



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 39 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES NYANCHWARA OKERE.....ACCUSED

J U D G M E N T

1. The Accused herein was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence was that **on the 7th day of July 2011 at Naisambu area within Trans Nzoia County unlawfully murdered SM.**

2. The accused denied the offence. The Prosecution called several witnesses to prove its case. When placed on his defence the accused gave unsworn evidence. At the conclusion of the case the counsel on record were to file written submissions. Apparently its only the State that filed. Nevertheless before analysing the evidence on record and coming up with appropriate conclusion it shall be worthwhile to summarise the evidence as presented during trial.

3. **PW1 Mathew Charles Kipkeu** testified that he was a retired teacher. On the material day, he alighted from a vehicle and was walking towards his home. This was around 5.30 pm. He saw a boy and a girl beside the road. The boy was holding the girl's handbag. After about 50 metres he heard some screams from the girl and on looking back he saw the boy holding the girl down and beating her. As he rushed back the boy took off and run across the fence. He told one Peter to go after him as he tried rescuing the girl. She found her bleeding from the neck. One Jeremiah rushed to get a vehicle but by the time it arrived, she had died.

4. **PW2 Reuben Kipchirchir** testified that he was burning charcoal inside the farm when he saw a man and a lady standing not far from where he was. He greeted the girl. After about ½ an hour he heard screams. He rushed to the scene where he saw the boy sitting on the girl. He rushed to help the girl but the boy took off across the fence. He followed him towards the forest and with the assistance of Elly and Peter they apprehended him. They found the girl had already died. The accused was assaulted by the members of the public.

5. **PW3 Peter Maina** a herdsman testified that he saw PW1 passing the road while herding cattle. He heard screams from the road. He assisted in apprehending the accused.

6. **PW4 PM** is the father of the deceased. He said in his evidence that he knew the accused who was a Pastor to his wife and the deceased. The accused had defiled and impregnated the deceased. He had been charged with the offence of defilement and the matter was pending in court. The accused together with some members of his family had sought to reconcile but he did not accept as the matter was pending in court. He was called at the police station and told of the said news of deceased demise. He did not witness the incident.

7. **PW5 Dr. Blastus Kundu** from Endebes District hospital performed the postmortem on the deceased body. He concluded that she died out of cardio pulmonary failure secondary to penetrate injuries to the neck.

8. **PW6 Lawrence Muthuri** from the Government chemist produced his report which showed the blood samples on the knife belonged to the deceased as it matched the DNA profile. The blood samples on the clothes matched that of the accused.

9. **PW7 Benjamin Kinono** from DCI Kitale scene of crime produced the set of photographs taken by P.C. David Kipchumba which showed the deceased body as well as the injuries she sustained.

10. **PW8 Corporal Caleb Yator** carried out the investigations and preferred charges against the accused. He recorded the witnesses statement after visiting the scene. He also produced the exhibit namely the clothes and the knife. He was also present during the post mortem exercise. According to him the accused killed the deceased because of the defilement matter which was pending in court.

11. As stated earlier when placed on his defence, the accused gave unsworn evidence. He said that the deceased was his fiancée. He had proposed to marry her. However her parents had refused for the reason that he was a Kisii man and the Kusii's were known witches and cannibals. On the material day the deceased had looked for him and when they met she told him that since her parents had refused the marriage, she was going to take her life. According to the accused she then pulled the knife from her handbag and stabbed herself. In the process of saving her he was knocked unconscious and he found himself at the hospital.

Analysis and Determination

12. I have carefully read the proceedings herein which apparently were heard by 2 of my colleagues. There is no doubt that the deceased and the accused were persons who knew each other. The accused stated that the deceased was his fiancée.

13. The incident took place at broad day light. PW1 and PW2 clearly witnessed the incident. They both testified that they saw a man and a lady standing beside the road. PW1 stated that the man was holding the handbag. Within a short distance after passing (about 50 metres) he heard screams from the girl. When he checked, the man was on top of the girl assaulting her. He rushed to help and in the process he took off. PW2 and PW3 assisted in arresting the accused from a forest.

14. By the time PW1 and PW2 arrived, the deceased was bleeding profusely and she died on the spot. She could not be taken to the hospital.

15. The cause of death was clearly consistent with what PW4 found during the post mortem. The DNA as found by PW6 clearly showed the blood sample on the murder weapon (knife) matched that of the deceased.

16. I find the accused defence wishy washy and holds no water. Beside being unsworn hence of no probative value, the same does not deny the fact that he was present with the deceased that afternoon. The explanation that she attempted to kill herself does not add up.

17. If she did so, why did she have to scream to attract the attention of the passerby namely PW1, PW2 and PW34? Why would PW1 and PW2 find the accused on top of the deceased assaulting her? More importantly why would he take off and apprehended inside a forest?

18. If indeed she was attempting to kill herself then there would be every probability that the accused would have been the one calling for help and he would not have any reason of running away.

19. In the premises I hold that the prosecution have established that there was malice aforethought by the accused. The defilement matter pending in court although the details were not brought forward was the reason for the assault. The accused knew that the act of stabbing the deceased, precisely on the neck would result in fatal injuries.

20. The allegation that he became unconscious was a white lie as he was apprehended by the members of the public and handed over to the police.

21. Consequently, I find the case proved beyond any shadow of doubt. The accused is hereby convicted under the provisions of Section 203 of the Penal Code Cap 63 Laws of Kenya.

Delivered, signed and dated at Kitale this 9th day of April, 2019.

H.K. CHEMITEI

JUDGE

9/4/19

In the presence of:

Mr Omoria for the State

Arunga holding brief for Samba for Accused

Accused – present

Court Assistant – Kirong

Judgment read in open court.