



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 5 OF 2013

REPUBLIC.....PROSECUTOR

VERSES

NORAH CHEBOSEBEI LOYATUM.....ACCUSED

JUDGEMENT

1. The accused was charged with the **offence of murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge was that **on the 6th day of February, 2013 at Mwisho farm Kwanza area within Trans Nzoia County murdered Daniel Pchumba Loyatum**.

2. The accused denied the charge and the prosecution called several witnesses to establish its case. The accused was placed on her defence where she gave unsworn evidence and did not call any witnesses. Before looking at the question of whether the prosecution proved its case beyond any shadow of doubt it may be necessary to summarise the evidence as presented during trial.

3. **PW1 Sharon Jeptoo** the daughter to the deceased as well as the accused testified that she was at home at around 9pm doing her homework when her father arrived home. He then sat on the sofa set and the accused asked him where he was from. He responded that he had gone to kanyarkwat. He sat down and removed his shoes. The accused then took an axe and cut him on the head. She screamed and went and called the workers including one John. The accused then ran away as she left the axe behind.

4. **PW2 Reuben Krop** stated that he was home at around 9pm when he received a call from one John Kamau concerning the incident. He rushed to the scene and found the deceased lying on the ground bleeding. He took him to Kapenguria hospital but died while undergoing treatment. He said that when he arrived at the scene he did not see the accused.

5. **PW3 Dr. Faustin Shitote** produced the post-mortem report on behalf of Dr. Suweke who opined that the diseased died as a result of severe head injury secondary to multiple injuries inflicted using a sharp objects.

6. **PW4 Joseph Loyatum** the brother to the deceased witnessed the post mortem exercise by identifying the body.

7. **PW5 John Kamau** testified that he was a sleep in the kitchen not far from the deceased house when he was awoken by the accused who did not enter inside the house but left. One of the people he was with went to check and he told them that the deceased had died. He called one Rueben from Kapenguria to come with a car who came and took the body away. He apparently did not go to the deceased house neither did he see him.

8. **PW6 Corporal Benjamin Koono** from the Scenes of Crime Office Kitale Police Station produced the set of photographs prepared by one P.C. Kemboi whom he had worked with. The same showed the scene, the deceased body and the injuries as well as the axe which was used to cut the deceased on the head.

9. As indicated earlier the accused gave unsworn evidence denying the charge. She said that the deceased came at around 10.00 pm and had an axe. She gave him food but he refused to eat and he was drunk. He began quarrelling and accused her of failing to attend the wedding ceremony of his other wife at Kanyarwkat. He then went to the room and got a panga and arrows and as she entered the room he pulled her and kicked as well as pulling her hair. She attempted to run outside and she pushed him.

10. While outside the suckling child cried and she called PW1. By then the deceased was bleeding. She went and called John and left to the home of one Limo and Kiratum. She stayed at the cowshed and at 5.00 Am she went to Kapenguria and reported at the police station. She learn that the deceased had died.

ANALYSIS AND DETERMINATION

11. The court has heard the parties as well as perused the written submissions by both Counsel'S on record. The provisions of Section 203 of the Penal Code on the ingredients of murder namely malice aforethought are very clear. It must be proved that the cause of death was due to the unlawful acts of the accused. The said unlawful acts were committed with malice aforethought.

12. The star witness and for that matter the eye witness was PW1 the daughter to both the accused and the deceased. She explained in her evidence how the deceased arrived home that evening and while he was served food the accused attacked her with an axe. The closer scrutiny of the evidence by the said witness does not in my view present a situation of confrontation between her parents.

13. The witness when cross examined stated that her father was not drunk as he had come from a church function as he was a member of the Full Gospel church. The unsworn evidence of the accused suggests that the accused became quarrelsome as he arrived home and began pulling her by her hair. She said that there were farm implements and tools which the deceased may have injured himself.

14. I have looked at the line of evidence taken by the accused and despite being of no much probative value as it was unsworn, it becomes difficult to explain how the deceased injured himself or sustained multiple cuts on the head. Even if it was a fall as she would want this court to believe the post-mortem report indicates that the cause of death was ***“severe head injury secondary to a sharp object multiple times.”***

15. How then could the deceased fall multiple times over the same object? That defeats logic and in my view I do agree with the evidence of pw1 that it was the accused that inflicted the deceased with the injuries which caused his death.

16. What is important to take into account is the explanation given by the accused after the incident. She said that he went and told Kamau (PW5) who apparently told this court that she did not even wait at the scene but left immediately. What was the reason for her leaving if it was the deceased who had wronged her? Why leave yet she was innocent?

17. She further told the court that while hiding outside the suckling child cried and she told the other children including PW1 to bring the child. That was the end of her story concerning the child since thereafter that child did not feature anywhere including spending outside that night and surrendering to the police the following day.

18. Taking into consideration the totality of the evidence presented as well as the exhibits produced, and especially PW1 evidence, the court is satisfied that the accused caused the death of her husband by attacking and cutting him using the axe produced and seen in the set of photographs. They may have had their issues concerning the deceased marriage with another woman at Kanyarkwat, but there was no evidence that the deceased attacked or assaulted her.

19. Special emphasis is laid on the evidence of PW1 as she was the only eye witness and a child to both. I do not find any malice on her evidence to fix her mother. She was awake and was busy doing her homework or reading a book when the deceased arrived. She said that she sat at the smaller sofa set while the deceased sat on the big one. There was sufficient light which enabled her to see what was taking place between her parents.

20. The cause of death as found by the pathologist was consistent with the injuries and more particularly the murder weapon.

21. Consequently I hold that the prosecution has proved beyond any shadow of doubt that the accused attacked the deceased with an axe which caused serious injuries and subsequently caused his death. She is therefore convicted under the provisions of Section 204 of the Penal Code.

Dated, signed and delivered in open court at Kitale this 6th day of June, 2019.

.....

H. K. CHEMITEI

JUDGE.

6/6/19

In the presence of:-

Accused – present

Mr Bororio for the Accused

Mr. Omooria for State

Court Assistant – Emily

Judgment read in open court.