



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. 13 OF 2018

REPUBLIC.....PROSECUTOR

=VERSUS=

VICTOR KIBET LANGAT.....ACCUSED

JUDGMENT

[1] The accused was initially charged with murder contrary to section 203 as read with 204 of the Penal Code. The charge was subsequently reduced to manslaughter following a successful plea bargain, the voluntariness of which the Court upon examination on oath of the accused confirmed. The accused was then charged with manslaughter contrary to sections 202 and 205 of the Penal Code. The accused has been in pre-trial detention for over 6 years since 7th November 2013 when he was arraigned before the Court and remanded to await his trial. The Court file was transferred to this Court from the High Court at Eldoret by order of the Court made on 17th September 2018.

[2] The facts of the case as set out by the Prosecution and admitted by the accused were as follows:

“FACTS

*7. The accused and the deceased in this matter were **husband and wife** respectively. On the 18th of October 2013, the accused arrived home at around 6:20 pm. **He found that the deceased had sold 3 kilograms of his groundnuts without informing him. A quarrel ensued between the two over the issue and this escalated into a fight. The accused herein took a panga and cut the deceased on the head severally. She bled profusely leading to her death.** The accused then picked their four months old child and took it to his parent’s house. He informed his mother that he had killed the deceased and wanted to kill himself. His parents pleaded with him and his father called the area assistant chief. They all went to the scene and found the deceased in a pool of blood, dead. The accused surrendered a blood stained panga used to attack the deceased to the assistant chief who handed it over to the police. He was arrested at the scene and taken to Kabarnet Police Station. The body of the deceased was taken to Baringo County Referral Hospital where postmortem was done and the cause of death was found to be penetrating sharp force injury to the brain. The accused was arraigned in Court and charged with murder which has now been reduced to manslaughter. He was there after presented before the doctor at Moi Teaching & Referral Hospital for mental assessment and was confirmed to be mentally fit to stand trial.”*

Conviction

[3] The Court noted the accused’s ability to plead as certified by the psychiatrist Dr. Florence Jaganga of Moi Teaching and Referral Hospital, Eldoret by Certificate dated 4th March 2019 and upon his

confirmation of the facts as correct, the Court accepted the accused's plea of guilty and convicted him for the offence of Manslaughter contrary to section 202 as read with 205 of the Penal Code.

Appropriate sentence

[4] Mr. Kipkulei, Advocate for the accused led the accused in mitigation that he was remorseful and sorry to the family of his deceased wife for having caused her death during the heat of moment in a domestic quarrel at which he, for his drunkenness, did not have a chance to compose himself, and sought a non-custodial sentence to provide for his family for whom he was a breadwinner.

[5] The DPP suggested a Probation Officer's presentence report which came out negative, the Probation Officer in a report dated 23/10/2019 concluding that *"considering the open animosity towards the accused by the deceased's kin, his appearance in the area is bound to elicit some level of emotions. Consequently in the absence of reconciliation which is paramount for the success of a community based sentence, this case therefore seems to be **unsuitable** for non-custodial sentence. It is recommended that it may be dealt with otherwise. This is however subject to the discretion of this honourable Court."*

[6] The pain of the family of the deceased is understandable and it is always a matter to be taken into account when considering a sentence, in line with section 12 of the Victim Protection Act 2014, the provision for the consideration of victim impact statements before sentence in accordance with in accordance with section 329C of the Criminal Procedure Code, cap.75. However, the whole object of penal treatment must also be taken into account so that not merely the retributive aspects are emphasized but also the reform and rehabilitation of an offender and possible re-integration into the society. The accused in his mitigation was said to have reformed during his stay in custody while awaiting trial and had *"undergone theological course, which he has completed at Prison Fellowship International and awarded a certificate."*

[7] This case, with its setting of matrimonial dispute is on all fours as it were with the previous case of *R v. Kalamai Lebene* KBT HCCRC No. 2 of 2017, where the Court sentenced the accused to imprisonment for five (5) years as follows:

"7. The Court has considered that the killing resulted from a domestic quarrel between husband and wife, and it was not premeditated. In his favour, the accused had "on realizing what he had done tried to administer first aid but in vain." The Court notes from the Postmortem that the deceased died out of the excessive bleeding from the cut on the neck. The cause of death shown a postmortem Report as "acute blood loss secondary to penetrating cut wound to the neck." The accused in remorse had called his brother and did not run away as he is reported to have been arrested when the brother "called the police from Marigat Police Station who collected the body and arrested the accused."

Sentence

8. I have considered the Probation Officer's pre-sentence report which is negative for non-custodial sentence. I consider that the sentence of imprisonment for five (5) years will meet the justice of the case for retribution and deterrence of the accused and assuagement of the deceased's family noting that there were indications that the deceased's family were open to reconciliation and payment of dowry in accordance with applicable custom. The Court cannot, however, enforce customary practices in criminal law."

[8] I consider that the sentence of imprisonment for five years is suitable punishment in the circumstances of this case, of domestic quarrel escalating into a fight, notwithstanding the alleged opposition by the family of the deceased.

[9] Taking into account, as required of the Court by section 333(2) Proviso of the Criminal Procedure Code, the pre-trial detention of six (6) years since 7th November 2013, the offender has served his sentence of imprisonment for five (5) years in full, and consequently due for release.

Orders

[10] Accordingly, for the reasons set out above, the Court, having convicted the accused for the offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code, sentences the offender to imprisonment for five (5) years.

[11] As the offender has been in custody for 6 years awaiting the conclusion of his trial, he has served his sentence of five (5) years in full, regard being had of this pre-trial detention by virtue of section 333 (2) proviso of the Criminal Procedure Code.

[12] There shall, therefore, be an order for his immediate release from custody unless he is otherwise lawfully held.

Order accordingly.

DATED AND DELIVERED THIS 21ST DAY OF NOVEMBER 2019.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Adomeyon Advocate for the Accused.

Ms. Macharia, Ass. DPP for the Respondent.