

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO 384 AND 385 OF 1993

FAITH WACHERA MWANGIAPPELLANT

EUNICE MUGETHI MWANGIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The two appellants were originally charged with another not before this court with the offence of murder. This was later computed to one of manslaughter. Original accused No 1 was placed on probation accused 2 & 3 were both sentenced to 5 years imprisonment. The two now appeal against conviction and sentence.

This court finds from the records of the lower court the following evidence. P.W.1 is a chief who found the 3 original accused seated in his home. They made a report of him of fight with the deceased. She went to the scene and saw no one save the deceased lying dead. She wet and called the other witnesses in this case – presumably P.W.4 (as the trial magistrate made no identification during the trial of the witnesses by the witness in the witness box) and P.W.3 the husband to PW.2. P.W.3 also learnt of he incident from the chief. P.c (recorded in the proceedings as P.W.5 – probably in error) took the charge and cautionary statement. Proof by the prosecution must be beyond any reasonable doubt.

In this case no eye witness saw the incident. There was circumstantial evidence namely a sketch plan which shows the body having been found at the scene places. Evidence was led as to this there was a doctor to testify that the deceased did die, that the cause of death had been stipulated as deep cuts in the head and broken arms.

P.W.5 a police officer attached to the CID Murang'a had charged and cautioned the two appellants. The appellants did not question the statement or make any objections hereon. It is on the basis of these statements were the two appellants admitted to have had a fight with the deceased which caused his death

The death herein notes that the circumstantial evidence and confession given indicate that a fight occurred in which as a result the appellants attacked their father but not with the intention to kill him. One could not say it was as self-defense or provocation – none of this having been pleaded by the defence.

This court herein dismiss this appeal on conviction as to sentence, this court would not interfere with it.

Dated and delivered at Nyeri this 21st day of February, 1995

M.A. ANG'AWA

JUDGE