



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 44 OF 2007

JAMIN OBOTE SAYA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from a conviction and sentence of the High Court of Kenya at Eldoret
(Dulu, J) dated 25th May 2007**

in

H.C.CR.C. NO 31 of 2000)

JUDGMENT OF THE COURT

JAMIN OBOTE SAYA, the appellant, was jointly charged with another person not in Court with murder contrary to **section 203** as read with section 204 of the Penal Code. The Information filed by the Attorney General alleged that on the 14th of May 2003 at Umoja Estate in Uasin Gishu District of the Rift Valley Province he murdered Linet Nasimiyu, his wife (“the deceased”). However, after a full trial with the aid of assessors the appellant was convicted of manslaughter and sentenced to 10 years imprisonment.

The evidence adduced against the appellant in the trial court was as follows. The deceased and the appellant were husband and wife. They lived at Umoja estate within Eldoret Municipality. The deceased worked at Rupa Company, formerly Raymonds Woolen factory while the appellant was a businessman running matatu vehicles within the municipality. He was also a newspaper distributor.

On 15th May 2003 co-workers of the deceased at the factory, including Tiberias Wanjala (PW3), Jacob Ambata (PW2) and Ekam Okumu (PW4) were concerned that the deceased had not reported for duty, a thing that was unusual to her. They sent PW3 to the appellant to go and inquire about her. PW3 had also taken to the deceased her advance salary of Shs. 1,000. He went to the appellant’s place of work at 7.30 a.m. on 16th May 2003 and found him arranging newspapers. PW3 asked him about his wife and he told him that he, the appellant, had travelled and when he came back he saw bloodstains in the house and he thought that the deceased had miscarried and had gone to the rural home at Mautuma for treatment there. PW3 handed the Shs 1,000 salary advance to him and left. Later in the evening of the same day PW2 met the appellant and when asked about his wife he explained just as he had done to PW3 that when he returned home from his sojourn he did not find his wife and he thought she had miscarried and had gone to Mautuma for treatment.

On 17th May, 2003 the appellant’s sister and Zacharia Simiyu (PW5) went to the appellant’s house and met him outside. He repeated to them the same story as to what he thought had happened to his wife. After a brief discussion, he took them inside his house. At the sitting room there was a basin full of blood and pieces of cloth soaked in it. After a brief stay PW5 was shocked to see the body of the deceased in a night dress lying under the sofa set. The police were called and the body was taken to the mortuary at the M.T. & R. hospital.

The postmortem examination on the body of the deceased revealed a stab wound in the neck resulting in the severing of the jugular. The body further revealed mechanical asphyxia. The cause of death was haemorrhage due to the fracture of the thyroid cartilage.

The appellant in his defence denied killing his wife. He stated that on 14th May 2003 he left the house at 5 a.m. for Kabras to see his first wife. He came back on 16th May 2003 and slept. He did not sit on the sofa set that night. He

added:

“The basin was under a bed for visitors in the sitting room. It had blood. When I saw the blood I thought perhaps somebody had died. I did a search in the house. I looked into my bedroom, in the sitting room I found that the net for the visitor’s bed was placed on the bed. I want the court to believe that after the search, I did not see the body of the deceased.”

After he had testified, the appellant who was represented by counsel throughout the trial called his witness Stanley Chinai Masai (DW2) who is his uncle. DW2 testified as follows:

“I know when Linet died. It was night 13/14 May 2003. On that night when deceased came from work there was a quarrel between my uncle JAMIN OBOTE and the deceased. The reason for the quarrel was money that belonged to the deceased and my uncle took the money, he did not return it. When he was asked about the money he did not give a satisfactory answer.

They quarreled when they went to sleep I went to sleep in my room. The deceased was in the sitting room and my uncle was in the bedroom as they quarreled. When I was asleep, I heard some screams. I did not know where the screams came from.

After a short while my uncle came and knocked on my door. He told me to go and assist him with first aid. He took me to his bedroom. There I met his wife on the floor bleeding. I tried to clean the blood. Then I saw an injury on the neck. I applied water to see if blood will stop from coming out. Before I applied water, the deceased died. When I asked my uncle what we would do, my uncle quarreled me and I went to my sitting room. Then he cleaned the blood with a piece of cloth. Then he came to the sitting room and warned me that those were matters of his house. He told me not to say anything and that he would himself handle and finalize everything. He told me that he was going to talk to his cousin at Langas and go to him the next day.”

The trial court also heard the evidence of Metrine Naliaka (PW1) who testified that sometime in April 2003 the deceased told her that shs. 10,000 had been stolen from their house and she suspected that the appellant had taken it.

It is significant that DW2 was also charged with the murder of the deceased but he was tried separately in Eldoret H.C. Criminal Case No 15 of 2006. How far the trial has proceeded is not on record. The learned trial Judge totally exclude DW2’s evidence, and perhaps correctly so, on the ground that DW2 was an accomplice and that his evidence without corroboration was of little evidential value.

The learned Judge in his judgment held that this was a case based on circumstantial evidence. He stated that the guilt of the appellant could be inferred from the following facts which go towards proving that the appellant was not innocent. These facts are first, that assuming his story is believed he failed to report the disappearance of his wife after seeing a lot of blood in a basin in his house; second, a miscarriage is a serious matter and it would mostly be unusual for a man to simply sit by and not act to find out what would have happened to his missing wife after seeing such an amount of blood; thirdly, it is indeed abnormal and unbelievable that the appellant would be unable to see a body in his sitting room though he was in the house for two or so days; and finally telling lies about the whereabouts of his wife.

The learned Judge in agreeing with the unanimous opinion of the assessors held that the appellant either killed the deceased or participated in her killing and that the alleged travel and strange conduct of the appellant were merely meant to cover up the killing. The learned Judge thought that the reason for the killing was the disagreement over the lost money. This was the basis for convicting the appellant of manslaughter.

The appellant in his grounds of appeal and in the submissions of his learned counsel, Mr. Obwatinya, has faulted the findings of the learned Judge on a number of grounds contained in the supplementary memorandum of appeal. However, on our own analysis, we are satisfied that there was ample evidence to support the findings of the learned Judge and that there are no grounds for disturbing those findings.

The superior court directed itself correctly on the law regarding circumstantial evidence and relied on two well known cases, **R v Kipkering Arap Koske & Another [1949] 16 ECA 135** and **Kariuki Karanja v R [1986] KLR 190** on the correct approach to circumstantial evidence. We respectfully agree with the decision of the High Court.

We are satisfied that there was not only strong circumstantial evidence which irresistibly proved that the appellant was one of the persons who committed or arranged the killing of his wife, but, also evidence of an eye witness, DW2, whose testimony though of little or no probative value could be considered and acted upon by the trial court. The conviction is upheld. The sentence is legal and there are no grounds for interfering with it.

In our view, this appeal is without merit and we order that it be and is hereby dismissed.

Dated and delivered at Eldoret this 16th day of April 2010.

P.K. TUNOI
.....
JUDGE OF APPEAL

J.W. ONYANGO OTIENO
.....

JUDGE OF APPEAL

J.G. NYAMU

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR