



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 3 OF 2018

REPUBLICPROSECUTOR

VERSUS

CORNELIUS THUKU MBUGUAACCUSED

SENTENCE

1. The convict was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which were that on 13/14/8/2016 at Matopeni Area in Embakasi Central within Nairobi County murdered **LWN** to which he pleaded not guilty.

2. By a plea bargain agreement dated 28/1/2020 voluntarily entered into between the accused and the prosecution, which was on 19/2/2020 accepted and recorded in court, the said charged were subsequently withdrawn and substituted with the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code to which he pleaded guilty and was convicted on his own –plea of guilty.

3. The facts to which the convict pleaded guilty to were that on 13/8/2016 the accused came home while drunk and started abusing the deceased in the presence of her daughter and her friend and her daughter. The deceased's friend decided to take the children to her house which was adjacent to the deceased house for the night. The following day the deceased daughter returned back home and noticed that the gas was leaking which she put off. When she went to her parents bed room, she realized that her mother (the deceased) was not moving and was still wearing the clothes from the previous day. She noticed that her trousers were pulled down and she had marks on her neck. She informed her neighbours who confirmed that the deceased was dead.

4. The post-mortem report produced confirmed that the body of the deceased had submissions-conjunctiva congestion, central and peripheral synopsis, multiple finger nail abrasions on the neck (lateral area and anterior). There was un-opened condom on the left anterior thighs covered by trouser which was partially pulled down. Internally there was hematoma on neck muscles, thyroid cartilage and thyroid bone with congested brain vessels. As a result of his examination, the Doctor formed an opinion that the cause of death was asphyxia due to manual strangulation.

MITIGATION

5. In mitigation the convict through his Advocate on record stated that in admitting to take plea agreement he had expressed his remorse and sought divine intervention as he walks the path of restoration. It was stated that at the time of the commission of the offence he was suffering under alcoholism and was in need of treatment not punishment. It was contended that he had been diagnosed with acute respiratory distress syndrome (SARS) supported by a medical report dated 24/2/2020 from the Remand Medical Facility. It was contended that his family had tried to reach out to the family of the victim and her daughter for a closure. He therefore sought rehabilitative sentence.

6. On behalf of the State Mr. Okeyo submitted that though the convict had occasional arrest for drunk and disorderly, he did not have any previous convictions. He submitted that the presentencing report was not favourable to the convict and should therefore be given stiff sentence since a young life was cut short and her daughter demands motherly love.

PRE-SENTENCING REPORT

7. In compliance with the Sentencing Policy Guidelines and the determination of the Supreme Court in the case of **Francis K. Muruatetu & another [2017] eKLR** the court ordered for a presentence report where the following were noted:-

At the time of the offence the convict had been living with the deceased for a period of 1½ years while working as a lorry loader. He alleged that he had been married to the deceased though the marriage was not known to her parents and that it was characterized by constant conflicts mainly caused by abuse of alcohol.

Accused character and Health: He admitted being a heavy drinker of cheap alcohol and that he had been asthmatic since childhood.

Circumstance of the offence: He stated that he came home drunk when the deceased picked up a fight with him over his coming home drunk and threatened to evict him using members of the dreaded Mungiki Sect. He was very remorseful over the offence and stated that he panicked and ran away fearing the public may lynch him. His guilt feeling and remorse made him approach a catholic priest to make a confession who advised him to report to which he did after 1½ years.

Victim's family views: she was 41 years old with a 14 year old daughter who was now under the care of her grandmother with assistance of her sisters. They were yet to come to terms with her death and her daughter often experiences panic attacked which has had a negative impact on her education. They therefore sought severe punishment to the convict. The parents were not aware of the relationship between convict and deceased.

Accused family views: The parents stated that they knew of the relationship between the convict and the deceased whom they treated as their daughter in law. They were ready to give the convict psychological and financial support.

Conclusion/Recommendation:- It was stated that the convict was heavily abusing alcohol at the time of the offence and continued to do so during the 1½ years he had gone underground to escape facing justice. His family had shown little social support and he was therefore found to be of high risk of recidivism owing to his alcohol and drug abuse and violent nature. He was found unsuitable for non-custodial sentence.

DETERMINATION

8. The objectives of sentencing upon conviction is to meet either of the following:-

- 1) ***Retribution:*** to punish the offender for his/her criminal conduct in a just manner.
- 2) ***Deterrence:*** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- 3) ***Rehabilitation:*** to enable the offender reform from his/her criminal disposition and become a law abiding person.
- 4) ***Restorative justice:*** to address the needs arising from the criminal conduct such as loss and damages.
- 5) ***Community protection:*** to protect the community by incapacitating the offender.
- 6) ***Denunciation:*** to communicate the community's condemnation of the criminal conduct.

9. In this matter, the convict and the deceased were living together as common law husband and wife. Their marriage though short lived was characterized with constant abuse. The convict was akin to what this court has in the past called a “**woman eater**”. He was living in the house of the deceased and contributed nothing rather than having sex with her, which he did even when he had killed her as seen through the condom found on her. He seems to have been insecure and the only way to put the same down was to kill her.

10. Convention on Preventing and Combating Violence Against Women and Domestic Violence:- defines domestic violence as ‘all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit between former or current spouse or partners whether or not the perpetrator shares or has shared the same residence with the victim. **Article 3.b.**

11. The sentence meted out to the convict must therefore be commensurate with the gravity of the crime committed with the purpose of the punishment being:-

- a) Exerting a preventive influence on individual not to commit criminal offences
- b) Preventing the perpetrators from committing additional offences and encouraging his/her rehabilitation and expressing the community's condemnation of the criminal offence and reaffirming the value of the law.

12. This court has said and shall continue to say “that all married persons but women in particular have a right to choose their own destiny and until this message is spread and applied consistently at all levels of the justice system, more women will continue to die in the confines of their homes, where they expect love and comfort and the perpetrators will continue to thumb their nose at the law by evading appropriate sentence and the right to equal treatment guaranteed in our constitution will be but a mirage.”

13. I have looked at how the offence was committed and the reasons that led to its commission and is of the view that a deterrence sentence will be the most appropriate here so as to send a warning that every person has a right to live and the menace of death as a result of domestic dispute and misunderstanding must be curbed and checked at all cost so as to save the matrimonial homes from destruction.”

14. I have taken note of the conduct of the convict who after strangling the deceased put on the gas cylinder as if he intended that the house be set on fire when a match is ignited. He then left the jurisdiction of this court and was at large for a period of one and half years before taking himself to the police at Naivasha.

15. Whereas the convict pleaded for a non-custodial sentence, this is a matter where the same needs to be rehabilitated while in custody. There is no evidence tendered in court to show that his medical condition cannot be handled while in prison.

16. I have taken into account the fact that the same entered into plea bargain agreement with the prosecution and further the fact that the victims daughter who was then aged ten was the first to recover the body of her mother who was half naked on bed, which experience she will live with for the rest of her life and that fact that the deceased had welcomed the convict into her home, her bed and body only for him to take her life away and is of the considered opinion that **an imprisonment of fifteen (15) years** will be the most appropriate sentence in the circumstances of this case which I hereby pass. The convict shall therefore serve fifteen (15) years imprisonment and it is ordered.

17. Both the convict and the prosecution are entitled to right of appeal on sentence.

Dated, signed and delivered through Google Teams at Nairobi this 21st day of May, 2020.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Ms Onunga for the State

Denis Otieno for the Accused

Accused present

Court assistant- Karwitha