Police went to the scene and managed to retrieve the body of the infant of about 2 months old strangled and covered using a cloth.

The body was taken to Kapkatet district hospital mortuary where postmortem was conducted by Dr. Peter Koech who noted that the infant was approximately 2 months old and formed the opinion that the cause of death was Asphyxiation Secondary to strangulation with cloth.

Meanwhile the Area Chief convened an urgent village meeting (baraza) to investigate and establish who killed the infant and threw it in the pit latrine.

They zeroed in on three suspects including the Accused but it was established that the other two suspects had their children while the Accused was at large and the whereabouts of her child was unclear.

Further investigations were done and information from the Accused's husband (S) and her sisters revealed that the Accused Person was the one who committed the heinous act.

On the 10th day of March, 2019, the Accused was spotted at Rungut Village near her sister's home by members of the Public and was arrested and taken to Bureti Police Station.

She was then charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code which has now been reduced to the offence of Infanticide Contrary to Section 210 as read with Section 205 of the Penal Code.

5. Section 210 of the Penal Code states as follows: ***“Where a woman by any willful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child, then, notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she shall be guilty of a felony, to wit, infanticide, and may for that offence be dealt with and punished as if she had been guilty of manslaughter of the child.”***

6. The Defence Counsel stated in mitigation that at the time of the offence, the Accused Person had not recovered from the effects of child birth that she was suffering from postpartum depression and further that the Accused Person is a single mother with a four year old son who is currently under the care of her mother.

7. The Defence Counsel further said in mitigation that the Accused Person is HIV Positive and she suffers from chest problems.

8. The Probation Officer filed a Pre-sentence Report on 15/9/2021 detailing the social circumstances of the Accused Person.

9. The Accused Person has been in custody for a period of over 2 years since March, 2019 when she was arrested.

10. This Court has taken into account the mitigating circumstances in this case and especially the fact that the Accused Person is a first offender and that she pleaded guilty to the offence and saved the court's time

11. ***Section 4(2) of the Probation of Offenders Act*** provides as follows: ***“Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.”***

12. The Accused Person is suitable for Probation Sentence. I place her on Probation for a period of 3 years on condition that she complies with the requirements of the Probation Officer.

13. The County Probation Officer, Kericho to organize for counselling during that period.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER, 2021.

A. N. ONGERI

JUDGE