



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU

(CORAM: O’KUBASU, GITHINJI & VISRAM, JJ.A)

CRIMINAL APPEAL NO. 190 OF 2008

BETWEEN

DOUGLAS KIPROTICH KIRUIAPPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from a conviction and a sentence of the High Court of Kenya at Nakuru (Koome, J) dated 9th October, 2008

In

H.C. Cr. C. No. 98 of 2007)

JUDGMENT OF THE COURT

The appellant was convicted on his own plea of guilty for the offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code and sentenced to ten (10) years imprisonment. He now appeals against the sentence on the main grounds, that the sentence is manifestly harsh and excessive; that the sentence is likely to ruin his life and that the sentence is likely to adversely affect his family.

The deceased, a woman aged about 48 years was in the business of selling “*Busaa*” – a traditional liquor in her house. On the material day the appellant went to the house of the deceased where he took some “*busaa*”. Thereafter the appellant became disorderly. He banged the window of the house and started making noise thereby scaring customers.

The deceased asked the appellant to stop making noise and a quarrel ensued. The appellant left the scene but went back shortly thereafter, removed a knife and stabbed the deceased on the left-ear. The deceased sustained a stab wound and bruising at the left periauriallar and post auricular area and died instantly. Dr. Mwangi who later performed the post mortem on the body of the deceased formed the opinion that the cause of death was subdural and intracranial haemorrhage leading to the compression of the brain with consequent cardio-respiratory arrest.

At the hearing of the appeal the appellant asked for forgiveness from the Court and family members of the deceased and submitted, among other things, that, he committed the offence unintentionally and that he has small children; that his wife has gone mad; that his house was burnt and that he has now acquired useful skills in prison which he can utilize in nation building. Mr. Omutelema, the learned Senior Principal State Counsel, opposed the appeal intimating that the sentence was legal and proper.

Although the appellant was convicted on his own plea of guilt, he has by virtue of **section 379 (3)** of Criminal Procedure Code, a right of appeal against the extent or legality of the sentence.

The offence for which the appellant was convicted carries a life sentence and hence the sentence of 10 years imprisonment is legal.

Before passing the sentence, the trial Judge took into account various factors namely, that the offence was committed in a “*drinking den*”; that the judgment of the appellant was impaired by the illicit brew; that the appellant was aged 23 years and had two young children; that innocent life was lost and that the offence was prevalent. The fact that the appellant had been in custody for a period of one year before he was convicted, was brought to the attention of the court and duly considered.

It is clear from the foregoing that the trial Judge took into account relevant factors in assessing the appropriate sentence. The matters raised by the appellant before us were raised before the trial Judge, and duly considered. It is apparent that the appellant after quarrelling with the deceased left the scene and returned later armed with a knife and mercilessly stabbed to death a helpless middle aged woman.

Sentencing is essentially a matter of exercise of judicial discretion by the trial court. In the circumstances of this case we are satisfied that there was no error in principle and that the sentence was not harsh or manifestly excessive.

In the result the appeal is dismissed. Order accordingly.

Dated and delivered at Nakuru this 13th day of January, 2012.

E.O. O’KUBASU

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JUDGE OF APPEAL

E.M. GITHINJI

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JUDGE OF APPEAL

ALNASHIR VISRAM

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.