



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL CASE NO.26 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

SUDI WAMBANDA.....ACCUSED

JUDGEMENT

1. The accused person Sudi Wambanda is charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code.

The particulars of the offence are that on 13th of June, 2012 at Sanjero village, Tuuti sub-location within Bungoma County he murdered Jackson Asiola.

2. The accused having pleaded not guilty. The Prosecution called a total of 6 witnesses. The Prosecution Case is that on the material day the deceased was accused of having stolen a duck which PW1 and the accused both claimed ownership of. And that both PW1 and the accused agreed to go to the deceased to find out from him where he had stolen it from. At about 9p.m. in the company of one other person the two went to the deceased house and on arrival the accused hit the deceased with a hoe handle. They then all left and in the morning the deceased was found dead having succumbed to severe head injury.

PW1 and PW2 confirm that the accused and one other person had a duck allegedly stolen by the deceased. PW1 further confirms that she was in the company of the accused when he hit the deceased severally on the head.

3. According to PW6 the investigating Officer, he got the murder weapon behind the house of the accused. He also confirmed that after the deceased was hit the accused and one other (Geoffrey) headed to the area village elder where they reported about the lost duck and left it there. It was also his evidence that the accused ran away on learning of the deceased death but was pursued and arrested on 5/9/2012 after a period of 4 months.

PW4 on his part confirms that indeed the accused and one other took a stolen duck to him.

4. In order to prove an offence of murder, 3 ingredients are necessary. The fact of death, secondly that the action or omission of the accused caused the death, thirdly, that the action or omission was actuated with malice aforethought.

5. The death of the deceased was confirmed by all witnesses. In particular PW3 and PW5 the father and doctor respectively.

PW5 gave cause of death as head injury with haematoma due to assault by a blunt object.

6. The evidence of PW1 is direct evidence. She gave an account of the assault meted upon the deceased by the accused on the fateful night. The evidence of PW4 was corroborated by PW5 and 6. PW5 confirmed the claim by PW1 that the accused hit the deceased severally on the head.

7. Further the conduct of the accused of disappearing for several months after learning of the deceased death points to nothing else but guilt on his part which fortifies the assertion by PW1. I am convinced beyond all reasonable doubt based on the evidence before Court that the accused severely hit the deceased on the head which injury led to the deceased death.

8. Even if the deceased had not died he did not deserve the severe injuries inflicted upon him. Not to say that injuries meted that caused a fracture was intentional and no doubt malicious more so because when stopped from hitting the deceased the accused instead turned upon PW1.

9. With the above evidence as against a defence which is a mere denial and which has not discredited in any way the Prosecution evidence I find that the accused caused the death of the deceased contrary to Section 203 as read with 204 of the Penal Code and convict him of the offence.

DATED and DELIVERED at BUNGOMA this 1st day of February, 2018

ALI-ARONI

JUDGE