



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 95 OF 2014

REPUBLIC.....PROSECUTOR

VS

PATRICK BAKARI MUTUA.....ACCUSED

JUDGMENT

The accused Patrick Bakari Mutua was charged with offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars are that Patrick Bakari Mutua on the 24th day of December 2014 at Munyone village, Makandune Sub-location in Imenti Central District (s/county) within Meru County murdered Amina Gakii.

The prosecution's case was that the deceased and accused who were cohabiting as husband and wife in Nairobi differed and the deceased decided to go back to her parents place in Munyone village where she arrived on 23rd December 2014.

When the mother of the deceased woke up from sleep the following morning on 24th December 2014 she found the accused seated on a bench within her home. That PW2 greeted the accused and served him with tea. That she left the accused with the deceased and their child while she went to fetch feed for the goat. That when she came back she told accused he could not be able to resolve their differences and the deceased called accused persons mother and reported accused had followed her. The accused persons mother pleaded with him to go back to Nairobi so the issue could be resolved after Christmas.

PW2 left alone at 1.40 pm to go for a group meeting and on return at 6.00 pm she found the daughter deceased herein had been strangled with wire and had died in the house.

PW2 said accused left with the deceased persons child after killing her. She said deceased had come from the bathroom when she was strangled.

PW2 called assistant chief as well as her daughter. PW1 and her son Morris and also raised alarm and neighbours came. PW2 said the accused used to fight with the wife for cruelty. PW2 said that after burial of the deceased she discovered accused had come to her home with a jerry can containing petrol and hid it under pumpkin leaves. It was taken by assistant chief to Karembeke police. She said she didn't find

accused at home when she returned in the evening.

PW1, the deceased person's sister received phone call from the mother – PW2 reporting that Amina Gakii had died. She said the accused was cohabiting with the deceased in Kariobangi South estate in Nairobi with their son Handy. That when accused murdered her sister and took away the child. PW1 was led by a friend to accused persons house in Kariobangi South and he was arrested by 2 police officers who accompanied him and child taken away.

Accused was detained at Buruburu police station and later escorted to Meru where he was charged. PW1 said accused and her sisters used to quarrel frequently and that he swore he would make sure she doesn't marry any other man if they separated. She said accused had threatened to throw their child who was 3 months old from apartment. She said accused had assaulted the deceased and she went and helped her go to the stage and she travelled home.

PW3 brother to the deceased said he woke up and found the accused seated on a bench near the kitchen on 24/12/2014 and he waved at him and started washing clothes. He said on the material day he was at home with PW2, Amina the deceased, handys Kioko (accused and deceased son) Lilian and James Mutuma.

He said he and Lilian went to the Market at about lunch time and left accused, Mutuma the deceased and Kioko at home. On return at 5.00 pm he heard screams at home and on reaching home he was told Amina had been murdered. That he entered the houses found the body lying on the floor on the house used by his sister as bedroom.

He reported at Kiamwi Police post and the police after contacting Mwenda called a vehicle from Kaguma Police station and the body was collected and taken to Meru Level 5 Hospital mortuary. He said the deceased had reported to him she wanted to separate from accused person. PW4 James Mutuma 6 years old child said he was at home with Kioko and Kioko's mother and accused. That Hans mother went to take a bath. That when mama Hans came from the bathroom and entered the house, accused followed her and locked the door. That he left Hans outside and went to call people. When accused entered and locked the house he said he went to call people from Zakayo's home to come separate mama Hans and accused who were fighting in the house. He said he didn't get anyone at Zakayo's home and when he went back home he found accused and Hans had gone. He also didn't see mama Hans as she had been locked inside the house. He said when deceased went to the bathroom accused removed wire used to hold gutter to the roof. He said accused used the wire to tie mama Hans neck. That he locked the house and started fighting with mama Hans. PW5 said she was going to visit her cousin the deceased and on the way she met James Mutuma who told her he left the deceased fighting with accused, when she rushed home she didn't find accused but the deceased was lying dead in the house. That she called Obadiah Muturi who also came when Gakii didn't respond and he rushed to police station.

PW6 Dr. Simon Mwangi Munyoki produced post mortem report prepared by Dr. Mohamed Noor on the body of the deceased. He said there was a wire ligature around the neck. PW7 Chief Inspector Wilfred Mwangi testified that during the murder incident in 2014 he was OCS Gaitu Police Station in Meru Central S/County. He said he got information of murder from Cpl Ledude of Kamuru police patrol base in company of P.C David Wainaina and proceeded to scene led by Cpl Ledude. He said body of the deceased was lying on its back. He said a wire used to strangle the deceased. Members of deceased family told CIP Mwangi the suspect was one Patrick Bakari who was husband to the deceased. He said deceased had arrived on 23/2/2014 and accused arrived on 24/12/2012 at 6.00 am. He said accused on interrogation told him they didn't agree on who between him and the deceased would remain with their son and a fight ensued. That accused claimed that deceased bit him on the hand and he strangled her and pushed her to the ground in order to get hold of the baby.

