



REPUBLIC OF KENYA.

IN THE HIGH COURT

AT BUNGOMA.

CRIMINAL CASE NO. 3 OF 2018.

REPUBLIC.....PROSECUTOR

VERSUS

CYNTHIA MATERE.....ACCUSED

JUDGMENT

Cynthia Materere the accused, was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence were; On the 1st day of January 2018 at Muslim village in Township Location of Kanduyi Sub-County within Bungoma County murdered BRIAN KENYANYA.

The prosecutors case is that on 31.12.2017 Pw4 Paul Keverenge Ndiema was with the deceased Brian Kenyanya. He together with the deceased and one Collins went to Prime Bar in Bungoma to wait for the new year. They drank alcohol. At 3a.m. they left the bar to go home. Paul and deceased boarded the deceaseds Motor cycle while Collins took another boda boda home. The deceased was the rider and Paul was a passenger. They went to deceaseds house at Muslim area. The deceased knocked at his house and accused who was his wife/girlfriend opened the door. The deceased and accused started quarrelling when deceased asked accused why she had gone to town without permission. Paul advised deceased to lock accused in the house and they go to sleep. The deceased took the motorcycle in the house. While inside he heard accused say "unanipiga" He then saw deceased come out of the house and said he had been injured. He saw deceased was bleeding. Paul took the motorbike and took deceased to St. Domiano Hospital who advised he be taken to County Hospital. He took him to Ali Baba and later to Bungoma County Referral Hospital to where he was admitted and died later that day.

Pw5 No. 102149 P.C. Mohammed Mumba attached to Bungoma Police Station received information that a suspect was being beaten by members of Public at Muslim area. He and the Deputy OCS visited the scene. They rescued the suspect from members of public. The suspect was accused. They entered the house and recovered blood stained clothes and a knife at the flower bed. They took the accused who had been beaten to Bungoma Hospital where she was admitted.

Pw3 Dr. Haron Ombongi who performed the Post-mortem examination on the body of the deceased found he had a penetrating left chest injury and leading to massive bleeding leading to lung collapse. He formed opinion that cause of death was due to pulmonary arrest due to the penetrating wound.

The accused gave sworn evidence. She testified that the deceased was her husband. On 31.12.2017 the deceased who was a boda boda rider left with Paul Ndiema. They came at 11.00p.m. whole drunk. The deceased entered the house and held her hair and started beating her alleging he had seen her at Club Bungoma. She tried to run away. She testified that she was defending herself. The deceased then left with Paul. The next day at 12p.m. a mob came to her and wanted to beat her saying she had killed the deceased. She denied that she had a knife or injured the deceased.

That the deceased died due to massive bleeding leading to lung collapse as a result of a penetrating left chest injury was confirmed by Dr. Haron Ombongi who performed the Post-mortem examination. This issue is who inflicted the injury?

Pw4 in his evidence of what transpired stated;

Earlier deceased has informed me that he had told accused not to go to town but accused had gone to town that night without his permission. When accused opened the door they started quarrelling. They started fighting. They were now outside the house. I told deceased to lock accused in the house and we go to sleep. Deceased took the motorcycle inside the house. I heard accused say "unanipiga." Deceased then came out and I saw he had injury on left arm. He was holding the hand. I saw he was bleeding. I went into the house, and took the motorcycle. It was only accused in the house. Which is one roomed.

The accused in her defence admits that the deceased and Paul (Pw4) came home. She opened for deceased who then started beating her. She stated in her evidence;

The deceased then held my hair and started beating me. He was saying he had seen me in a club, at G.M Club Bungoma. It is not true that I was there. He continued beating me. I tried to run away. I was defending myself. I went out and hid behind a toilet. I then saw him leave with Paul. I did not see him again. When he left he had no any injury.

From the evidence of the accused is clear that she was the only one in the one roomed house with the deceased. She confirmed that there was a fight where she tried to defend herself. She testified that the deceased came out and left with Paul. However, Paul testified that when deceased came out of the one roomed house, he was having injuries and he took him to Hospital. There were only 2 people in the room, accused and deceased. The deceased went in without injuries and came out with stab wounds. The accused denies that deceased had injuries when he came out. From the evidence of Paul and the events that followed including being taken to hospital, the accused assertion is not true. The injuries on the deceased would only have been inflicted by the accused who was the only person with deceased in the house before he came out of the house with injuries. I am therefore satisfied that it is accused who inflicted the injuries on the deceased.

The accused in her defence testified that the deceased came home drunk and held her hair and started beating her. She stated that she defended herself and ran out. She testified that they used to fight frequently. This is confirmed by Pw1 Paul who testified that when the accused opened the door for deceased, they started quarrelling and the fought. The accuseds defence is that all the time she defended herself Section 207 Penal Code provides;

Section 207: When a person who unlawfully kills another under circumstances which, but for the provision of this Section, would constitute murder, does the act which caused death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.

Upon considering all evidence I find that accused did inflict the injuries that caused the death of the deceased when under provocation as a result of the beating by the deceased. I therefore under Section 207 of the Penal Code find that accused is guilty of manslaughter contrary to section 202 as read with Section 205 of the Penal Code and convict her accordingly.

Dated and Delivered at BUNGOMA this 4th day of March, 2020.

S.N.RIECHI

JUDGE