



IN THE COURT OF APPEAL OF KENYA
AT NAKURU

CRIMINAL APPEAL NO. 166 OF 2005

MOSES OLESUGUT PARANAI APPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya Nakuru (Mr. Justice Musinga) dated 27th April, 2005 In H.C.CR. C. NO. 11 OF 2003)

JUDGMENT OF THE COURT

The appellant in this appeal is *Moses Olesugut Paranai*. He was charged with the offence of murder contrary to *section 203* as read with *section 204* of the Penal Code. The particulars of the offence were that “*on the 1st day of August 2002 at Nkareta area in Narok District of the Rift valley Province he murdered Silo Ene Sebut*”.

The record shows that the charge was read to the appellant on 20th May 2003 when the case came before Muga Apondi J., Masai interpretation was provided. Mr. Onderi appeared for the State and Mr. Gai appeared for the appellant.

The charge sheet was read out and every element explained to the appellant who then pleaded “*not guilty.*”

There then followed numerous mentions until 27th April, 2005 when the case came before D. K. Musinga Ag. Judge (as he then was).

Mr. Gai learned counsel for the appellant then informed the Court that “*the accused wishes to change his plea to that of guilty. He wants to plead guilty to murder.*”

Mr. Gumo learned counsel for the State had no objection. The record then reads:-

“Court: Let the charge be read to the accused again in Kiswahili/Masai. Mr. Kisongo - Interpreter English/Masai.

Court: The charge having been read over to the accused and every element thereof having been explained to him in Kimasai language which he understands and upon asking him to respond thereto he states

“It is true.”

The Facts of the case were stated by the Mr Gumo as follows:-

“On 1st August, 2002 the deceased was at her matrimonial home when the accused who was her husband arrived back home from a drinking spree and inquired from the deceased where one of the family calves was. The accused enquired from the deceased where the calf was. She did not give a satisfactory answer. The accused became so much incensed on account of the missing calf and started beating up the deceased. While still in a francy (sic) of anger, the accused took a panga and started cutting up the deceased. The deceased raised an alarm which attracted neighbours. When the accused saw the neighbours, he turned violent against them and caused them to flee. He returned to the scene where the deceased was lying and inflicted several cuts, killing her on the spot. Members of the public informed the police who immediately arrested the accused and escorted him to Narok Police Station. The deceased body was removed from the scene and taken to Narok District Hospital Mortuary where a Post Mortem was performed. The cause of death was indicated as being due to the severe assault which had been inflicted. I wish to produce the Post Mortem report. P Exh. 1. The accused was examined on 14th August 2002 and found fine to stand trial. He was thereafter charged with the present offence. I wish to produce the mental examination report as P Exh. 2. A panga was recovered from the scene. P Exh. 3.”

The record of the trial court then indicated:-

“ACCUSED

The facts are true

COURT

The accused is convicted of murder on his own plea of guilty.

ACCUSED

I have nothing to say.

COURT

The accused is sentenced to death. That is the only punishment as by law prescribed.”

We have come to the conclusion that, given the fact that the appellant had been on “a drinking spree” prior to his return to his house where his wife was, this is a proper case for his conviction of the offence of murder under **section 203** of the Penal Code being substituted with a conviction for the lesser offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code.

In reaching this conclusion we have been mindful of **section 13 (4)** of the Penal Code which states as follows:-

“4. Intoxication shall be taken into account for the purposes of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.”

We consider that it is highly unlikely that the learned Judge took into account the issue of intoxication as required to do by the cited section of the Penal Code.

In view of the foregoing we order that the sentence of death ordered by the trial Judge be and is hereby set aside and substituted with a sentence of ten (10) years imprisonment to run from the date of his

conviction and sentence by the superior court i.e 27th April, 2005.

Dated and delivered at Nakuru this 28th day of September, 2007.

R. S. C. OMOLO

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JUDGE OF APPEAL

E. O. O’KUBASU

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JUDGE OF APPEAL

W. S. DEVERELL

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR