



REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL CASE NO. 7 OF 2011

REPUBLICPROSECUTOR

VERSUS

SANGO MOHAMED SANGO

ALI MOHAMED SANGO

SOFIA SWALEHACCUSED

JUDGMENT

1. The 1st and 3rd accused were jointly charged with another (2nd accused, who was acquitted at the close of the prosecution case), with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge are that on 2nd February, 2011 at Gongoni Market, Magarini District of Kilifi County, they jointly murdered Salim Omar Said. They denied the charge and were represented by Mr. Muisyo.
2. The prosecution called 8 witnesses. The gist of the prosecution case is as follows. The 1st accused is a stepbrother to the deceased, while the 3rd accused is their niece. Prior to the material date a dispute had arisen between the deceased and his mother over the deceased's declared intention to sell his mother's house. The mother opposed the plan and so did his siblings. Relations between them grew cold. All the parties lived within Gongoni area albeit in different homes.
3. On the morning of 2nd February, 2011 the deceased left home at dawn to travel to Mombasa. He was to travel in the matatu operated by a neighbour Lelah Sheikh Fadhil (PW8). At Tawifq hotel which is close to 3rd accused's house, PW8 stopped to enable the deceased collect his bag from the house of the 3rd accused. PW8 having waited over 15 minutes decided to leave. Meanwhile at about 330am – 400am, neighbours of Sofia (the third Accused), namely Mohamed Bakari (PW2) Hidayah Ali Swaleh (PW3), Martin Jillo Godana (PW4) were drawn out of the houses by noise emanating from the direction of Sofia's house.

4. Pieced together, the evidence of the witnesses is that the 1st and 3rd accused were heard engaged in a loud conversation. They were demanding to know from deceased why he was selling the house. The 3rd accused suggested that the deceased be gagged and trussed up. The deceased raised distress calls for help. The 3rd accused was aggressive when some neighbours approached her and inquired. Presently the 1st accused who was armed with a panga stepped into view declaring that he had killed and was ready to go to jail.
5. At about 445am the 3rd accused and her aunt called Riziki reported to the Gongoni Assistant Chief that the deceased had been attacked and killed after collecting his bag from Sofia's house that morning. The body was found next to 3rd accused's house. On the same day, the 3rd accused called PW2 and begged him not to disclose what he had witnessed earlier. About three days later the 1st accused approached PW3 and confessed to the murder of Salim. He said the Assistant Chief Bashe Hussein Bashir (PW5) who was suspected to facilitate the sale of the house was next. PW3 reported to (PW5) who notified the police. Eventually the accused were arrested and charged.
6. The defence of the two accused is similar that they were roused from their sleep by noise outside 3rd accused's house. Upon getting outside they found Salim's body and saw receding figures of the supposed attackers. Both claimed that they had a good relationship with the deceased.
7. The family relationship between the accused and Salim, the deceased is not in dispute. Neither is it in dispute that the deceased was murdered early on the morning of 2nd February, 2011 and his body found lying near the residence of the two accused.
8. The cause of death is undisputed: bleeding from multiple severe cuts on limbs and head. The court must determine the identity of the assailants. In this regard the evidence of two neighbours who withstood the test of cross-examination, PW2 and PW3 leaves no doubt that the two accused participated in assaulting the deceased. Although none of the two actually saw the attack, which appears to have happened inside 3rd accused's house they heard and recognized voices during the attack. Besides the 1st accused confessed the murder to them.
9. Thereafter 3rd accused attempted to ask PW2 not to disclose what he had witnessed. Both PW2 and PW3 were well familiar with the accused and deceased, in particular PW3 knew them over twenty years. 1st accused confessed to PW3 and 4 that he had killed the deceased. To repulse the first neighbour (PW2) who got to the scene the 3rd accused was hostile telling them it was none of their business.
10. Yet at about 445am the 3rd accused with an aunt went to the house of the chief (PW5) to report that the deceased was murdered after collecting a bag from Sofia's house. That is essentially the defence so adopted by the accused except that in the defence they did not mention that the deceased had collected a bag from Sofia's house. So why did the accused not raise an alarm for help and why did 3rd accused turn hostile towards inquiring neighbours who were drawn out of their houses by noise?
11. The defence is clearly displaced by the credible evidence of neighbours PW2, 3 and 4 regarding the evenings of the fateful morning and thereafter. To these witnesses, the defence did not suggest during cross-examination that Salim was killed while close to the 3rd accused's house before or after picking his bag. Yet the testimony of the prosecution witnesses contains a very different narrative, which includes confessions by 1st accused and efforts by 3rd accused to conceal the crime by giving a false report to the chief (PW5) and asking PW2 not to volunteer any information.
12. It is clear from the evidence of PW3, the chief PW5 and deceased's wife Salma Geoffrey (PW6) that this attack had to do with the fact that the deceased had declared an intention to sell his mother's plot. The accused as well as Salim's mother were opposed to the plan. The 1st accused even went as far as telling PW3 that the chief (PW5) who was suspected to have signed some of

the sale documents would also be killed.

13. The prosecution evidence in his case is overwhelming. The accused plotted to get rid of Salim to pre-empt the sale of the disputed plot or house. They both executed the plan on the morning of 2nd February, 2011. So severe were the injuries that the deceased died almost instantly. Thereafter the 3rd accused set about tidying up by reporting that the attack was carried out by other people outside 1st and 3rd accused's house. While the 1st accused passed on threatening messages through PW3, possibly to silence her and PW5, the 3rd accused directly asked PW2 not to speak about what he had witnessed on the fateful morning.

I am satisfied that the prosecution has proved its case beyond any reasonable doubt. I do find the accused persons guilty as charged and convict them accordingly.

Delivered and signed at Malindi this **12th** day of April, **2013** in the presence of the accused, Miss mate for state, Mr. Muisyo for the accuseds.

Court clerk – Evans.

C. W. Meoli

JUDGE

MISS MATE

I treat them as first offenders

C. W. Meoli

JUDGE

MR. MUISYO

3rd accused is an orphan and has children to care for. 1st accused has aged parents.

They are remorseful and ask for mercy.

C. W. Meoli

JUDGE

NOTES ON SENTENCE

The accused have been treated as first offenders.

Despite their family circumstances the accused persons hatched a cruel plot to get rid of the deceased due to greed concerning the house they feared he was about to sell. They were callous in the manner in which

they executed the plan. They showed total impunity as the 1st accused even threatened that the Assistant Chief of the area would be next to be murdered. Such lawlessness cannot be condoned.

C. W. Meoli

JUDGE

SENTENCE

The two accused persons are sentenced to suffer death in the manner authorized by law.

Right of appeal in fourteen (14) days.

C. W. Meoli

JUDGE