He also admitted he locked the deceased in the house and went to Nairobi with the baby. Accused arrested on 25/12/2014 by Administration Officers from Kariobangi South and detained at Buruburu Police station from where he was collected on 27/12/2014.

CIP Mwangi said the scene of crime officers P.C Cleophas Musinga took photographs before body was removed to the mortuary. He said the wire was removed from the deceased neck during post mortem. He said the wire was coiled tightly on the neck. He said accused claimed deceased bit his thigh but there was no bite mark on the thigh. He said here was no possibility that deceased inflicted the injuries on herself.

PW8 P.C Abraham Mbatha was at Kamuri police patrol base when report of murder was made. He booked report and visited scene. He said the deceased who lay on the floor had a bruise below the knee cap on right leg and abinding wire around the neck.

She was strangled. PW8 made phone call to Gaitu Police Station and PW 7 CIP Mwangi came to scene in company of police driver and body was collected and taken to the mortuary.

That when accused was arrested by Administration Police from Kariobangi South on 27/12/2014 CIP Mwangi PC Juma, PC David Marete and himself went to collect him after which charge was preferred.

PW8 said when they visited scene, blankets and bed sheets were scattered on the floor indicating there was struggle in the house where the body lay.

At close of prosecution case accused was placed on defence and after it was explained to him how he could defence himself he said he was not going testify.

The issue for this courts determination is whether prosecutions has proved:

- 1) Fact of death
- 2) That the death was caused by the unlawful act on omission of the accused
- 3) That the unlawful act and/or omission was actuated by accused persons malice after thought.

All the prosecution witnesses attest to the fact that the deceased died. The post mortem report conducted on 29th December 2014 given cause of death as asphysea secondary to ligature strangulation.

The accused is confirmed to have followed the deceased at her parents home. PW2 and PW3 found him at 6.00 am seated on a bench near the kitchen when they woke up. He wanted to reconcile with his wife the deceased and go back with her to Nairobi.

PW2 said she could not resolve the dispute immediately and urged him to go away as she talked to the deceased.

The deceased called the accused persons mother and told her accused had followed her to her parents home. The accused person's mother told him to go back to Nairobi and wait for the matter to be resolved after Christmas.

PW2 left accused and the deceased at her home after which as she went for a meeting but on returning the evening found she had been murdered.

The deceased person's brother also left the accused at home with the deceased and on the way back heard screams and he found his sister had been murdered and he reported to police.

PW4 6 years old James Mutuma was left at home with the deceased and accused as well their son and he recounts that his aunt the deceased had gone to the bathroom to take a bath and when she returned and entered the house, the accused who had taken abinding wire holding the gutter to the roof followed her immediately, locked the house from outside and he heard a struggle. He ran to Zakayo's home to go and call people to come separate his aunt from the accused but he didn't find anyone, on return he didn't find Hans and the accused but the house in which the accused the deceased were struggling was locked from outside.

Both circumstantial and direct evidence from James Mutuma PW4 point to the fact that the unlawful actions of accused led to the death of the deceased.

The unlawful actions were actuated with malice. He waited until only 2 minor vulnerable children were at home when he pounced on the unsuspecting wife when she was from the bathroom and with the use of abinding wire strangled her.

From evidence of CIP Mwangi PW7 and P.C Abraham Mbatha PW8 the binding wire was tight coiled around the neck of the deceased. PW4 said accused remove the binding wire used to hold gutter to the roof.

The wire was only removed during post-mortem. It cant be true as PW7 said accused told him that he strangled him in defence of himself. If it was on his defence he could not have used the binding wire. He claimed he was bitten on the thighs by the deceased but CIP Mwangi PW7 said accused had no bite mark on any of his thumbs when he was arrested.

This court therefore concludes that evidence adduced by prosecution witnesses has proved all the ingredients of the charge of murder. The court finds accused person guilty and he is convicted as per the Law under Section 215 C.P.C.

JUDGMENT SIGNED, DELIVERED AND DATED THIS 22nd DAY OF NOVEMBER 2018.

HON. A.ONG'INJO

JUDGE

In the presence:

C/A:- Kinoti

HON. A.ONG'INJO

JUDGE

22/11/2018

Before Hon. Adwera Onginjo, Judge

Kinoti – C/A

Miss Mwathi for State

Mr Nyenyire Advocate for accused

Accused – present in person

Mr. Nyenyire Adv – We had filed an application dated 2/11/2018 which should be considered accused wishes to defend himself.

Accused – I pray that the ruling be read to me because I was confused on the date ruling was read. I also want the court to reinstate my bond even with condition.

Court - The accused should confirm if he would wish to give defence.

Accused – I want to be supplied with copy of proceedings so I can prepare myself and defend myself.
One month will be sufficient for me.

Order – in the circumstances of accused persons plea, his defence is re-opened and judgment deferred to enable him defend himself. Defence hearing on 5/12/2018 at 12.00 noon. Application for reinstatement of bond to be heard within 7 days. Photocopies of proceedings to be supplied to the accused person.

HON. A.ONG'INJO

JUDGE

22/11/2018

Court – It is now confirmed photocopies of proceedings have been supplied to accused.

HON. A.ONG'INJO

JUDGE

22/11/2018