



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

crim app 57 of 83

FANUEL JABUYA AJWANG APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a sentence of the High Court of Kenya at Kisumu (Schofield J) dated 11th May, 1983

in

Criminal Case No 3 of 1983)

JUDGMENT OF THE COURT

The appellant Fanuel Jabuya Ajwang' was convicted on his own plea of guilty to the manslaughter of his wife Helenia on May 18, 1982, contrary to Section 205 as read with Section 202 of the Penal Code (Cap 63). He had originally been charged with the murder of Helenia, but his offer to plead guilty to the lesser offence of manslaughter was accepted by the prosecution. He was sentenced to two (2) years' imprisonment and he had been in custody for almost one year before he was tried. He has appealed against sentence only.

The brief facts which were put before the learned Judge by the prosecution and were accepted as correct by the defence were that the deceased operated a hotel at Sondu Market in south Nyanza District. On the night of May 17, 1982 the appellant went to his home which is about 3 kms from the market. He did not find the deceased wife at home.

He went back to the market, but again he was unlucky and did not find her there, so he decided to go back home arriving there at 11.30 pm. Helenia did not come home until after midnight, ie about 12.30 am on May 18, 1982. When the deceased's mother-in-law asked her where she had been the deceased offered no reply. The appellant and the deceased went to their house and when Fanuel asked Helenia where she had been she ran out of the house pursued by Fanuel. She fell into a ditch between their house and that of Fanuel's mother. Fanuel hit her three times with a talking stick. She became unconscious and Fanuel took her back to their house, left her on the bed where she died an hour. The doctor who performed the postmortem examination of her body said that the cause of her death was abural and epidural haemorrhage. Fanuel said that he beat Helenia because he suspected her of infidelity to him, a thought that made him angry. He unlawfully without intention killed his wife out of provocation, and we think that is what Fanuel meant when he said that he killed his wife accidentally because of a quarrel arising from a family misunderstanding. In his appeal he said that his wife left him six children five of them at school and one aged two years. His old mother will not give them the care they need as she is helpless. He was a first offender and he vowed to be of good character. The learned Judge gave Fanuel credit for most of what he has urged us to consider in his appeal, before he sentenced him. We have considered Fanuel's

urgings and taking into account the circumstances of the case which must be weighed against the seriousness of the offence he was convicted of and we have reached the conclusion that the sentence passed by the learned Judge was lenient and as the learned Judge did not act on any wrong principle we are unable to interfere.

Before we conclude we would mention that the lower court's record reads:

“conviction is recorded on accused's own plea.”

I believe it was oversight on the part of the learned Judge in not specifying no injustice or embarrassment to the appellant, who knew why he was convicted of, we have no cause to disturb the conviction except to avoid ambiguity we formally convict him of manslaughter.

The appeal against sentence is dismissed.

Delivered at Kisumu this 20th day of June, 1983.

K D POTTER,

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JUDGE OF APPEAL

A A KNELLER

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JUDGE OF APPEAL

Z R CHESONI

.....

AG JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR