



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIIAYA
CRIMINAL CASE NO. 49 OF 2015
(CORAM: J. A. MAKAU – J.)
REPUBLIC
VERSUS
CAROLY OWINO OLUOCH
SENTENCE

[1] The accused person herein **CAROLY OWINO OLUOCH** was initially charged with the offence of **Murder contrary to Section 203 as read with Section 204, of the Penal Code.**

[2] That before the hearing of the Murder case the Prosecution reduced the charge from Murder to **Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code (Cap 63) Laws of Kenya.** The particulars of the offence are that on the 25th day of April 2015 at Rangala Sub-Location, Ugunja sub-county within Siaya County the accused unlawfully killed **CHARLES OKUMU ADERO.**

[3] That upon the substance of the charge and every element that being read and explained to the accused in Kiswahili language which he understands, the accused pleaded guilty to the charge and a plea of guilty was entered.

[4] The prosecution gave the facts of the case as follows:- That on 25th April 2015 at midnight the accused and the deceased together with others were keeping vigil at the funeral of one Tobias Mugere, where the accused and others were preparing the grave while the deceased was seated at a distance from the grave. That the accused and others were taking alcohol as they prepared the grave when the deceased approached the accused and questioned the accused why he was behaving in the manner he was, thus shouting as they were drinking. That an argument ensued between the two, the accused picked a spade and hit the deceased on the head twice. That immediately after the incident there was no sign of any discomfort as the deceased asked the accused why he hit him. That after a few minutes one of the villager Martin Odhiambo escorted the deceased home and left him with his wife. That in the morning of 20th April 2015 the deceased was taken to Ambira Sub-District Hospital from where he was referred to Kisumu Jaramogi Oginga Odinga Hospital for further treatment on 27th April 2015. The deceased herein passed on, on 6th May 2015, postmortem was done by Dr. Omondi. The postmortem Report was produced as exhibit P1. The cause of death was indicated to be severe head injury secondary to blunt force trauma. Later the accused surrendered himself to Ugunja Police Station. He was arrested and charged with the offence of Murder which has now been reduced to manslaughter as there were several engagement and disagreement between the deceased and the accused which led to the accused taking the unlawful action which resulted into the death of the deceased.

[5] On the accused being asked his response on the facts, he admitted all facts were true. The court accordingly convicted the accused on his own plea of guilty to the offence of manslaughter.

[6] Mr. E. Ombati Learned State Counsel submitted that the deceased left a widow and three (3) minors, aged 9, 7 and 5 years. That the parents of the deceased are all dead and his surviving brother has since 2012 never gone back home. That the widow is a small scale business woman within her village. That the family of the accused has promised and have taken up the burden of educating the three children of the deceased and have already taken up Education Insurance cover for the deceased's three children which would see the minors proceed on with their education through to secondary school without any difficulties. The insurance cover is taken through the Old Mutual and the amount due is already fully paid into the account of the widow and as such there is no risk at all on part of the deal (The State Counsel furnished court with supportive documents).

[7] In mitigation Mr. Ingosi Learned Advocate for the accused urged that the accused is remorseful and that the deceased death was accidental. He urged in North Nyanza as at the time of digging graves it is customary for grave diggers to be supplied with alcohol and a chicken and that explains why grave diggers were taking alcohol at the time of preparing the grave. That the alcohol influenced the accused subsequent action of killing the deceased. That the accused and the deceased had disagreed. That the accused took himself to Ugunja Police Station. That the gesture of the family of the deceased is done in good faith. Mr. Ingosi prayed for non-custodial sentence urging the accused is 26 years old. He also urged the documents produced by State Counsel show that the widow is also catered for.

[8] The Probation Officer report filed in court on 15.8.2016 reveal that the accused behavior was occasioned by his indulgence in alcoholic drink taken while the grave diggers were enjoying alcohol supplied to them according to custom when grave diggers are at work. The report further States the circumstances surrounding the crime in question are that both the accused and the deceased were reported to have been drunk and that the deceased was the aggressor as he approached the accused and enquired from him why he was shouting while drunk. I have further taken into account the fact that the family of the accused have taken the burden of educating the three minor children of the deceased upto the secondary school, taken an Insurance Cover with a reputable company M/s. Old Mutual and all money for the insurance paid upfront and is in the account of the widow. That the agreement also caters for the wife of the deceased herein. I have also taken into account that the Probation Officer's, report filed by the Probation Office support the accused being granted a non-custodial sentence. I have noted accused is a young man. I have also taken into consideration that the accused is remorseful and after commission of the offence he did not abscond but took himself to the Police however, an innocent life was lost and the widow lost her dear husband and the children their beloved father. I have taken into account that the accused has been in custody for the last 1 year and 6 months. He must have learned that crime does not pay during the period of incarceration.

[9] Accordingly and taking into account the fact that the accused has been in custody for 1 ½ years, the good gesture extended to the family of the deceased, I find due to seriousness of the offence and the use of excessive force towards the deceased resulted into untimely and sudden death and as such I find a custodial sentence would be proper. I have taken the period of 1 ½ years accused has been in custody and I therefore sentence the accused to serve ten (10) years imprisonment.

DATED AND SIGNED AT SIAYA THIS 6TH DAY OF OCTOBER, 2016.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT

IN THE PRESENCE OF:

MR. INGOSI FOR THE ACCUSED

MR. OMBATI FOR STATE

C.C. K. ODHIAMBO

L. ATIKA

J. A. MAKAU

JUDGE