



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 6 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

HELLEN AKOTH OCHIENG'.....ACCUSED

JUDGMENT

1. Hellen Akoth Ochieng' is charged with an 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 the 29th day of March 2020, at Airstrip area, Matayos sub County of Busia County, murdered Irene Agola.
3. Irene Agola, the deceased herein, went to the house of the accused on unclear date in March, 2020. She had left her parents' home on 24th March 2020. On 29th March 2020, the deceased was taken to hospital by the accused. She was pronounced dead on arrival. The accused was charged with murder.
4. The accused contended that on 28th March 2020, Christopher Onyango (PW6) took the deceased to her house and asked her to stay with her and advise her. At about 4 a.m. she noted that the girl appeared unwell and took her to hospital. She said that she was not aware that the girl was pregnant. She denied any involvement in her death.
5. The issues for determination are:
 - a. Whether the accused was involved in the death of the deceased; and
 - b. Whether the prosecution has proved its case against the accused.
6. The prosecution tended to rely heavily on circumstantial evidence to link the accused to the death of the deceased. This was adduced by Stella Etyang (PW5). She testified that when the deceased was pronounced dead by the clinical officer, she interrogated the accused so as to get the name of the deceased. The accused kept giving her several names as the identity of the deceased. When she labelled the body of the deceased as Jecinta, the name supplied to her by the accused, the accused removed the name tag. When she realized the tag was missing, she asked the accused about it. The accused removed the tag from her pocket and handed it to her.
7. Circumstantial evidence was restated in the case of **Mohamed & 3 Others vs. Republic [2005]1 KLR 722** as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

8. The Court of Appeal in the case of **Sawe vs. Republic [2003] KLR 354**, held as follows:

1. In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.

2. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.

3. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.

9. The accused explained that her conduct was induced by confusion. This explanation is not far-fetched. It is common knowledge that when death strikes, some people are affected and behave in strange ways.

10. The prosecution did not adduce evidence to show how the accused was involved in the death of the deceased herein. It is as if they expected her to prove her innocence. She had no legal obligation to do so. She was arrested and charged on suspicion. The Court of appeal in the case of **Sawe vs. Republic [2003] KLR 354** said:

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.

11. I therefore find that the prosecution has not proved that the accused was involved in the murder of the deceased herein. I accordingly acquit her of the charge of murder and set her free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 16th day of December, 2020

KIARIE WAWERU KIARIE

JUDGE