



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 73 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

NANCY SOILA PARSIMEI.....ACCUSED

JUDGMENT

Nancy Soila Parsimei, the accused, is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on 1/10/2011 at Enosupukia Village in Narok North District, she murdered Mary Wanjiku Chege. She denied the offence and the case proceeded to hearing with the prosecution calling a total of five witnesses. The accused was placed on her defence and testified on oath but did not call any other witness.

Peter Ntaiya Ole Nchoko (PW1), a businessman and farmer in Enosupukia, Narok told the court that the accused, Nancy was his girl friend; that Nancy was operating a bar in his plot and resided in a room in the same plot. He operated another bar in same plot and resided in two rooms. He said that on 30/9/2011, The deceased (the deceased) called her to help her get a piece of land for purposes of leasing. He informed the accused that the deceased was coming and accused prepared lunch, they ate, he showed the deceased the land and left the deceased with accused as he went to run other errands. He returned to the plot about 10.00 p.m., Nancy had closed down her bar and gone to sleep. It is then he passed by the room where the deceased had slept to find out if she was comfortable and as he talked with the deceased, the window glass was suddenly broken from outside and on going out, he found the accused standing at the door and was trying to push herself into the room; that the accused got hold of the deceased and pushed her outside the room and he then saw the deceased fall on her knees and blood on her legs. He did not know what had happened then but the accused had gone wild and he hit her to protect himself. He told his son Chris (PW4) to assist the deceased as he went to bed. Next morning he found the deceased in the same position he had left her and realized that she had died. He denied pushing The deceased on the glass while trying to ward off the accused.

PW2, Raiyan Ole Merai of Nairage Nkare recalled that on 2/10/2011 about 1.00 a.m. he was woken up by one John Naani who informed him of a murder of a lady. He rushed to the scene, found the body of a lady. He called the OCS of the area and later when the body was turned over, he noticed that the deceased had been stabbed on the neck. PW2 knew both PW1 and the accused. Acting on information he arrested Nancy on same night.

PW3, Mpapai Ole Morijoi recalled that on 1/10/2011, he was in his house about 3.00 a.m. when he received a call from the security chairman (PW2). He found PW2 with others with the accused and was told to take them to Maela Police Station which he did.

PW4, Chris Nchoko, is the son of PW1. On 1/10/2011, he was asleep when he heard screams about

10.00 p.m. He went outside and found The deceased who called him and asked him to hold her, just then, he saw her fall and it is then he saw blood. He had a torch. She held onto him and he also screamed on seeing blood. He said his father told him to take the deceased to hospital but by then she was already dead. He said that the accused sometimes went to their house to cook for them and he too would go to her house but that the father and accused lived in separate rooms. He knew also the deceased.

PW5, Dr. Titus Ngulungu performed the post mortem on the deceased on 5/10/2011, after the body was identified to him by Jane Muthoni and Lawrence Kabungugi. On examination, he found a stab wound on the left side of the neck which was convex like two curves (()). The stab wound involved the skin, semi fibrous tissue, the subcutaneous fat (below the skin), the muscles and external carotid artery and jugular vein. Dr. Ngulungu formed the opinion that the deceased died as a result of severe haemorrhage due to the stab wound to the neck involving the neck vessels using a sharp object.

In her sworn testimony, the accused denied murdering the deceased. She recalled that the deceased was well known to her. She also claimed to have been married to Peter Nchoko (PW1) and that on 1/10/2011, the deceased went to Enosupukia where she operated a bar business and PW1 operated another; that PW1 went to show the deceased land which she intended to lease. After that, PW1 left the deceased with her at her bar; that at about 7.00 p.m. she showed the deceased where to sleep. She closed down about 9.00 p.m. and went to sleep; that PW1 woke her up about 10.30 p.m., asked for food, ate a little and claimed the food was bad, a quarrel ensued and PW1 started to beat her; that a neighbour called John intervened and took her to sleep in his house till next day when they planned to ask PW1 about the fight. Next day, the village elder came to return her back but instead took her to the police station and claimed to be going to get her husband. PW1 was released from the police cells and instead she was kept in cells and the OCS ordered that she be booked. She did not know why she was arrested till the charges were read to her in court and that is when she learnt of the deceased's death. She denied knowing of any love affair between PW1 and the deceased.

Having considered all the evidence adduced by both the prosecution, the defence, and the submissions of counsel, there is no dispute that the deceased was known to both PW1 and accused. The evidence of PW1 and the accused as to how the deceased came to Enosupukia and to PW1's business premises where she was accommodated on the night of 1/10/2011 is not in dispute.

The accused claimed that PW1 was her husband something that PW1 denied. PW1 said that the accused was only his girlfriend. PW2, the security chairman in the area also knew PW1 and that accused owned a bar in PW1's plot. He denied knowing whether the two lived together. PW4, Chris, PW1's son knew the accused and that she was his guide and lived in his father's plot where she also operated a bar business. He said that his father used to live alone since the mother passed away. Although accused claimed that she had a child with accused and they were married, I find no evidence to prove that they were married. Accused said that they were married because they had lived together for 3 years and had a child. When PW1 and PW4 testified, there was no such suggestion made to them that PW1 and the accused were husband and wife or that they had a child. The allegation of PW1 and accused having a child came up as an afterthought in the defence.

PW1 is the only witness to the offence. He explained how the accused broke the window to the room where he was with the deceased and on PW1 opening the door, the accused pulled the deceased out and that it is when he noticed that the deceased was bleeding. PW4 denied having witnessed the incident but that he found the deceased injured and she asked him to help her but did not disclose who had injured her. The accused on the other hand denies having been at the scene and that after PW1 attacked her, she was rescued by one elder called John. However, this man '**John**' is mentioned for the first time in her defence. At no time during the cross examination of PW1 to PW4 was the said John mentioned. What the accused is purporting to raise an alibi, that after she was beaten by PW1 she was taken away to sleep away from the plot. The accused was represented by counsel and if she intended to raise an alibi, that after the altercation with PW1 she did not sleep at PW1's plot on the night of 1/10/2011, she should have put the prosecution on notice so that the prosecution would have had an opportunity to call the said John to explain himself. She cannot wait till the defence to ambush the prosecution with such a defence. To raise the defence of alibi - the Court of Appeal concluded when an alibi can be raised as a defence in

Karanja v Rep. (1983)KLR 501. The court said:-

“1. The word ‘alibi’ is a Latin verb meaning ‘elsewhere’ or ‘at another place’. Therefore where an accused person alleged he was at a place other than where the offence was committed at the time when the offence was committed and hence cannot be guilty, then it can be said that the accused has set up an alibi. The appellant’s story in this case did not amount to an alibi as it was mentioned in passing when giving evidence and, furthermore, it was not raised at the earliest convenience, ie when he was initially charged;

2. In a proper case, the court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused’s guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence, or his alibi, if it amounts thereto, at an early stage in the case, and so that it can be tested by those responsible for investigation and prevent any suggestion that the defence was an afterthought.”

In this case the alibi does not meet the threshold set in the above case.

I will therefore dismiss the said alibi as an afterthought. I will dismiss the defence and instead believe that the accused attacked the deceased after she found PW1 and the deceased were in one of the rooms. Although PW1 did not see at what stage the deceased was injured, it is the accused who attacked the deceased. On that night and soon thereafter, the deceased fell down bleeding and died on the same night. Although the accused denies that there existed any love affair between PW1 and the deceased, she must have suspected the two and was enraged by PW1’s visit to the room where the deceased had slept on the fateful night. If PW1 was not a lover of the deceased, the accused knows best why she attacked the deceased.

I also disbelieve the accused’s defence because PW2 who was called to the scene of the murder told the court that he arrested accused and took her to the police station the same night. PW3 corroborated PW2’s evidence that he is the one who took PW2 and accused to police station on the same night at about 3.00 a.m on his motor cycle. The accused’s defence that she went to sleep at one John’s house till next day was totally dislodged.

The doctor who performed the post mortem on the deceased found the cause of death to have been haemorrhage due to stab wound to the neck which involved the neck vessels. The stab wound was inflicted at the neck, where the blood vessels are situate and they were deeply penetrated leading to massive bleeding that caused quick death. I find that the action of the accused injuring the deceased on the major blood vessels was meant to cause grievous harm to the deceased or cause her death as it did. I find that the injury inflicted though one stab wound,, is evidence of malice aforethought. **Section 206** of the **Penal Code** defines malice aforethought as intention to cause death of or to do grievous harm to any person or intention to commit a felony and knowledge that the act or omission causing death will possibly cause death or grievous harm to some person.

Having found that the accused was the only one who attacked the deceased on the fateful night as a result of which she was fatally injured and because I have found evidence of malice aforethought, I find her guilty of the offence of murder as charged and I hereby convict the accused under **Section 322** of the **Criminal Procedure Code**.

DATED and DELIVERED this 1st day of October, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Cheche for the accused

Mr. Chirchir for the State

Kennedy – Court Assistant