REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 10 OF 2012

REPUBLIC .....PROSECUTOR

VERSUS

CATHERINE MUTHONI MUREITHI.....ACCUSED

J U D G M E N T

CATHERINE MUTHONI MUREITHI the accused herein stands charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that the accused on the 3rd day of March 2012 at Kiritiri market, Kianjiru location of Mbeere South District within Embu County murdered David Nthiga Njiru.

The case of the prosecution is premised on the evidence of seven (7) witnesses. The fact of death is not in dispute. The cause of death as found by Dr. Ngari whose evidence was given by Dr. G. Njuki Njiru – PW6 was internal bleeding due to an abdominal injury. She found the deceased's body to have a penetrating abdominal injury with protruding intestines and massive bleeding in the abdominal cavity. He also had an injury to the spleen with perforated large intestines.

PW4 – Ndaru Gatiti a watchman at Kiritiri said he had on 29th February 2012 at 9pm been sent by the accused to the deceased's father to ask him to warn the deceased against coming to her house as she would kill him. He further said she had already bought a panga and knife for the purpose.

PW2 Michael Njiru Muchira who is the deceased's father confirmed receiving the report on 2nd March 2012 at 9pm but did nothing about it as he was working that night. At around 4pm on 3rd March 2012 he received a report about the death of the son.

PW5 – Carolyne Ekamba Muturi testified that on 3rd March 2012 at 4pm she had gone to fetch water when she saw the accused and deceased walking together. The accused was holding a knife while the deceased was holding himself near the stomach. The accused took a stone and hit the deceased on the back and he fell down. He rose up and walked abit. He then fell on his back and started shaking his head. She thought the deceased was sick so she ran to pick her phone to call his brothers. On her return she found Police Officers there and the deceased was already dead.

PW1 – Dr. Joseph Thuo found the accused to be mentally fit to stand trial. PW3 Lawrence Kinyua Muthuri a Government Analyst examined some cement pebbles which had slight blood stains. He also profiled the blood of the deceased and found his blood to match that on the cement cables.

The prosecution case also confirms that the accused and deceased were in some kind of intimate relationship . PW7 – Cpl Magiri Baabu who was the investigating officer but having taken over the matter from the OCS Kiritiri said the accused was suspected of killing the husband by stabbing him on the stomach. She surrendered herself to the Administration Police and was handed over to the OCS Kiritiri. He picked some cement pebbles from the Government analyst and produced them as EXB4.

The accused gave a sworn statement in her defence. She denied the charges saying she knew the deceased as her husband but they had temporarily separated for personal reasons. She said on 2nd March 2012 she was at her uncle's place at Makima. The uncle is Francis Njuki. On 3rd March she rushed to Embu to buy clothes for sale. She produced two receipts (DEXB1a and b). She then went back to Makima as she was assisting her uncle's wife prepare for guests.

On 4th March 2012 at 3pm she left for Kiritiri. While at Makima market she met Mzee Kivonge (a village elder) who told her she was needed at the Police Post. She went with her cousin and found two Administration Police Officers. Later she was placed in the cells. She denied sending PW4 with any message. She further said that PW5 lied to the Court and the two had collided over business.

M/s Muthoni for the accused submitted that the prosecution had not proved its case against the accused. She asked the Court not to believe the evidence of PW4 and PW5 but that of the accused. She dismissed PW5 for not being an eye witness.

M/s Ing'ahizu the learned State Counsel submitted that the prosecution witnesses were credible and believable witnesses, and that malice aforethought had been proved by the prosecution.

As already pointed out above the fact of death and the cause of death are not disputed. The issue to be established is who killed the deceased. Section 203 PC defines murder as;

"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder".

Murder may be proved by the establishment of two main ingredients which are;

Malice aforethought (Mens rea)
Act of killing (actus rens)

The prosecution has tried to connect the deceased's killing through the evidence of PW4, PW2 and PW5. It is the evidence of PW4 that he had on 29th February 2012 at 9pm been sent by the accused to PW2 (father of the deceased) to ask him to warn the son from coming to her place as she would kill him. That she had already bought the weapons for execution of the said act. And these were a panga and a knife. PW4 did pass this information to PW2 on 2nd March 2012.

By all standards this was vital information that ought to have been acted on very fast. However PW4 appears not to have seen its' urgency/importance. He was allegedly given this information on 29th February 2012 at 9pm and he only passed it to PW2 on 2nd March 2012 at 9pm. He did not report to the Police. Secondly PW2 who is the deceased's father acknowledges receiving the information on 2nd March 2012 at 9pm. He too did not take any action. His explanation is that he was on duty that night so he could do nothing. What about the time he reported off duty most probably at 6am? This incident occurred on 3rd March 2012 at about 4pm.

