

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL CASE NO. E016 OF 2025

REPUBLIC
.....**PROSECUTOR**

VERSUS

SHAFI BILAL SHAKLANE.....
ACCUSED

JUDGMENT

1. The accused person herein is charged with the offence of **murder** contrary to **Section 203 as read with Section 204 of the Penal Code (Cap.63) Laws of Kenya**. The particulars of the offence are that on 16th day of November, 2025 at around 0000hrs, at Borehole 5, Fafi Sub-County, Garissa County, he murdered Safiya Hussein Bilal.
2. Having denied the charge, the case proceeded to full trial. Consequently, prosecution called 6 witnesses in its endeavour to prove its case.
3. PW1 Nastea Hussein Bilal, a minor aged 13 years and a niece to the accused and sister to the deceased told the court that on a date she could not remember, accused person killed her sister Safiya. That on the material night, they were in the house sleeping on a mattress when she saw accused approach the deceased who was sleeping on a different mattress and started fondling her breasts. That when Safiya resisted, accused took a scarf and strangled her as he pushed her against the wall.

4. She stated that when her sister fell down, accused undressed her and then started defiling her. That the accused went outside, washed his face and then went back and continued defiling her. According to her, accused defiled the deceased about three times. That after finishing defiling her, he dressed her up and then warned her not to disclose lest he killed her.
5. She went further to state that they all slept until morning when they left for the mosque for prayers. After prayers, they went back. Accused allegedly told her to go and called her Aunt Alabe Bilal. When Alabe arrived, she found the deceased dead. That it was Alabe who called neighbours and later the police to whom she disclosed what had happened. She said that during the material night she was with the accused and the deceased as their parents had gone to the bush.
6. During cross examination, she stated that three weeks prior to her death, the deceased was sick suffering from Dengu fever.
7. PW2 Abdinassir Hassan, told the court that on the night of 16.11.2025, he was at a friend's house chewing miraa. At about 1.00.a.m they heard some noise from the neighbouring house in which some lady was crying seeking help. That at 3.00am, he left for the bush to look after his camel. He came to learn of the death of Safiya the following day.
8. PW3 Bishar Karim, a cousin to the deceased, heard screams from Safiya's home on 16-11-2025 at 9am. On arrival, he found Safiya dead. That the body was taken away to the hospital by the police. He identified the body for postmortem. He observed the body and noticed injuries on the neck.

9. PW4 Dr.Chweya, a medical officer performed post-mortem examination on the body of the deceased. On observation, he noted a bruise on the neck and dry blood in the nostrils. On the left upper left limb there was bruising which was blue being evidence of lack of oxygen. There was blood in the vagina but no tear nor laceration. The cause of death in his opinion was hypoxia secondary to strangulation.
10. On cross examination, the Dr. stated that Chingunya fever can cause passing of blood through body openings like the nose or ears.
11. PW5 P.C Jefferson, the I.O was informed by his boss CIP Ombasa to visit a scene of crime murder. At the scene, they found the body of the deceased. He noticed the body had an injury on the neck. That the brother to the deceased one Nastea informed the officers that he had witnessed the incident. That some people who were washing the body were arrested at the scene. He preferred the charges before court.
12. On his defence, accused denied the offence. He stated that the deceased was suffering from Dengu fever hence the cause of her death. He claimed that he was suffering from mental illness. That on the material night, he spent in another house and that he discovered the dead body the following day.
13. After close of the defence case, parties were directed to file final submissions.
14. Prosecution filed its submissions dated 8-4-2026 contending that it has proved its case beyond any reasonable doubt. It was contended that prosecution has established the requisite elements of murder inter alia; proof that the deceased died and that the cause of death was unlawful;

that the accused was the perpetrator and that there was proof of malice aforethought. In that regard, the court was referred to the case of **Republic v Mohamed Dadi Kokane & 7 others (2014)e KLR** where the said elements were espoused.

15. As regards the cause of death, the learned prosecutor opined that the deceased died of strangulation thus corroborating the testimony of PW1. On the question of the perpetrator, counsel contended that accused was positively identified by his niece (PW1) who saw what transpired on the material night.
16. Concerning malice aforethought, counsel submitted that the nature of the injuries inflicted by strangulation is itself proof that the accused intended to kill the deceased after which he defiled her.
17. On the part of the accused, Mr. Nyipolo filed his submissions dated 12-3-2026 contending that PW4 Dr. Chweya did not conclusively determine the cause of death as he did not open the body to ascertain the source of blood in the nostrils and the vagina. That the doctor having confirmed that reduced blood can cause hypoxia, there was no reason why the same can be associated with strangulation. Counsel contended that the deceased may have died of Dengue fever which PW1 confirmed the deceased was indeed suffering from.
18. On the aspect of bruises being noticed on the neck, counsel opined that the body according to PW5 the Investigating Officer had been tempered with by people who engaged in washing it before the police arrived.
19. Mr. Nyipolo held the view that PW4 being a mere Medical Officer had no pathological expertise to ascertain the cause of death hence the reason

why PW5 requested for exhumation of the body to extract more samples for further analysis something that was not done.

20. As regards the testimony of PW1, counsel opined that she was a minor whose evidence lacked corroboration. That the witness was not truthful as she claimed that during the material night there was a hanging lamp while PW5 said it was on the ground.
21. On the issue of malice aforethought, he contended that there was none established.
22. I have considered the prosecution case and that of the defence. I have also considered the submissions of both parties.
23. The accused herein was charged with the offence of **murder** contrary to **Section 203 as read with Section 204 of the Penal Code**. The offence of murder is defined under **Section 203** of the **Penal Code** in the following terms; **“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”**
24. Based on the above definition, for the prosecution to secure a conviction on a charge of murder, it has to prove, beyond reasonable doubt, three ingredients as follows: -
 - a) the death of the deceased and the cause of death;**
 - b) that the accused committed the unlawful act which caused the death of the deceased; and**
 - c) that the accused had malice aforethought.**

(See **Anthony Ndegwa Ngari vs Republic [2014] eKLR**).

25. It is trite that the prosecution bears the burden of proving every element of the offence an accused person is charged with, and in this case, prove that the accused herein murdered the deceased [see **Woolmington vs DPP (1935) AC 462**]. The standard of proof which is required of the prosecution is that of “beyond any reasonable doubt” [See **Miller vs Ministry of Pensions, [1947] 2All ER 372**]. The question begging for an answer therefore is whether the above ingredients were proven to the required standards.
26. As for the proof of the death of the deceased and the cause of death, PW4 who conducted post-mortem on the body of the deceased testified that the cause of death was hypoxia secondary to strangulation.
27. Right to life is protected by our **Constitution** under **Article 26** and can only be taken away under the circumstances provided therein. It therefore means that every homicide is unlawful unless authorized by law or excusable under the law. In **Guzambizi Wesonga vs Republic [1948] 15 EACA 63** the court held that; -
- “Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must**

have been under justifiable circumstances, for example in self-defence or in defence of property.”

28. There is no doubt that the deceased died. This is clear from the testimony of all witnesses including the accused. What is most contested is the cause of death and the perpetrator.
29. According to PW4, the deceased had a bruise on the neck, blood in the nostrils and vagina whose cause he could not specifically ascertain its source given that he could not open the body as he was not pathologist. He however admitted that similar symptoms could occur if one was suffering from prolonged Dengue fever. However, the doctor was very particular on the cause of death as hypoxia which is lack of oxygen hence strangulation in this case. On cross examination, he stated that Dengue fever cannot cause hypoxia.
30. In the absence of any other medical opinion, I will take the only medical evidence at hand that the deceased died of Hypoxia which is lack of oxygen secondary to strangulation. With that opinion, the existence of bruises on the neck which the doctor observed and the investigating officer confirmed that the cause of those bruises could not be associated with washing of the body as Mr. Nyipolo would like the court to believe. The subject bruises have a nexus with the strangulation in question. To that extent, the cause of death was unlawful.
31. Who then killed the deceased? There is only one witness in this case PW1 a minor aged 13 years who gave a detailed testimony on the events of the material night. She explained how her uncle attacked her

sister by strangling her before defiling her three times and there after dressed her up and warned PW1 of dire consequences if she disclosed. Why would PW1 lie against an uncle whom she had no grudge with?

32. Mr. Nyipolo, argued that there was no positive identification as it was at night. PW1 said there was solar lamp (light) on at the time of attack. However, the accused was well known by the niece and they used to sleep in the same house. Even by voice identification she could not mistake the accused for somebody else. See the case of **Choge vs Republic (1985)KLR where the court stated that;**

“Evidence of voice identification is receivable and admissible in evidence and it can, depending on the circumstances carry as much weight as visual identification. In receiving such evidence, care would be necessary to ensure that it was the accused person’s voice, that the witness was familiar with it and recognized it and that the conditions obtaining at the time it was made were such that there was no mistake in testifying to that which was said and who had said it”.

33. Similarly, in the case of **Olola v Republic (Criminal Appeal No. E064 OF 2021) (2026)KECA (583(KLR)(13 March 2026) (Judgment) the court held that;**

“Recognition and or identification of an accused within a domestic setting of a close relation in broad day light is considered more reliable, satisfactory and assuring than visual”(see also Anjononi & others v Republic (1980)(KLR 59.)

34. In the circumstances of this case, it is my conviction that identification was by recognition both visual and voice. There was no mistaken identity.
35. Mr.Nyipolo, opined that the evidence of PW1 was not corroborated . From my own assessment, PW1 appeared to be honest, reliable, consistent and unshakable in her testimony. I am alive to the principle of corroboration and its significance. It has time and again been established and held by several superior courts that a court can rely on the evidence of a single witness to convict as long as the court cautions itself of the dangers of relying on such evidence. See **Roria v R (1985) KLR** and **Abdullah Bin Wendo and another v Republic (1953) EACA 166**.
36. In line with the position espoused in the above case law, I am satisfied that there is no danger likely to be suffered by the accused by the court relying on the evidence of PW1 coupled with the medical report which corroborates her testimony that it was the accused who killed the deceased. His defence is just but a mere denial which in my opinion does not shake the otherwise strong evidence of PW1. Accordingly, am inclined to find that the perpetrator in this case was the accused.
37. Was there malice aforethought? Under **section 206** of the **CPC**, Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances —
- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;**

b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

38. From the nature and manner of execution of the act, malice is apparent. Accused knew that by strangling the deceased she was likely to die but went ahead and after killing her, he continued defiling her. This is pure malice hence proof of malice aforethought. Taking the totality of the circumstances surrounding the commission of the offence, evidence by the prosecution and that of the defence, am satisfied that the prosecution has proved its case beyond any reasonable doubt hence accused convicted of the offence of murder as charged.

Dated, signed and delivered virtually this **30th** day of **April 2026**

J.N.ONYIEGO

JUDGE