



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO. 13 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

PETER KIPLANGAT RUTO.....ACCUSED

JUDGMENT

1. The accused, Peter Kiplangat Ruto, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The information against him states that on the 22nd day of May 2017 at Tegat village in Bureti Sub-county within Kericho county, he murdered Irene Cheron. He pleaded not guilty to the offence and the trial proceeded before this court. The prosecution called 8 witnesses in support of its case against the accused. On his part, the accused elected to remain silent and to offer no defence.
2. The prosecution case against the accused is that the accused and the deceased were married and were living together. At about midnight on 20th May 2017, the accused had a disagreement with the deceased and he assaulted her with a panga. She sustained several injuries on her head, hands and legs. The deceased screamed as she was being assaulted, attracting their neighbours who included the accused's brother. By the time they got to the scene, the accused had fled and the deceased was lying in a pool of blood. The deceased was rushed to Litein Mission Hospital where she succumbed to her injuries. A post mortem report indicated that the deceased died as a result of severe haemorrhage wounds.
3. Wesley Kiprono Ruto (PW1), was asleep on the night of 20th May 2017 at around midnight when he heard screams. He got out of his house and went to where the screams were coming from. This was from the house of his younger brother, Peter, the accused. Peter's house was about 20 – 30 metres from Wesley's house. He saw that there was light coming from a lamp in Peter's house, and that the door was open. When he entered the house, he found Peter's wife, the deceased, lying on the floor, bleeding. Wesley ran to a neighbour's house to get a motor cycle to take the deceased to hospital. She was bleeding from her head, hands and legs, which had cut wounds. She was unconscious.
4. Wesley's brother Robert and his mother also went to the scene, and Robert took the deceased to Litein Mission Hospital. Wesley visited her in the hospital the following day, where he found her in great pain. They were informed the day after that she had passed away. Wesley did not see the accused on the day of the incident, but he heard that he had been arrested the following day while on his way to work as a tea picker.
5. Wesley confirmed in cross-examination that he did not see the accused assault the deceased. The deceased was unconscious when he got to the accused's house, and the accused was not in the house. The accused and the deceased had a cordial relationship, and theirs was not an abusive marriage.
6. Simon Kipkoach Langat (PW2) was also a neighbour of the accused at Tegat village. He too, heard screams on 20th May 2017 at around 11.00 p.m. The screams were coming from the accused's house. Simon ran to the accused's house and found other villagers and Peter's brother, Wesley. When they got into the accused's house, they found Irene Cheron, the accused's wife, lying down with injuries on her head. She was bleeding from her head, hands and legs, and she had cut wounds, probably from a panga. Simon could see inside the house as a lamp was on. They had taken the deceased outside, put her on a motor cycle and she was taken to hospital. Simon did not see the accused in the house that night. The following day, the 21st of May 2017, he went to the hospital and saw the deceased, but she was not talking.
7. On 22nd May 2017, in the morning at about 6.30 a.m, while Simon was on his way to the stage with Charles Kitur and James Korir, they found the accused at the stage. He was carrying a bag on his back, some items in a sack and a panga. The items in the sack included sufurias and a blanket. Simon and the other two had tried to ask him where he was going and what he had done but he tried to run away. Simon ran after him and arrested him. They took him to Kikwatu AP Camp where they left him. On 23rd May 2017, Simon heard people screaming, because Irene Cheron had died.

8. Simon confirmed in cross-examination that he had not found the accused at the scene when he responded to the screams. He had found the deceased lying down, bleeding, and the accused's brother, Wesley (PW1) at the scene. He did not see a panga at the scene.
9. Nicholas Cheruiyot Ngeno (Nicholas, PW3) was a boda boda rider from Togat. He was at home on the 20th of May 2017 at around 12.00a.m. when he heard screams coming from the accused's house, 200 metres from his home. He ran to the accused's house and found that a woman had sustained injuries. The woman was lying on the floor near the door, with cut wounds on her head and hands. There were other people at the scene, and they were using phones and torchlight to see as there was no other light in the house. The accused was not in the house.
10. According to Nicholas, the woman on the floor, whom he had seen before, seemed like the accused's wife as she had stayed with him for 8 months. He and others had taken the woman to Litein Mission Hospital and left her there. He had later heard that she had died. He stated in cross-examination that he did not find the accused at the house when they got there, nor did he witness the incident that led to the death of the deceased.
11. Richard Langat (PW4) was the father of the deceased. He had been informed on 21st May 2017 at around 6.00 that he should go to the Litein Mission Hospital as his child, the deceased, was ill. He was further informed that his child had been assaulted by her husband. He went to the hospital and found that the deceased was in theatre. The deceased was 19 years old and had been living with the accused for 3 months, though they were not formally married.
12. Daudi (David) Kipkemoi Bii (David, PW5) was an uncle of the deceased. He had heard that the deceased, who had been living with her husband, was in hospital. That she had been cut several times and been taken to Litein hospital. He heard on 23rd May 2017 that she had died. He attended her post mortem on 25th July 2017. He identified her body for the doctor and witnessed the post mortem.
13. PW6, No. 229462 AP Constable Evans Ojiambo attached to Techonget Police Post in Cheborgei Division of Bureti Sub-county was at the police post on 22nd May 2017 at around 7.30 a.m. when the accused was brought to the post by two members of the public who had arrested him. These were Leonard Ngeno and Simon Langat (PW3). They reported that the accused had assaulted his wife. PC Ojiambo and his colleague, APC Bismarck Bungei re-arrested the accused and escorted him to Litein Police Station where he was kept in custody. He confirmed that the accused was the person they had re-arrested. He later learnt that the deceased had died while undergoing treatment at AIC Litein Hospital.
14. Dr. Langat Samuel (PW7) stationed at Kapkatet Sub-district hospital conducted the post mortem on the body of the deceased at the AIC Litein Mission Hospital on 25th May 2017. He noted that she was 19 years old, with a small body. She had deep cut wounds on the left parietal region, on the left side of the head, with a fracture of the parietal bone. She also had bruises on the face and swollen supra-orbital region above the right and left eye. She also had deep cut wounds on the left wrist joint with amputated 3rd and 4th fingers. The deceased also had cut wounds behind the right knee and on the left foot. She had acute left sub-dural haematoma, and he formed the conclusion that the cause of death was haemorrhagic shock secondary to severe bleeding following multiple cut wounds. The report dated 25th May 2017 was produced as prosecution exhibit 1.
15. The investigating officer (PW8), was No. 89212 P. C Eliachim Orita. On 22nd May 2017 at about 10.00 a.m., he had received information from two Administration Police officers attached to Kibwatsywo AP Post that they had arrested the accused who had severely assaulted his wife at Tergat village. The wife, Irene Cheronno was rushed to AIC Litein Mission Hospital in critical condition. P.C Orita and the two AP officers had gone to the hospital to visit the victim on the instructions of the. OCS. They had found the victim in critical condition in the ICU.
16. P.C Orita had then gone back to the station and recorded statements from witnesses regarding the incident. He also recorded a statement from the accused who was in custody. While preparing to take the accused to court on a charge of attempted murder, they received information that the victim of the assault had died. They went back to the hospital and confirmed that she had died, and her body was moved to the mortuary to await a post mortem.
17. The accused, who was in custody at the Litein Police Station for further interrogation, informed PW8 about the murder weapon and where he had kept it. PW8 had gone to the accused's homestead and with the assistance of the area chief, they had recovered the murder weapon in a banana plantation near the homestead. The accused had told them where they could find the panga. It had not been taken for forensic analysis. His testimony was that once the case turned to one of murder, they had referred it to the Directorate of Criminal Investigations which should have taken it for forensic analysis. PW8 produced the panga as prosecution exhibit 2.
18. According to PW8, the house in which the incident took place had a pool of blood, and it was where the accused and the deceased lived as husband and wife.
19. The accused did not tender a defence to this case, opting to remain silent as is his right under Article 50(2) of the Constitution.
20. It is the law that the burden of proof in a criminal case lies on the prosecution. It has a duty to discharge the burden of proving its case against the accused beyond reasonable doubt. In this case, the accused is charged with the offence of murder contrary to section 203 of the Penal Code. The prosecution has the burden of proving, beyond reasonable doubt, that the accused, 'with malice aforethought', caused the death of the deceased. Section 206 of the Penal Code sets out what the prosecution needs to place before the court for 'malice aforethought' to be established:

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.

21. The deceased in this case was assaulted with a panga. According to the post mortem report produced by Dr. Langat, she died from haemorrhagic shock secondary to severe bleeding following multiple cut wounds. The nature of the cut wounds inflicted on her was so severe that two of her fingers on the left hand were amputated, probably as she attempted to defend herself from the panga assault. Whoever inflicted these injuries did not intend that she should survive. He or she had malice aforethought. The elements of *actus reus* and *mens rea*, the unlawful act and the intent, were established.

22. The prosecution says that it was the accused who inflicted the fatal injuries on the deceased. As is evident from all the prosecution witnesses, no-one saw the accused inflict the injuries on the deceased. His brother (PW1) heard screams coming from the accused's house. He went and found the deceased lying on the floor, with severe injuries. The accused was not in the house. The neighbours, PW2 and PW3, also went to the house when they heard screams. They too, did not find the accused in the house, but they found the deceased lying in a pool of blood.

23. The prosecution has not presented any direct evidence linking the accused to the death of the deceased. It has relied on circumstantial evidence to base its prosecution on. The law is that a court may convict an accused person on the basis of circumstantial evidence where such evidence points irresistibly to the accused as the perpetrator of the offence charged. This has been the position in law since the decision in **R vs Kipkering arap Koske & Another 16 EACA 135** in which the court stated:

“In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”

24. In its decision in **Sawe vs Republic [2003] KLR 364** at page 375, the Court of Appeal stated as follows:

“There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”

25. The circumstantial evidence presented in this case is that the accused and the deceased were living in the accused's house as husband and wife. This emerged from the evidence of PW1, PW2, PW3 and PW4, the latter being the father of the deceased. There is no evidence that anyone else entered the house in which the accused and the deceased were living on the material night.

26. The house was on a compound which the accused shared with his brothers, PW1, and one Robert. It was close to the homes of PW2 and PW3. PW1, PW2 and PW3 were cross-examined at length by Counsel for the defence. However, aside from eliciting the fact that the accused was not in the house he shared with the deceased when the three witnesses got there to find the deceased in a pool of blood, nothing emerged from the evidence that would suggest that there was anyone else in the house on the material night, other than the accused and the deceased. There was no evidence to indicate that anyone else went into the house and attacked the deceased. PW1, PW2 and PW3 were woken up by screams, and they went there to find the deceased lying on the floor, bleeding.

27. Then there is the conduct of the accused as it emerged from the evidence of PW2. On 22nd May 2017, he had been found by PW2, Simon Langat, and two others, at the bus stage. He was carrying a bag on his back, some items in a sack, and a panga. When PW1 and the other two asked him where he was going and what he had done, he tried to run away and they chased him and arrested him. According to the investigating officer (PW8), the accused had told them where he had taken the panga, the murder weapon, and had directed them to where he had put it, in a banana plantation near his homestead. The investigating officer, with the area Chief, had recovered it from that plantation.

28. This is a man whose wife was in hospital after a savage assault. She died on the day he was seen carrying various items in a sack, including sufurias and a panga. He had directed the investigating officer to where he had left the panga used in the assault.

29. Taken in its totality, the inculpatory evidence in this case is incompatible with the innocence of the accused, and is incapable of explanation upon any other reasonable hypothesis than that of his guilt.

30. It is my finding therefore that the accused did, with malice aforethought, murder the deceased. I therefore find the accused guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code, and convict him in accordance with section 215 of the Criminal Procedure Code.

Dated and Signed this 7th day of March 2019

MUMBI NGUGI

JUDGE

Dated Delivered and Signed at Kericho this 9th day of April 2019

GEORGE DULU

JUDGE