



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 39 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

BEN KHISA.....ACCUSED

J U D G M E N T

1. The accused was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The facts are that **on the 23rd day of July 2004 at Machewa location within Trans Nzoia County murdered Jane Namukuru**.

2. The accused denied the charge and the prosecution called a total of 5 witnesses whose evidence can be summarised as follows.

PW1 Emmanuel Barasa Khisa is son to the accused. He said that while asleep at around 3.00am on 24/7/2014 he was called by his younger brother Wafula and told that their parents were fighting.. He rushed to the scene and found the accused sitted outside the veranda. The deceased was lying down on the floor with an injury on the chest. She was not responding. She decided to go and call his uncle Cornelius Barasa. They then called the police who came and arrested the accused.

3. **PW2 Erick Wafula** was the son to the deceased and the accused. He said that he was sleeping in the kitchen on 23/7/2014. At around 9.00 pm he heard screams emanating from his parents house. He went to check and he saw the accused assaulting the deceased using a stick. Although it was dark, he was able to see. The deceased told her to go and sleep.

4. At around 2.00 am the accused came asking him for water which he did and he continued sleeping. He again went back and told him to call PW1. When he arrived, he found the deceased had died.

5. **PW3 Simon Arupe Naroke** is a neighbour to the accused. He said that he purchased land from him. He said that on 23/7/2014 one Amos flashed his phone. He went outside and he heard screams emanating from the deceased's house.

He rushed there and found the accused beating the deceased using a stick. He came outside and promised not to beat her again. He gave the stick to the witness. The witness went back to his house but the accused continued assaulting the deceased. The witness did not go back as his wife told him not to. The following morning they found that the deceased had died.

6. **PW4 Dr. Kagundi Blastus** produced the postmortem report prepared by Dr. Odhiambo which showed the injuries that caused the death of the deceased as severe head injury caused by blunt object.

7. When put on his defence the accused gave unsworn evidence denying the charge. He explained how the deceased had gone to drink alcohol and when she came back she was unable to walk but was crawling and falling down. He said that the deceased asked her for water and continued to sleep. Later in the morning he found that she had died.

Analysis and Determination

8. The court has carefully read the evidence herein as well as the submissions by the learned State counsel. What is not disputed was the relationship between the deceased and the accused namely husband and wife.

9. Secondly, the place of death was their house. The deceased died in any case in the presence of the accused.

10. Did the accused assault the deceased and thus caused fatal injuries? The evidence of all the prosecution witnesses points to this. The accused 2 sons witnessed the incident. The neighbour PW3 attempted to stop him that night. Clearly I do not find any reason least of all from the accused defence to suggest that the deceased died out of other injuries. His children and neighbours testified to this. Even though it was night, there was no suggestion that at the time the deceased arrived from her drinking spree if the accused is to be believed, she had

sustained any injuries as a result of the falling. Neither is there any evidence to suggest that there was someone else beside the accused and the deceased in their home that night.

11. Needless to state that the post mortem report squarely and clearly showed that the deceased sustained severe injuries secondary to blunt objects.

12. In a nutshell, I place the accused squarely within the scene of the incident. Although the stick used to beat her was not produced, nevertheless the autopsy report is conclusive.

13. There was malice aforethought on the part of the accused. He knew or ought to have known that the injuries he was inflicting on his wife were serious and could be fatal.

14. I find the accused guilty as provided under Section 203 of the penal code. He murdered his wife, the deceased herein. The prosecution proved its case beyond any shadow of doubt.

15. He is thus convicted appropriately under the aforesaid section.

Delivered, signed and dated at Kitale this 9th day of November, 2018.

H.K. CHEMITEI

JUDGE

9/11/18

In the presence of:

Mr Kakoi for the State

Mr. Abari holding brief for Mr Nyamu for Accused

Accused - present

Court Assistant – Kirong

Judgment read in open court.