The accused has denied passing this kind of information to PW4. The inaction of PW2 and PW4 in this matter leaves this Court wondering if indeed the accused told PW4 what she is alleged to have said. There is no reason whatsoever that stopped both PW2 and PW4 from reporting the matter to the Police and also warning the deceased if indeed the accused had said so. Both of them knew the relationship between the accused and the deceased.

The cause of death and the injuries suffered by the deceased have been enumerated in post mortem report (EXB3). PW5 who is supposed to be an eye witness said she had first seen the accused and deceased at the Market. She does not say at what time she saw them there and what they were doing. A Market is a big and open place. Who else saw them? She does not say.
She next saw them as she was going to fetch water. And this time she saw the accused carrying a knife. She does not explain exactly where they were and how far she was from them. She however says she heard the accused utter the following words;

"wait for me you dog I come and finish what is left".

If indeed she heard these words then she must have been very close to them. According to her evidence all she saw was;

The deceased holding his stomach.
The accused holding a knife.
Accused pick a stone and hit the deceased with it and he fell down.
The deceased fall down a second time on his back and shaking his head.

The Doctor's evidence is that the deceased was stabbed in the abdomen which caused massive bleeding plus perforation of the large intestines. This witness did not witness the accused stabbing the deceased. In cross examination she said she did not see any blood. She however added that she saw blood stains on the blade of the knife.

i) If she did not see any blood on the deceased then at what point was the deceased stabbed?

ii) And if indeed there was blood on the knife, where had the blood come from?

iii) Considering the serious injuries that the Doctor (PW1) observed on the deceased's body, would it have been possible for the deceased to walk with them tothe point where PW5 allegedly saw them? Would it have been possible for him not to bleed from such injuries? I am asking all these questions because PW5's evidence does not just add up.

Inspite of all these serious things she allegedly saw, PW5 never raised any alarm or sought any assistance. She does not even say where the accused went to after this incident and where she took the knife. She never told anyone but ran to call the deceased's brothers. On phone. It's not clear if she ever called anyone let alone the deceased's brothers. All she says is that when she returned to the scene she found Police Officers and the deceased was dead.

Only one Police Officer PW7 – Magiri Baabu testified herein. He did not visit the scene or carry out any investigations. It could have been useful to know how Police Officers came to the scene and what their findings were. All that PW7 did was to collect cement pebbles (EXB4) from the Government Chemist. No one has explained to this Court the relevance of these cement pebbles. PW3 said the blood found on them was similar to that of the deceased but where did these cement pebbles come from? From where were they collected and by who?

PW7 explained that the accused surrendered herself to the Administration Police Camp. To whom did she surrender herself? The accused has denied surrendering herself to the Police. She says she was directed by a village elder Mzee Karonge to report to the Police Post as she was required there. She then went. Had the officer/officers who received her testified, they would have explained what transpired. None of those officers testified.

In her defence the accused has raised an alibi which this Court must consider alongside the evidence of the prosecution witnesses. I have already dismissed the evidence of PW2 and PW4 as being unreliable. Had they reported the matter, the accused's house would even have been searched to confirm if the knife and panga were there as alleged.
PW7 the Investigating Officer states in his evidence at page 22 lines 2-3 (typed proceedings)

"The accused was suspected of killing her husband by stabbing him on the stomach".

The evidence by the prosecution ought to have moved from suspicion to reality. In the case of SAWE –V-REPUBLIC [2003]KLR 364 the Court of appeal states thus;

"Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt".

The evidence of PW2 and PW4 was just part of furthering this suspicion.

The remaining evidence is that of PW5. I have in the above discourse pointed out the gaping holes in the

evidence of PW5. The accused person raised a defence of alibi, and I find the evidence PW5 alone to be too weak to displace the alibi and place the accused at the locus quo.

I therefore find that the prosecution has failed to establish that it is the accused who killed the deceased. For my part I find the accused not guilty and acquit her under section 322(1) Criminal Procedure Code.

She shall be released forthwith unless otherwise lawfully held under a separate warrant.

DATED, SIGNED AND DELIVERED AT EMBU IN OPEN COURT THIS 9TH DAY OF SEPTEMBER 2014.

H.I. ONG'UDI

J U D G E

In the presence of;

M/s Ing’ahizu for State

M/s Muthoni for Accused

Mutero/Kirong – C/c