



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 35 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

JKM.....ACCUSED

JUDGMENT

The accused JK was charged with offence of murder C/s 203 as read with S.204 of the penal code.

Particulars are that on the 8th day of March 2009 at Thangatha Location in Tigania District within Eastern province the accused JK murdered NMA.

The evidence on record is that PW1 saw the accused who was armed with apanga chase her 5 years old child into her home. When she inquired why he was chasing him he didn't respond but just turned and walked out of the compound.

Shortly thereafter PW1 heard the deceased herein scream. The deceased had been fetching firewood along the fence to PW1's home. On rushing to scene she found the accused had attacked the deceased with the panga. That he cut the deceased at the back of the neck and hand with a panga.

That when PW1 raised alarm the accused person herein ran away. PW1 said members of public responded to the alarm and matter was reported to the village elder, wife who they found at home. PW1 said she knew accused who comes from neighbouring village.

PW1 said she didn't see the deceased with any panga as she was fetching firewood. She said she was classmates with accused who proceeded to class 8 while she dropped in STD 5. She said accused was healthy and performed well in school but later she heard rumours that he became insane after Std 8.

She said accused had planted miraa in a distant village but on material day she didn't see anyone snatch any miraa from the accused or anyone else. She said the deceased was an old woman who could not grab the accused.

Report of assault was made to PW2 who was then Assistant Area Manager (Village Elder) of a village in Ngoto sub location whereas the deceased came from neighbouring viillage. Those who reported wanted him to assist in tracing their viillage sub area. He said he visited the home of the deceased at 10.00 p.m and found she had cuts on left side of the body which was bandage. He said the deceased had 4 cuts on the left side of the head and 3 cuts on the left head.

PW2 reported matter to Assistant Chief who took over investigations arrested suspect and took him to chief's office and later police stations.

PW3 arrested the accused person on instructions of the Assistant chief. He said the accused person's father had tied him on the legs and hands together to restrain him and they took him to AP camp. He said accused persons father and one M accompanied him to AP camp.

That they were also with the deceased and they were referred to Mikindiru Police station where he was placed in cells whereas the deceased was taken to hospital where she died while undergoing treatment.

PW3 said he was not aware accused had sustained a cut on the head. He said he was not aware accused was on medication for injuries on the head. PW3 said the accused person's father informed him that accused had cut Ncilambu and he wanted to take him to AP camp. He said accused persons father, brother and uncle accompanied him to the AP camp. PW4 identified body of the deceased for purposes of autopsy on 24th March 2009 at Meru General Hospital Mortuary.

PW5 the son to deceased got information on 8.3.2009 at 10.00 pm that accused had cut his mother. He proceeded home on 9.3.2009 and took the mother to hospital. He said when he arrived home he went to accused persons home and found the father DW23 had tied him as he

also wanted to cut the father.

By a report of Dr Thure J.N Consultant Psychiatrist dated 29th October 2014, it was concluded that accused JKM had a mental illness and he required treatment in a maximum security hospital – Mathari Hospital. He is not mentally fit to stand trial.

Dr. Wamukhoma by a certificate dated 10.6.2015 said accused who had been committed to Mathari hospital had become capable of making his defence and he requested that directions under s.163 (2).

Subsequently by a letter dated 6th July 2015 the ODPP informed the court pursuant to section 163(2) CPC that it was their intention to proceed against the accused. By a letter dated 12.5.2016 Dr. Mwikamba after examining the accused following court order established that again he was not fit to plead and he required admission to a mental institutions.

Accused was again admitted at Mathari Hospital and on examination found not fit to take plea as per Report of Dr Mucheru dated 11th May 2017.

As such I find that the accused person is guilty of the offence but insane. That pursuant to section 166(2) of the C.P.C the cabinet secretary should report this case to the President for an order of commitment of accused in a suitable place of custody under S.166 (3) C.P.C.

HON. A.ONG'INJO

JUDGE

08.11.2018

Before Adwera – Ong'injo J

C/A:- Kinoti

Mrs Ntarangwi Advocate for accused

Mrs Mwathi for state

Accused – Present in person

Court

RULING DELIVERED, DATED SIGNED AND THIS 8TH DAY OF NOVEMBER 2018

HON. A.ONG'INJO

JUDGE