



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU**

Criminal Appeal 15 of 1994

JOHN KIPLANGAT CHERUIYOT.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Eldoret (Mr. Justice D.K.S. Aganyanya) dated 22nd June, 1993,

IN

H.C.CR. CASE NO. 18 OF 1992)

JUDGMENT OF THE COURT

The appellant was charge in the High Court of Kenya at Eldoret with the murder of his uncle on July, 10th, 1992. After trial he was acquitted of the charge but was convicted of manslaughter contrary to section 205 of the Penal Code and sentenced to seven years' imprisonment.

The material facts presented by the prosecution are simple. In the evening of the day in question, the deceased and the appellant with five other persons were in the house of Selina Kandie (P.W.1) where they were consuming liquor. At some stage during the drinking spree the deceased and the appellant were engaged in a quarrel over a debt of money allegedly owed by the deceased to the appellant who was irked by the former's inability to refund it and his unsatisfactory reply as to when he would repay it. The matter seems to have ended there although according to the evidence the appellant did not look happy. It was not clear at what time the appellant left Selina's house, but when the deceased went out he was attacked and hit on the head with a stick. He fell down and went into coma. He was rushed to hospital but died soon thereafter while undergoing treatment. The post-mortem gave the cause of death as due to severe injuries on the occipital region.

The appellant has preferred home-made grounds of appeal in which he referred us to various portions of the evidence from which he argued that his conviction was wrong. Most of these were factual matters. The question of importance on this aspect of the case, is whether the evidence led was such as to justify a conclusion that the appellant was the person who inflicted the fatal head blows on the deceased. Such evidence must of necessity reach the degree of certainty required to sustain conviction in a criminal trial. Selina testified that when she was in her house, she heard a big band and when she rushed out she saw the deceased had fallen on the ground and the appellant was hitting him. She in fact witnessed two blows by

the appellant before he ran away. Her evidence is corroborated in all material particulars by the testimony of Kibiwot (P.W.2) who saw the appellant break a rafter and went out with it and with which he approached the deceased menacingly. The other two witnesses, Cherono (P.W.3) and Kiptoo (P.W.4) saw the appellant standing and looking at the deceased seething with anger.

The learned judge in an exhaustive and careful judgment, after considering such discrepancies as existed in the evidence of the witnesses, and after warning himself of the danger of accepting the evidence of witnesses who were apparently worse for intoxication in the circumstances of the incident, believed the prosecution witnesses and found the facts as above stated proved. We can see no good reason to disagree with him. In our view, none of the arguments advanced to us on the facts has caused us to doubt the correctness of his findings.

We think that the learned judge was correct in holding that the appellant was guilty of manslaughter and by reducing the appellant's crime to it. We uphold the conviction. The sentence is lawful and well-merited in the circumstances of the case and there is no justification for interfering with it. It must stand.

Accordingly, this appeal fails and is ordered dismissed.

Date and delivered at Nakuru this 25th day of February, 1994.

J.M. GACHUHI

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JUDGE OF APPEAL

A.M. COCKAR

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR