



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 51 OF 2014

REPUBLIC.....PROSECUTOR

VERSES

GEOFFREY OIGO.....ACCUSED

JUDGEMENT

1. The accused herein 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 24th day of September 2014 at Kibomet area within Trans Nzoia County murdered IRENE KEMUNTO.**

2. The accused denied the charge which led the matter proceed to full trial. The prosecution called three witnesses and when placed on his defence the accused gave sworn evidence but did not call any witness. It shall be appropriate to summarise the evidence as tendered during trial before analysing the same and reaching an appropriate conclusion.

3. **PW1 JULIUS ONYANCHA** the chief of Bidii location testified that he received a phone call at around 4pm while in his house that there were members of the public who were destroying the accused house. He rushed to the scene and truly they had destroyed much of the house on suspicion that he had killed his wife who had not been seen for a while. They suspected that she had been buried within the compound. There was according to his evidence a rubbish pit they were trying to dig.

4. The Assistant Chief had already arrested the accused and they took him to the AP camp and later handed him over to the police. After two weeks it was reported that the body of the deceased had been found at the rubbish pit within the homestead by some tenants. The witness went to the scene in the company of the OCS who assisted in exhumation of the same.

5. When cross examined by the defence counsel he said that he did not participate in the exhumation and that he had never had any incident or complain against the accused.

6. **PW2 DR FAUSTIN SHITOTE** testified and produced the post-mortem report on behalf of her colleague DR ODHIAMBO who carried out the post-mortem exercise. He concluded that the cause of death was severe head injury and severe external and internal bleeding.

7. **PW3 P.C GEORGE OKINA** carried out the investigation after PW1 had raised the complain of the accused being suspected of killing his wife. He and others visited the scene and arrested the accused and held him for 18 days and thereafter released him on bond.

8. He went on to state that one of the tenants saw the deceased leg in the rubbish dump and they went and dug and exhumed it. It was thereafter taken to Kitale district mortuary. He then recorded statements from the witnesses and preferred charges against the accused. When cross examined he said that the accused was arrested because of suspicion.

9. As indicated earlier the accused gave sworn defence in which he said that his wife left for Kericho on the 20th day of September 2014 to visit her sister one Kerubo. On 1/10/2014 at around 5pm his worker called him and informed him that there were people who had invaded his house and were busy destroying it. He was then arrested and taken to the AP camp. He stayed at the station for 19 days till the deceased body was found in the dumpsite. He said that the dumpsite was big and an old one. He denied that he committed the offence.

ANALYSIS AND DETERMINATION

10. The court has perused the submissions by both the counsels for the two parties herein. The court is as well seized of the facts and evidence as presented herein. Contrary to the submissions by both parties the accused child did not testify although at some point in time the learned state counsel intimated to the court that the accused had threatened the witnesses including his son who recanted his statement.

11. It is clear that there was no eye witness to the incident. The evidence that was close at least was that of pw1 the area chief who responded to the members of the public who were destroying the accused properties. Pw3 the investigating officer said that the accused was arrested and charged because of mere suspicion.

12. In the absence of an eye witness, the prosecution was then expected to prove the offence by way of circumstantial evidence. In this respect the court does not see any suggestion of such an attempt. There was nothing to indicate that the accused was with the deceased on the material day. There were no witness including the neighbouring tenants who may have at least heard or witness what transpired during that period.

13. The accused son or whoever recanted the statements were not brought to the court so that the veracity of their recant or failing to cooperate with the prosecution could be tested.

14. The accused defence was that the deceased had gone to visit her sister in Kericho at that time. There was no follow up by the prosecution to confirm if that was true.

15. In essence, although the cause of deceased death was proved by the pathologist, there was nothing to suggest that it was the accused who caused it. Mere suspicion is not enough. One needs cogent evidence be it direct or circumstantial. (See **PARVIN SINGH DHALAY V. REPUBLIC (1997) eKLR.**)

16. For the foregoing reasons, this courts reaches an irresistible conclusion that there is no evidence of the accused culpability. The case was poorly investigated.

17. The accused is hereby set free under the provisions of Section 215 of the Criminal Procedure Code unless lawfully held. The surety is also discharged.

Dated, signed and delivered at Kitale this 16th day of September 2020.

H. K. CHEMITEI

JUDGE

16/9/2020