



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO. 4 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT KIPKIRUI LANGAT.....ACCUSED

JUDGEMENT

Introduction

1. The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya in respect of the deceased, Josphat Kipng'etich Rono.
2. He pleaded not guilty.
3. The prosecution called four witnesses in support of the charge.
4. The accused made an unsworn statement and called no witnesses in his defence.

The case for the prosecution

5. The prosecution called Samuel Rono (Pw 1), who testified that the deceased was his brother. The deceased had married the sister of the accused. Pw 1 further testified that on 10th May 2018 at 3.00 pm, while at Kapses centre, the deceased and accused quarreled. Hillary Kiplangat Kirui (PW 3) tried to reconcile them. The accused and deceased had quarreled two years before this incident. Pw 1 had known the accused for a long time. When the accused wanted to fight the deceased, Pw 1 intervened and stopped the accused from getting hold of the deceased. He stopped the accused from fighting the deceased. PW 1 pushed the accused aside. The accused then got round and stabbed the deceased with a knife below the left neck. As a result, the deceased stooped to get pick a stick. And when he stood blood oozed from the injury. Pw 1 and PW 3 put the deceased on a boda boda and took him to Long'isa hospital, where he was pronounced dead upon arrival. Pw 1 and his friends reported the matter Mulot police station.
6. The evidence of Pw 1 is supported by that of Nelson Rop (Pw 2). Pw 2 saw accused fighting with the deceased. Pw 2 saw the accused hit the deceased with his fist. He then saw the accused escape from the scene. Pw 2 did not see the weapon used by the accused in injuring the deceased.
7. Furthermore, the evidence of Pw 1 and Pw 2 is also supported by that of Hillary Kiplangat Kirui (Pw 3), who saw the deceased and accused quarrelling, which led to fighting using their fists. Pw 3 then saw blood oozing from the neck of the deceased. Pw 3 testified that it was the accused, who injured the deceased.
8. Finally, the prosecution called No 46341 Sgt Andrew Bett, the investigating police officer (Pw 4). Pw 4 testified that while in the CID office on 14th May 2018, in Narok South the father and brother of the deceased went to his office and reported that he had been stabbed by the accused. on 11th June 2018 he re-arrested the accused and and took him to court on 12th June 2018. He then arranged for the postmortem to be done on the body of the deceased.
9. The report of the postmortem was put in evidence as exhibit Pexh 1 by consent of the parties. According to that report the body of the deceased had the following injuries. A penetrating stab wound on the left supraclavicular artery about 2 cm in length. The respiratory had blood clots. The cause of death was haemorrhage secondary to injury to the left subclavian artery secondary to a penetrating injury with a sharp weapon.

The case for the defence.

10. The accused made an unsworn statement and called no witnesses. He stated that on the material day he went to his business of boda boda. While en route the accused met the deceased. The deceased then told him that they go to drink beer at unnamed house. Upon arrival in that house they entered that house and were given traditional beer namely chang'aa. He does not remember whether they finished drinking the five litres of chang'aa. He also does not remember when they separated. Furthermore, he stated that the next morning he was surprised that he was in his home and that he did not know how he arrived at his home. After waking up, he was called by a young man who sells cattle, who wanted to be taken where he buys them. He took him there where they stayed for two weeks. As they were returning home, he was arrested by police at Sigor centre. He asked them as to why they arresting him. They replied that he was going to be explained later. He was later charged in court.

THE SUBMISSIONS OF THE DEFENCE.

11. Ms. Adallah, counsel for the accused filed written submissions and urged the court to acquit the accused of murder. It was her submissions that the offence proved was manslaughter; since the accused was very drunk. She submitted that Pw 1 only saw the accused stab the deceased and that the deceased did not die on the spot. She therefore submitted that the accused did not commit the offence of murder. Pw 2 saw the deceased and accused quarrelling, but did not know as to why they were quarrelling. Pw 3 saw the deceased bleeding from the neck but was not sure the blood was oozing from the neck. She cited the case of *Rex v Tubere s/o Ochen [1945] 12 EACA 63* in support of her submission that the accused had no malice aforethought, which is an essential ingredient element of murder.

THE SUBMISSIONS OF THE PROSECUTION

12. The prosecution was conducted by Mr. Omwega, a Senior Assistant Deputy Director of Public Prosecutions. The prosecution did not therefore have a right to submit and file submissions by virtue of section 161 as read with section 310 of the Criminal Procedure Code (cap 75) Laws of Kenya.

ISSUES FOR DETERMINATION.

13. I have considered the prosecution and defence evidence and submissions of the defence counsel. As a result, I find the following to be the issues for determination.

1. Whether or not the accused caused the death of the deceased.
2. Whether or not the offence disclosed is murder or manslaughter.

ISSUE 1

14. I have considered the totality of the entire evidence. I believe the evidence of the prosecution witnesses (Pw 1, Pw 2 and Pw 3) that the deceased and accused were seen quarrelling, which was followed by fighting. In the course of fighting Pw 1 saw the accused stab the deceased with a knife in the left part of the neck, which led to bleeding from the inflicted injury. Pw 2 and Pw 3 did not see the weapon used by the accused. They only saw the deceased and accused fighting. The accused escaped after inflicting the said injury. These witnesses knew the accused before this incident. The offence was committed during day time at 3.00 pm. They easily recognized the accused. The issue of mistaken identity does not arise. I therefore find that it is the accused who inflicted the fatal wound in the neck. The report of the pathologist is that the cause of death was due to a penetrating stab wound measuring 2 cm long. This is consistent with the usage of the knife by the accused in stabbing the deceased. The evidence against the accused is overwhelming.

15. Furthermore, I do not believe the defence evidence that after the deceased and accused went to drink chang'aa from a jerry can of five litres, he did not remember what happened thereafter other than that he found himself at his home. I also do not believe the accused that he did not recall how he arrived at his home. The defence is untruthful and lacks a ring of truth. I also do not believe the selective amnesia of the accused in respect of how he separated with the deceased and how he arrived at his home.

16. The motive of the attack is not clear, although the prosecution is not required to prove motive.

ISSUE 2.

17. I find that the offence disclosed by the evidence is manslaughter and not murder.

Judgement signed, dated and delivered in open court at Narok this 4th day of December, 2019 in the presence of Mr. Omwega for the Republic and Ms. Adallah for the accused.

J. M. Bwonwong'a

Judge

4/12/2019