



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 28 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

JOSPCHAT KIPKURUI RONO.....ACCUSED

RULING ON SENTENCE

1. The accused, Josphat Kipkurui Rono, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 23rd day of October 2017 he murdered Paul Kipkemoi Rono.
2. The accused pleaded not guilty to the offence and the case was scheduled for trial. However, pursuant to a plea agreement dated 24th October 2018 between the accused and the state, he pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The state indicated that the accused is a first offender.
3. The facts of the case as presented by Learned Prosecution Counsel, Mr. Ayodo, are that on 23rd of October 2017 at around 2100 hours within Chepnagai village, Koiwalelach Sub-location Chemamul Location within Belgut Sub-county, one Charles Kiprono Rono was at his homestead when his younger brother, the accused, came in while drunk and armed with a club, a rungu. The accused confronted Charles, but Charles ran away. While the accused was pursuing Charles while still holding the rungu, another, older, brother, Paul, the deceased, was passing by and the accused person mistakenly hit his brother Paul on the forehead using the rungu. Paul sustained serious injuries on the head, and he fell down. On noticing that the deceased was injured, the accused person ran away leaving his brother at the scene.
4. Members of the public responded to the distress call which was raised by the wife of the deceased's brother, one Gladys Rono. They rushed the deceased to Sigowet Sub-county hospital where he was treated and referred to Litein AIC Mission Hospital in serious condition. The deceased passed away on 29th October 2017 at around 0300 hours (3.00 a.m.) while undergoing treatment.
5. A post mortem conducted on the body of the deceased by Dr. W. Rotich at the Litein AIC Mission Hospital revealed the cause of death as severe head injury due to trauma to the head caused by a blunt object. The post mortem was produced as exhibit 1.
6. A report was made to Sosiot Police Station about the incident and the OCS, Sosiot Police Station, Chief Inspector Paul Njuguna, visited the scene. A rungu was recovered from the scene, while the accused was arrested at Kapsomboch Sub-location, where he had gone to hide, by the area assistant chief, Andrew K. Byegon. He was escorted to Sosiot Police Station and subsequently charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The charge has now been reduced to the offence of manslaughter contrary to section 202 as read with section 205 pursuant to the plea agreement.
7. The state indicated that it had no records in respect of the accused, and he could be treated as a first offender.
8. In mitigation on behalf of the accused, Mr. Koske submitted that he was a young man of 22 years, unmarried, and a first year student at Kiptere Polytechnic pursuing a course in carpentry. He was a first offender, was remorseful, apologised for the offence and was seeking leniency from the court. He had been in custody for 11 months and has reflected on his life and changed his character of drinking illicit alcohol and embraced Christianity. He was asking for a non-custodial sentence so that he can continue with his education.
9. I have considered the facts of this case and the mitigation offered on behalf of the accused. I have also noted the contents of the social inquiry report. From the facts read to the court, the accused was pursuing his elder brother, Charles, with a rungu. His elder brother ran away, but the accused's other brother, Paul, was not so lucky. He happened to cross the accused's path, and the accused hit him with the rungu with which he was intent on hitting his elder brother on the forehead. The facts read by the State Counsel to which the accused pleaded guilty are that the accused 'mistakenly hit his brother on the forehead' using the rungu that he had been chasing his older brother with. It is difficult not to ask the question: how does one 'mistakenly' hit another with a rungu on the forehead?
10. In the social inquiry report filed in court on 20th November 2018, the Probation Officer, Kericho, notes that there was tension between

the accused and his brother, Charles, over suspicion that the accused and Charles' wife were having an affair. The accused had had a confrontation with Charles at 10.00 a.m., 2.00 p.m. and 8.00 p.m. of the material day. The two had been separated, and the deceased and Charles had gone to drink. The deceased had decided to go home early and left Charles drinking. It emerges from the social inquiry report that the accused had lain in ambush for Charles, and when the deceased appeared, hit him on the forehead, thinking it was Charles.

11. I appreciate that the accused has pleaded guilty to the offence of manslaughter, and has thereby saved the time and expense that it would have taken to put him on trial. I note, however, that the accused was chasing his elder brother, Charles, with the rungu with which he hit his other older brother, Paul, the deceased. His actions demonstrated an intention to cause serious harm, if not death, to his older brother, Charles. The fact that it was his brother Paul that he ended up killing does not thereby excuse his actions. To borrow the words used in section 206 of the Penal Code, the accused had the intention to cause the death of or to do grievous harm to his brother Charles, but he ended up killing his brother Paul. That really, amounts to malice aforethought.

12. In the circumstances, it is my view that a custodial sentence is merited in this case. The accused needs to pay his debt to society for the pointless death of his innocent brother, whom he killed while engaged in the pursuit of causing harm to yet another brother.

13. I accordingly sentence him to a term of imprisonment for 20 years. He has a right of appeal against sentence within 14 days of today.

Dated Delivered and Signed at Kericho this 21st day of November 2018.

MUMBI NGUGI

JUDGE

In the presence of:

Nelson Kenei, Court Assistant

Ms Keli- For the director of Public Prosecution

Mr. Koskei- For the accused