



REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

(CORAM: GITHINJI, AGANYANYA & NYAMU, JJA)

CRIMINAL APPEAL NO. 532 OF 2010

BETWEEN

MUSYOKA MUASA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Machakos (Waweru J.) dated 11th February 2010

In

H.C.C.R.A. No. 34 of 2010)

JUDGMENT OF THE COURT

The appellant was charged with the offence of murder contrary to Section 203 and 204 of the Penal Code before High Court Machakos. He was however convicted by the superior court (Lenaola J) of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The trial judge apparently left the court before sentencing the appellant and when the trial resumed before Waweru J, the latter sentenced the appellant to ten (10) years imprisonment.

This appeal is solely against the severity of the sentence. The appellant was a nephew of the deceased and they were sharing one house. On the morning of July, 2007 at 8.00 a.m. Kasavi Mulinge found the deceased lying on his bed with a deep cut wound on the middle of the head. The deceased disclosed to her that it was the appellant who had cut him. Meanwhile the appellant went to the home of Jeremiah Muli Makau the Assistant Chief at 8.30 a.m and reported that he had injured the deceased. He wanted a letter to authorize him to take deceased to hospital. The Assistant Chief accompanied the appellant to the house of the deceased. The deceased who was lying in bed with a deep cut wound on the head disclosed to the Assistant Chief that he was cut by the appellant. The Assistant Chief handed over the appellant to police. The deceased died on arrival at Wote Hospital. Dr. Catherine Kilonzo who performed postmortem on the body found that the deceased had sustained two deep scalp injuries - one in the frontal parietal region and the second in occipital region the second cut wound extending to the brain. The deceased had also a deep cut in the left leg and fracture of the left tibia. The cause of death was diagnosed as due to sub-dural and extra-dural hematoma with herniation of the brain stem due to head injuries.

The appellant stated at the trial that the deceased cut him on the ear and when the appellant tried to get the panga that the deceased had the accused was cut. The trial judge concluded that the appellant cut the deceased; that it was wholly unclear what triggered the incident and that there was no evidence of malice aforethought. The trial judge thus convicted the appellant of manslaughter.

Before passing sentence Waweru J took into account the period that the appellant had remained in custody; that the appellant had lost part of the ear; the serious head injuries inflicted on the deceased and the leg injuries. The trial judge then observed.

“one may therefore be forgiven for concluding that in inflicting the injuries that he did upon the deceased, the accused intended to kill him or cause grievous bodily harm. The accused was therefore lucky to be convicted of the reduced charge of manslaughter”

The appellant does not say that the sentence of 10 years imprisonment is harsh or manifestly excessive. He merely pleads for the reduction of the sentence. The trial judge took into account all the relevant factors and as he correctly observed, the appellant was lucky to have been convicted of manslaughter. The sentence was indeed lenient in the circumstances. In the result the appeal is dismissed.

Order accordingly.

Dated and delivered at Nairobi this 21st day of October 2011

E. M. GITHINJI

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JUDGE OF APPEAL

D. K. S. AGANYANYA

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JUDGE OF APPEAL

J. G. NYAMU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR