



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. 18 OF 2016

REPUBLICPROSECUTOR

-VERSUS-

GEOFREY CHERUIYOT KIPRONO.....1ST ACCUSED

MARY MATEB CHEPKWONY.....2ND ACCUSED

JUDGMENT

The two Accused persons herein above mentioned are charged with the offence of murder C/S 203 as read with Section 204 of the penal code.

The particulars are that on the 1st day of August 2016 at Kipsinende village, Bosto sub location in Konoin sub county, within Bomet County, jointly, murdered Richard Metet.

The prosecution called ten witnesses on support of their case. The two accused persons gave unsworn statements and did not call any other witnesses in support of their case.

Brief facts

The 1st and 2nd accused are a son and mother respectively. The deceased was a member of "Nyumba Kumi". (A local village vigilante group which helps the local administration in the maintenance of law and order).

This group was under the leadership of Henry Rono (PW1) the assistant chief of Bosto sub location.

Henry Rono (PW1) testified that on the 31st day of July 2017 while at Bosto trading centre he got information that there was illicit traditional liquor belonging to the 1st accused which he had hidden in some tea bushes not far from his house. While in the company of a nyumba kumi member called Augustine (PW3) they proceeded to the home of the 1st Accused. On the way and before reaching the home of the accused they met with the mother (2nd Accused).

They had already recovered two litres of illicit liquor which was packed in polythene papers. The 2nd accused tried to get hold of the liquor. She had on her hands a plate of food which she threw on the face of the assistant chief. She picked dust from the ground and threw it on his face too and burst into screams. The 1st Accused emerged while armed with a panga and started chasing one Nicholas Bett (PW5) with it. They regrouped at his office and they made arrangements of how they were to arrest the 1st accused for the offences of creating disturbance among others. They communicated with the area chief and the Assistant County Commissioner.

The following day (1st August 2016) the assistant chief Henry Rono (PW1) assembled members of Nyumba Kumi, who included the deceased Richard Matet and early in the morning they proceeded to the home of the 1st Accused, when the 1st accused saw them he entered into his house and came out while armed with a panga. The 2nd accused emerged while armed with a piece of timber. She joined the 1st Accused and rushed towards the deceased while screaming.

She proceeded to hit the deceased who fell on the ground. The 1st Accused joined her and proceeded to cut the deceased with a panga. The attackers chased the assistant chief and the Nyumba Kumi members.

PW1 called the chief and informed her that one of his members had been seriously injured and needed medical attention. He also called another assistant chief and requested for help in arresting the first Accused who had escaped.

The Deceased was taken to Hospital by the area chief. The matter was reported to the area police who visited the scene and took some items therein as exhibits.

In his defence the 1st Accused testified that he heard screams while inside his house. His mother was outside milking the cows. He went outside to check what was happening. He saw a huge crowd of people.

The Deceased was lying on the ground. Upon inquiring as to what had happened he was informed that he was beaten. The Deceased was taken to hospital. Later while he was at the river where he had taken the cows to drink water he was arrested by the area chief and was tied with ropes and taken to Mogogosiek police station.

The Accused denied having murdered the deceased and stated that the witnesses who testified against him bore a grudge against him over a land dispute.

The 2nd Accused testified that on the 1st day of August she woke up and went to get milk from a neighbour. Upon return she found a crowd gathered near her farm. She saw the victim lying on the ground. Later he was taken away for treatment at Longisa Hospital.

Later the area chief went and arrested her. They picked a piece of timber and a stone. It was alleged that she was dealing with illicit liquor.

The offence of murder is defined under S. 203 of the penal code thus:- “Any person who of malice aforethought causes death of another person by an unlawful act or omission its guilty of murder.

Malice aforethought which constitutes the ingredients of the offence of murder is defined under S. 206 of the penal code in the following words:- “Malice aforethought shall be deemed to be established by evidence proving anyone or more of the following circumstances.;

- a. An intention to cause the death of to do grievous harm to any person in whether that person is the person actually killed or not.
- b. Knowing that the act of 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 harm is caused or not , or by a wish that it may not be caused.
- c. An intention to commit a felony.
- d.

There are two set of incidents which comprise the offence of murder on this case. The first one was the receipt of information that the 1st Accused was hiding illicit liquor in his farm and the subsequent recovery and confrontation between the area assistant chief (PW1) while in the company of Numba Kumi members and the two Accused persons. This was on the eve of 1st August 2016. On the first incident the first Accused was armed with a panga and he chased the law confronters away.

The 2nd incident is the day of the murder i.e 1/8/2016. It is the prosecution case that the Deceased was hit by the 2nd Accused with a piece of timber (which was produced in court as a exhibit) and he fell down.

The first Accused pounced on the Deceased and cut him severally with the panga while injury on the ground and he proceeded to chase away the area Assistant Chief, chief and his Nyumba Kumi people”

Post mortem examination was performed by Dr. Mutai (PW9) at Longisa District Hospital. His observations were that the body had multiple cut wound on the posterior cervical region measuring 13 cm long, left temporal region measuring 19 cm long left anterior cervical region 13 cm long, small cut wound frontal region 3 cm long, cut wound on left leg.

There was a left superficial and deep cut on the jugular and carotid arteries.

A deep cut wound on the temporal region exposing white matter. There was a fracture of the cervical column at C5 and C6.

Dislocation of the cervical cord at C5 and C6.

From the above doctors findings it is abundantly clear that there were numerous cut wounds at the head severing the jugular and carotid arteries and exposing white matter on the left temporal region. The person or persons who inflicted such wounds had only one intention in mind, to cause grievous harm or to cause death.

There is evidence from PW1 (Henry Rono) PW2 (John Chirchir), PW3 (Augustine Chepkwony), PW 4 (Michael Koech), PW 5 (Nicholas Bett) to the effect that they saw the 1st and 2nd Accused inflict the fatal blows on the Deceased on the 1st 8.2016 while at their homestead and while resisting arrest. In murder weapons, a piece of timber (p. exhibit 1) and a panga (P. exhibit No. 4) were identified by the witnesses and produced in court as exhibits in support of the prosecution case.

The incident took place in the morning and hence there was enough and adequate light to enable identification of the attackers.

I have gone through the evidence of the defence. There is no dispute that the Deceased was attacked near their homestead but they both deny having known who the attackers were. However, the prosecution case is that it's the two Accused persons who had police to the recovery of the murder weapons.

I am satisfied that the prosecution did prove their case beyond reasonable doubt. The two Accused persons are found guilty of the offence of murder C/S 203 of the penal code and they are convicted accordingly under S. 322 of the CPC.

Judgment delivered dated and signed in open court this 10th day of May 2017 in the presence of learned counsel for the prosecution M.S Kiptoo learned counsel for the defence Mr. Koech for the appellant. Court assistant Mercy.

M. MUYA

JUDGE

11/5/17

Ms Kiptoo – We do not have their previous records. They may be treated as first offenders.

M. MUYA

JUDGE

11/5/17