



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NUMBER 9 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PAUL LANG'AT.....ACCUSED**

**R U L I N G**

***(On Whether Or Not The Accused Has A Case To Answer)***

1. The accused person **Paul Langat** is charged with the offence of **Murder contrary to section 203 as read with section 204 of the Penal Code.**
2. The particulars of the offence are that on 2<sup>nd</sup> February, 2020 at Chepkosigen Village, Kapnanda Sub- Location in Kuresoi South Sub-County within Nakuru County he murdered **Carren Chelangat.**
3. On 13<sup>th</sup> October, 2020 he pleaded not guilty.
4. The Prosecution called a total of eight (8) witnesses in support of its case.
5. PW1, **Sophia Cherotich Rorian**, a neighbor to the accused person, testified that on 2<sup>nd</sup> February 2020 at about 9.00pm while at the market, Mzee wa Nyumba Kumi one Paul Ngeno requested her to accompany the deceased to her home as she was totally drunk and unable to walk. She was unable to carry her so she called Juliana, Wesley Langat and Judith Rutto who came and assisted her to carry the deceased up to her house. They had to literally drag her to her house stopping three times to rest. That it appeared as if the deceased had injuries on her ribs.
6. When they reached her house they only found the deceased's three (3) children PW1 took to her house. She fed them and put them to bed.
7. At night she heard the deceased screaming and the screaming continued till dawn. She did not respond to the screams as it was the norm for the deceased to do so when she was drunk.
8. The following day the deceased's children went back to their home. A child came to call her. She went to Karen's house in the company of another neighbour. They found one Mama Seti who had sent the boy. She told them that Karen was still sleeping. They went in, touched her and left. She said that Karen had 'left' meaning had died. She said Karen's husband the accused was not at home that day. She told the court that the couple did not live a good life as they spent most of it looking for and drinking alcohol. She confirmed that when she heard the screams it was only Karen's voice.
9. PW2, **Juliana Chepkorir Kelvin** & PW3, **Judy Rutto** both testified how they had assisted to carry the deceased up to her house. Each confirmed that the accused was not at home when they took the deceased there.
10. PW4, **Anderson Lelei**, recalled that on 3<sup>rd</sup> October 2020 at about 9.30 a.m. his neighbor James Towett informed him that he had received a call from Samuel Rangechir saying that the accused person had killed his wife. At about 10.00pm, in company of James Towett and Paul Ngeno he proceeded to the accused person's house where they found a crowd. They entered into the house and saw the deceased lying down dead on the floor. That the deceased body was covered up to the chest while the rest of the body was uncovered and that there was blood on the right side of the face. He said that he interrogated the accused person who informed him that his wife had disturbed him and he had been looking for her the entire day, that when he got home at around 11.00 pm he found a person called **Shtuka** coming out of his house and when he entered the house he found the deceased naked. That a fight ensued and he beat the deceased severely using a stick. PW4 said the police arrived at the scene at around 11.30 pm and moved the body to Olunguruone mortuary and the following day he recorded his statement.

11. PW5, **Charles Ruto**, recalled that on 22<sup>nd</sup> February 2020 at about 9.00pm while going home he heard the deceased screaming. He did not bother, went to his house and slept because it was usual for her to scream whenever she was drunk. The next day at about 8.00 - 9.00am he heard screams from many people which prompted him to go to the deceased's house where he found a crowd and learnt that the deceased had died.
12. PW6, **Stephen Kirui**, testified that on the material night he heard the screams and went to the deceased house, found a crowd and learnt that the deceased had died.
13. PW7, **Samwel Kipkurui Cheruiyot** the father of the deceased testified that on 12<sup>th</sup> October 2020 he attended the post mortem examination where he identified the body of the deceased.
14. PW8, **George Biketi**, was a doctor who conducted postmortem examination on the body of the deceased on 11<sup>th</sup> February 2020. He stated that the deceased's body had injuries on the hands, legs, face, right eye, and blood on the right thigh. That cyanosis of the fingers and mouth was an indication or evidence of blood loss.
15. He further stated that the deceased's body had injuries on the stomach area, genitalia, bruises on the labia, on the right eye and hematoma at the back of the head and brain. He concluded that the deceased died as a result of head injury caused by blunt trauma. He produced the postmortem report as **P. Exhibit 1**.
16. On cross examination he stated that if someone is totally inebriated and he/she staggers and falls severally on a rocky surface he or she can suffer a blunt trauma and that the labial bruises on the body of the deceased was evidence of forced intercourse prior to her death.
17. PW8, **IP Mathew Kipkorir Chebii** is a Police Officer and testified that on 3<sup>rd</sup> February 2020 at about 11.20 am he received a call from the Officer in charge of Station. He was informed that there was a person killed at Chepkosigen Centre. Accompanied by his colleague he proceeded to the scene where he found the deceased lying dead on the floor. He documented the scene and moved her body to Olenguroini Mortuary. He observed the deceased's body and noted it had injury on the right hand and it had no inner wear. On inquiry he learnt that the deceased was found drunk at Chepkosigen Centre and since she was unable to walk she was escorted by some women up to her house. He told the court that upon interrogating the accused person who was present at the scene he confessed that he had beaten the deceased on the head at night using a stick. He took the accused person to the station for further investigations and he recorded his statement. When the post mortem examination was completed he charged the accused person with the present charge. He produced the stick as **P. Exhibit 2**.
18. The prosecution closed its case.
19. At the close of the prosecution's case, Ms. Ogange filed written submissions on behalf of the accused person. The prosecution opted not to file any submissions.
20. Counsel for the accused submitted cited the provisions of **section 25A of the Evidence Act Cap 80** and submitted that evidence of PW4 & PW8 on alleged confession was inadmissible and could not be the basis of placing the accused on his defence.
21. On the cause of death, it was submitted that the evidence of the doctor confirmed that if a person was inebriated as deceased was and the person fell and hit the head severally the person could suffer blunt force trauma. That indeed blunt force trauma was the cause of death of the deceased herein. Counsel cited the case of **R vs Cheshire [1991] 1 WLR 844**, where the court stated: -

**“Even where it is necessary to direct the jury’s minds to the question of causation, it is usually enough to direct them simply that in law the accused’s act need not be the sole cause, or even the main cause, of the victim’s death, it being enough that his act contributed significantly to that result... Occasionally, however, a specific issue of causation may arise. One such case is where, although an act of the accused constitutes a causa sine qua non of (or necessary condition for) the death of the victim, nevertheless the intervention of a third person may be regarded as the sole cause of the victim’s death, thereby relieving the accused of criminal responsibility. Such intervention, if it has such an effect, has often been described by lawyers as a novus actus interveniens. We are aware that this time-honoured Latin term has been the subject of criticism. We are also aware that attempts have been made to translate it into English, though no simple translation has proved satisfactory, really because the Latin term has become a term of art which conveys to lawyers the crucial feature that there has not merely been an intervening act of another person, but that that act was so independent of the act of the accused that it should be regarded in law as the cause of the victim’s death, to the exclusion of the act of the accused.”**

22. That there was evidence of PW1 that the deceased had visible injuries from her ribs downwards, according to the accused person, is an indication that she sustained the same due to heavy fall.
23. It was also submitted that based on evidence of PW7 that there was evidence of forced sexual intercourse by the deceased prior to her death, yet no evidence was placed before the court to connect the accused with the said act.
24. The issue that arises for determination at this stage is whether the evidence so far on record establishes a *prima facie* case to require the accused person to be put on his defence.

#### **ANALYSIS & DETERMINATION**

25. The definition as to what amounts to a *prima facie* case is given in the case of **Bhatt vs R [1957] EA 332** where the Court of Appeal stated as follows:

**“Remembering that the legal onus is always on the Prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to suggesting that the Court would not be prepared to convict if no defence is made but rather hopes the defence will fill the gaps in the Prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence. It is true as Wilson J said that the Court is not required at this stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively. That determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “prima facie case” but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”**

26. Is the evidence on record sufficient to sustain a conviction should the accused choose to say nothing to rebut the evidence by the prosecution?

27. **Section 203 of the Penal Code** defines murder as follows:-

**“Sec.203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”**

28. **Section 206 of the Penal Code** defines Malice afterthought as follows:

**“Sec. 206. Malice aforethought shall be deemed to be established by Malice aforethought 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.”**

29. Therefore the ingredients of murder are as follows:-

**i. Death of the deceased and cause of death.**

**ii. That the accused caused the death through an unlawful act or omission.**

**iii. That accused possessed an intention to cause harm/kill or possessed malice afterthought.**

30. Is there any evidence to support the above ingredients to warrant the accused person to be asked to answer the charges.

31. What jumps at the court is that there was no direct evidence to connect the accused to the offence as there was no eye witness.

32. There was no circumstantial evidence placed before the court. The accused was not home when the deceased was taken home by well-wishers. There was no eye witness to the alleged offence. The state presented suspicion based on what was alleged to be a confession by the accused person.

33. The prosecution seemed to have charged the accused based on the evidence of PW4 and PW8 who stated that the accused confessed to them having beaten the deceased severally on the head using a stick. There was a stick that was produced but it was never subjected to any forensic examination. The first witnesses, including the Nyumba Kumi person did not see any stick despite the fact the he is the one who was told about the beating. There was nothing to connect the stick with the alleged murder,

8. In any event what was alleged to be a confession cannot stand the weight of scrutiny under **Section 25(1)(a) of the Evidence Act** which provides for confessions.

16. The prosecution witnesses confirmed that the deceased on the fateful day was totally inebriated and had difficulty walking to her home. The pathologist testified that the injuries she had were not peculiar to a beating and could have been caused by a fall or falls. Even before she got home the deceased had some bodily injuries. Where she was found she was on the ground and could have fallen there. The fact that there is another way in which the deceased could have sustained the injuries that caused her death creates a doubt in the case for the prosecution and the possibility that it was not the accused person who was responsible. In view of the foregoing I find that the prosecution has failed to establish a *prima facie* case against the accused person to warrant him being put on his defence.

17. I proceed under **Section 306 (1) of the Criminal Procedure Code** to dismiss the charge of **Murder Contrary to Section 203 as read with 204 of the Penal Code** and acquit the accused accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> APRIL, 2022.**

**Mumbua T Matheka**

**Judge**

**In the presence:**

CA Edna

Ms. Mumbe for the State

Ms. Ogange for Accused

Accused present