



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. 60 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

JULIUS TETEA KATE ALIAS SAMU.....ACCUSED

JUDGMENT

1. The accused was initially charged with murder contrary to section 203 as read with 204 of the Penal Code which was upon a plea bargain agreement reduced to manslaughter contrary to section 202 as read with 205 of the Penal Code. In accepting the plea bargain agreement the Court examined the accused to establish the voluntariness of his plea and ascertained from a certificate of fitness to plead that he was mentally fit to stand trial. Upon his admitting the facts of the case, the accused's plea of guilty was accepted.

2. The FACTS as presented by the Prosecution and accepted by the accused were as follows:

“The accused and the deceased in the matter were living together as husband and wife. On the 18th day of April 2014, the accused and the deceased argued over mistrust. The accused was accusing the deceased of having a love affair with another man. On the material day, the two argued and the accused herein tore the clothes of the deceased and even destroyed both their phones apparently to cut out communication. The deceased went to their employer's house as she wanted to make a call. As she was making the call, the accused followed her and hit her on the right side of her neck and she fell down unconscious as she bled from the nose. The suspect tried to administer first aid to the deceased but in vain. The suspect on realizing that the deceased was not regaining consciousness took the deceased to the nearest bush and left her there while still unconscious. After sometime he went to check on the deceased and found her dead. He panicked and went to the shop and bought poison by the name diaconal and drank it. He was taken to Eldama Ravine District Hospital where he was admitted for three days. On the third day he ran away from the hospital to his aunt's place in Eldoret from where he was arrested. On the 1/5/2016, it was reported to Eldama Ravine Police Station that there was a bad smell which came from a nearby bush and upon following it up it was found that there was a decomposed body of a female unknown person. Scene was visited by the police of Eldama Ravine Police Station and the body was removed to Eldama Ravine Sub County Hospital. The body was identified by the deceased family members as that of the deceased as she had been missing for some time. Post mortem was done on the 13th of May, 2016. The doctor formed the opinion that the body was decomposed and tissues detached with skeletonization and needed collaborative history to conclude. In other words the cause of death could not be established due to decomposition. The accused was taken to court and charged with murder which has now been reduced to manslaughter. The accused person was thereafter presented before the doctor at Moi Teaching and Referral Hospital for mental assessment who confirmed that he was mentally fit to stand trial.”

3. Upon conviction of the accused on his own plea of guilty, Counsel for accused, Mr. Chepng'oswo, made the following statement in Mitigation:

We request the court to consider that the accused is a first offender. He is remorseful. We pray for lenient custodial sentence. We do not seek for a pre-sentence report.

4. The Court also examined the Accused who mitigated as follows:

I am a first born of my family of 4 members. My parents died a long time ago. I am the person who takes the place of father. I stopped school to help my mother provide for the other children.

CONCLUSION

5. I have considered the mitigation by the Counsel, the accused and the circumstances of the killing of the deceased by the accused.

6. Although the accused and the deceased were husband and wife and the accused may have been driven by his suspicion that the wife was having extra marital affair with another man, there was no extenuating circumstances that would lessen the seriousness of the guilt or support

a finding of extreme provocation within the meaning of sections 207 and 208 of the Penal Code as to justify the consideration of diminished responsibility.

7. In accordance with the principle of sentencing that calls for consideration of the accused blameworthiness (see *Omuse v. R* [2009] KLR 214), the court finds that the acts of the accused in destroying their phones to cut out communication and refusing the deceased to call for help, his disposal of the body in the bush and his subsequent flight into hiding at Eldoret from where he was arrested belies any notion of diminished blameworthiness. It would appear that the accused intended to chastise or discipline the deceased for the suspected extra-marital affair with another man. He was wholly to blame for the unintended death of the deceased as a result of his assault in trying to stop her from calling for help.

8. This court has recently sentenced offenders in similar circumstances to imprisonment for eight (8) years.

Orders

9. Accordingly, having convicted the accused on his own plea of guilty to the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, the court sentences the accused to an imprisonment term for (8) years from 18th May, 2016 the date of his remand to await trial, pursuant to section 333 (2) of the Criminal Procedure Code.

DATED AND DELIVERED THIS 2ND DAY OF MAY, 2018.

EDWARD MURIITHI

JUDGE

Appearances

Mr. Chepng'oswo, Advocate for Accused.

Ms. Macharia, Ass. DPP for the Prosecution.