



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 49 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JONATHAN KIPRUTO KIMAYO.....ACCUSED

JUDGMENT

The accused herein was charged with the offence of **Murder Contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence were that on the **11th day of October 2014 at Top Suwerwa Sub Location Cherengany within Trans Nzoia County murdered Rosemary Jebet Kimaiyo**.

The accused denied the offence and the prosecution called several witnesses to prove its case. Their evidence can be summarised as hereunder;

PW1 Mercy Chemutai is the deceased daughter. She testified that on the material day 11/10/2014 at around 10.30 am she was from grazing cattle with one Marko Apolonyi when the accused came asking for the deceased. By then the deceased had come from the farm and the accused arrived with a panga and attacked the deceased. She tried to run but fell down. The accused proceeded to cut her all over the body. The said witness screamed while running away and despite being chased by the accused she managed to escape. The neighbours then came to the scene but unfortunately the deceased had sustained serious cut injuries and she bled to death. PW1 and the accused are cousins.

PW2 Marko Apolonyi Abalgamora an elderly witness testified that he was herding cattle on that material day together with PW1.

As PW1 left to get tea leaves she heard her scream and she saw the accused run towards the deceased and she heard her scream also. When he reached where she was he saw the accused cutting her all over. On cross-examination he testified that although there was maize all around he could still see the accused assaulting the deceased.

PW3 Edwin Suter Kiprotich the Chief Kiptoror location received a phone call from one Charles Kibor concerning the incident.

He called the OCS Cherangany who sent police officers to the scene where they found the body in a pool of blood and took it to the mortuary. On 12/10/2014 the accused surrendered himself at the police station. He also showed them where he had hidden the panga.

PW4 Dr Godfrey Obara Wamukoya produced the post mortem form on behalf of Dr Edward Odhiambo who after carrying out the exercise concluded that the deceased had died as a result of severe

head injury with severe haemorage from the cut wounds.

PW5 PC Kimeli Kipkemboi Nicholas testified that after receiving a call at around 10.00 am on 11/10/2014 he went to the scene together with the area chief. They found the body lying 20 metres from the homestead and blood was still oozing from the head. It had other multiple cut injuries. They then took the body to Kitale Mortuary. They later received a report from OCS Kapcherop that the accused had surrendered himself. Upon interrogation he told them where the panga was and they went to Kiptoror river where they recovered. He produced the panga as an exhibit.

When put on his defence the accused gave unsworn evidence. He said that on 11/10/2014 he was from Kibigos at around 5 pm where he had gone to work. He met some people on a motorbike who inquired where he was as the members of the public were looking for him concerning the death of the deceased. He became afraid and he surrendered himself to the police. He that he was shocked concerning the deceased death.

Analysis and Determination

Having heard the parties herein and upon perusing the submissions by both counsels for the state and the accused it is instructive to note that the offence of Murder to be proved one has to establish that there was malice aforethought pursuant to the provisions of Section 206 of the Penal Code which states that;

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

a) an intent to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

b) finding that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

c) an intention to commit a felony;

d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

In the instant case the crucial evidence is that of PW1 and PW2. Both of them testified that they were at the scene. The incident took place at around 10 am. The accused was a cousin to PW1 a fact which was not denied by the accused. After assaulting the deceased he managed to escape. Her distress call attracted the attention of the neighbours.

PW2 on the other hand was present at the scene and he testified seeing the accused cutting the deceased. The accused was a person well known to him.

The weapon used, panga, was recovered by PW3 after the accused disclosing where he had dropped. This fact was never controverted even during cross-examination. The doctors postmortem report confirmed that the cause of death was severe bleeding as a result of the deep cuts.

The defence by the accused boards on alibi. The same however was not tested on cross-examination. He did not infact explain himself where he was on the material day.

In the premises I am fully persuaded that the accused planned to kill the deceased. Infact during cross-examination it emerged that the accused believed that it was the deceased who had bewitched her mother who had died before and thus he must have been on a revenge mission.

I do in the premises find that there was malice afterthought as proved by the accused's action. The prosecution proved its case beyond reasonable doubt and I shall proceed to convict the accused with the offence of Murder as charged under the provisions of Section 203 of the Penal Code.

Delivered this 21st day of February, 2017.

H.K. CHEMITEI

JUDGE

In the presence of;

Kakoi for state

Accused - present

Kirong – Court Assistant