



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 36 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

PIUS KANGOGO RUTO.....ACCUSED

JUDGMENT

PIUS KANGOGO RUTO is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of this offence are that on the 5th day of May, 2014 at 11.00 hours in Epkei Location, Keiyo North Sub County, Elgeyo Marakwet County, the accused murdered STELLA JEPCHIRCHIR KOSGEI.

The prosecution case is that the accused herein was the husband to the deceased person. On 5th May, 2014 at about 10.30 a.m, PW-1 in this case was outside her house at Kaptalam in Epkei location. The deceased is her grand daughter. That day and time, she saw the accused in company of the deceased. The two were about 15 metres away from where PW-1 was seated. They were deliberating together but PW-1 could not hear what the conversation was about. The accused who had a panga, suddenly cut the deceased with it on the back of her neck. The deceased fell down as a result. The accused dropped the panga and took on to his heels. PW-1 went to the scene. She noted the deceased had a deep cut on the back of her neck which was bleeding profusely. She started screaming while running away from the scene.

PW-1 is a grandmother to PW-2. On the material day and time PW-2 was going to graze cows in the hills when he saw the accused and his wife (deceased) in the farm removing charcoal. He could see the two were deliberating on something but did not bother to hear what it was about. He just went on. Shortly thereafter he heard PW-1 screaming. He turned back and rushed to where the screams were emanating from. On the way back he noticed the accused and his wife were not where he had seen them. He went to PW-1's home where he found a crowd already gathered. He joined them and saw the deceased's body lying not far from PW-1's house. The body had cuts on the neck and arm. The area chief was among the crowd and was holding a panga. The said panga had a wooden handle which was tied with a rubber band. The area chief, at about 11.00 a.m called PW-6, who was at the time attached to Tambach police station. He reported to

him that a person called Kangogo had cut his wife to death and had escaped into the forest. PW-6 left in company of IP Hassan and sergeant Musyoka. They got to the scene. The deceased had bled a lot from deep cuts on the hand, neck and head. They got a panga which was blood stained near the body. They carried the body to Iten District Mortuary. The panga was kept as an exhibit.

Later on that very same day at about 4:30 p.m, PW-3 was in his shamba at Cheptebo Highland. While walking home to Chemkui village, he received a telephone call from a neighbour. The said neighbour told him to go to Kaptalam to get Pius Kangogo who had allegedly killed his wife. He went to the place and found the deceased arrested and tied with ropes by the villagers. They took him to the roadside and handed him over to the area chief. The chief called the police. PW-6 and his team went for him. The Assistant chief availed witnesses and PW-6 recorded their statements.

On 9/5/2015 at about 11.00 a.m, PW-4 who is an uncle to the deceased was at Elgeyo Marakwet Iten Referral Hospital mortuary to identify the body of the deceased for post mortem. He did so. The post mortem was conducted by doctor Paul Omondi. He noted that the body had deep cut wound on the right hand measuring 8cm x 1 cm involving the humerus and femoral artery and vein. There was a second cut on the said hand measuring 5.6cm x 1cm, involving deltoid muscle (back upper hand). The 3rd cut was on the neck, upto basal of the brain, destroying mastoid bone, ear drum and optic nerves (left and right); Internal and external jugular. There was a 4th cut, deep cut wound on the tempo-parietal region, penetrating to the brain, measuring 11 cm. He concluded that the cause of death to the deceased person was deep cut wounds, haemorrhage, Asphyxia, resulting from assault. The accused was then charged with the preferred offence. The recovered panga and the post mortem report were produced in court as prosecution exhibit 1 and 2 respectively.

The accused gave unsworn testimony in his defence and called no witness. His case is that on 5/5/2014 he woke up in the morning and took breakfast. He then proceeded to the farm where he was till 2.00 p.m. His wife, one Stella Jepchirchir Kosgei had returned to her parents'

home in Highland, Kapkei. They had though, not quarreled. She had visited on 24/4/2014. When he returned home the wife was not there. He went to the home of Cheptor for beer. He was there till 4.00p.m. On his way out he passed through the home of Chebet and requested for drinking water. After a while many people gathered at the place. They held him and tied him up. He was

asked of whether he knew the one who had killed his wife. He said he was not aware. He was beaten a bit and released. On the way home another group held him. He was presented to the area chief. He never met his wife on that particular day. They had not quarreled and the prosecution witnesses lied on how she met her death.

At this juncture, the court must determine as to whether the offence against the accused is proved by the prosecution beyond reasonable doubt. What the prosecution should establish beyond reasonable doubt is that the deceased died or is dead; that her death was the direct consequence of an unlawful act or omission on the part of the accused herein, of which constitutes the "actus reus" of the offence, and also that the said unlawful act or omission was committed with malice aforethought, which constitutes the "mens rea" of the offence.

In this case the evidence of PW-2 shows that on the material day and a few minutes before the deceased met her death, the accused person was with her in the farm removing charcoal. The two were deliberating on something. The evidence of PW-1, and eye witness, is very crucial. She saw the two along the road deliberating on something. She knew both very well as she is a grandmother to the deceased. It was during the day and the two were about 15 metres away. She could not have made a mistake of them. She then suddenly saw the accused attack on the deceased, who was his wife, with a panga which he had, on the neck. The accused then dropped the panga and took on to his heels, only to be arrested later in the day. The wife died at the scene. These two witnesses had no cause to lie against the accused. The evidence is reliable in that the accused was with the deceased on the material day and time and had therefore the opportunity to commit the offence, and that he is the one who committed it as PW-1 witnessed him doing it. The evidence of PW-5 on the cause of death to the deceased links the assault to the cause of her death. The accused inflicted on her four cut wounds; two on the right hand, one on the neck and the last one on the head. All were fatal injuries and his intention must have been to kill her, and if not to cause her grievous harm, of which constitutes malice aforethought.

The accused defence is frivolous. There is no evidence in support that the deceased had visited her parent's home at the time of her death. Given that PW-1 and PW-2 saw him with her, the defence is a lie. The prosecution case shows that he was the only suspect, and given the direct and reliable evidence of PW-1 that he is the one who committed the offence, the flimsy defence could not tilt the scale of justice in his favour. The defence case is thus dismissed.

The upshot is that the offence of murder, preferred against the accused, is proved by the prosecution beyond reasonable doubt, and he is convicted of the same.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 10th day of July, 2019

In the presence of:-

Mr. Bet holding brief for Ms Karuga for the accused

Ms Mokuia for the state

Ms Sarah - Court assistant

Ms Mokuia :-

We have no previous record. He is a first offender.

Mr. Bet in Mitigation:

The accused is a first offender. I pray for lenient sentence. He is remorseful. It was a crime of passion. He has a young family and is the sole bread winner. We pray for non - custodial sentence.

COURT:-

I have considered the mitigation and the period spent in remand which is about 5 years. I have also considered that he is convicted of a serious offence of murder, in which an innocent life was lost, and which carries a death sentence on the higher side. Having weighed that, I find that a non custodial sentence is not appropriate. He will serve 12 years imprisonment.

SIGNED

S.M GITHINJI

JUDGE

10/7/2019

Mr. Bet:

I pray for certified copies of proceedings and judgment.

Court:-

Application is granted.

SIGNED

S.M GITHINJI

JUDGE

10/7/2019