



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 91 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

DENNIS NYAMOTE MAANGU.....ACCUSED

JUDGMENT

1. The charge facing the accused, **Dennis Nyamote Maangu**, is that of murder, contrary to S. 203 read with S. 204 of the Penal Code, in that on the 10th August 2013 at Bomariba Sub-location Kisii South within Kisii County, murdered Jared Orero Oboye.

2. The case for the prosecution was that on the material date the deceased was at a liquor drinking den when he was fatally stabbed on the neck with a knife just as he was about to step out to purchase cigarettes. His assailant escaped from the scene when villagers arrived there and threatened to set houses on fire.

3. Police officers arrived at the scene and contained the crowd of villagers prior to removing the dead body of the deceased to the mortuary.

A post mortem was later carried out and a report (P.Ex 1) compiled by a doctor showed that the deceased died from cardiorespiratory arrest due to massive internal bleeding following a stab wound on the neck.

4. The accused who was identified as the assailant was eventually arrested and charged with the present offence. His defence was a denial and an indication that his arrest was prompted by a land dispute between his family and that of the deceased and especially after a fracas involving himself and members of the local community policing group occurred on the 11th August 2013. He contended that he does not take alcohol and did not know how the deceased died while at a traditional liquor drinking joint.

5. From the evidence, it was undisputed that the deceased died immediately after being assaulted with a knife or a sharp object. The autopsy report proved that he suffered fatal injury.

6. Under S.206 of the penal code, malice aforethought shall be deemed to be established where there is an intention to cause the death of or to do grievous harm to any person.

Herein, the degree of injury inflicted upon the deceased right on the neck was a clear indication that the assailant had the intention to kill or cause him grievous harm.

7. The identity of the accused as the assailant and therefore the murderer of the deceased was the only crucial issue for determination in this case.

Although the accused denied responsibility for the offence and implied that he was charged without good cause, there was strong evidence from Evans Nyamecho Machuki (PW 1) and Jacob Machuka Okeyo (PW 2) indicating otherwise.

8. Both these witnesses were well known to both the accused and the deceased. In fact, all the four of them are cousins.

Evans (PW 1) and Jacob (PW 2) were actually with the deceased when he was fatally stabbed on that material date and time. Both testified firmly that the deceased was assaulted and fatally injured by the accused.

9. Evans indicated that they were at the liquor drinking den when the accused appeared from the kitchen and assaulted the deceased by stabbing him three times on the neck.

Jacob indicated that he was conversing with the deceased when the accused appeared and slapped him (Jacob) several times. The deceased intervened and questioned the accused over his act but he (accused) reacted by drawing out a knife and stabbing the deceased.

10. Apparently, both Evans and Jacob were not consistent on the circumstances under which the deceased was confronted and assaulted by the accused. However, both witnesses were consistent and firm that the accused and no other person was the assailant. Their evidence in that regard was cogent and credible.

11. The other witnesses such as Joseph Toile Ombati (PW 3) and the Assistant Chief Benjamin Ayuma Opanga (PW 4), arrived at the scene after the fact but were informed that the deceased's assailant was the accused who had already escaped from the scene.

12. IP Aloysius Mutheu (PW 5), and his team arrived at the scene and found a large crowd of villagers being contained by the assistant chief and his team after causing chaos and burning houses. He (PW 5) viewed the dead body of the deceased and noticed an injury on the throat. The body was thereafter removed to the mortuary.

13. As a whole, the evidence by the prosecution clearly disproved the accused's defence and rendered it an afterthought. It credibly showed that the accused was not arrested and charged out of malice or due to a land dispute between his family and that of the deceased but due to his involvement in unlawfully assaulting the deceased and causing him fatal injury.

14. In sum, the prosecution case against the accused was proved beyond any reasonable doubt for this court to now enter a verdict of guilty as charged and convict the accused accordingly.

[Delivered and signed this 4th day of May 2017]

J.R. KARANJAH

JUDGE

In the presence of

CC Mohe/Dorothy

State Counsel – Mr. Otieno

Mr. Okenye for accused

State Counsel: Accused may be treated as a first offender.

J.R. Karanjah , Judge

Mitigation by Mr. Okenye: The incident occurred during a drinking spree. Accused is a casual worker.

J.R. Karanjah , Judge

Court: Accused is a first offender. Mitigation noted.

J.R. Karanjah , Judge

Sentence: Accused shall suffer death as prescribed by the Law.

J.R. Karanjah , Judge

4/5/17