



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL MURDER CASE NO.17 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ALBERT ODHIAMBO ODONGO.....ACCUSED

JUDGMENT

[1] ALBERT ODHIAMBO ODONGO, is accused of murdering **EUNICE ATIENO OLAL**, contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

It is alleged that the offence occurred on the 7th June 2015 at Kotieno Village, Kasimba sub location in Rachuonyo South, Homa Bay County.

[2] The case for the prosecution was that, the accused lived with the deceased as man and wife and on the material date they allegedly quarreled and engaged in physical confrontation in which third parties were involved at the invitation of the accused. In the process, the deceased suffered fatal injuries but on the following day the accused proceeded to Oyugis police station and reported that the deceased had been attacked by unknown thugs on her way home from the market and had suffered fatal injuries.

[3] CPL. BRENDA AKINYI ONYANGO (PW1), and colleagues pursued the report by the accused and in the process visited his house where they found the dead body of the deceased in a bedroom with a fresh deep open wound on the forehead.

They noted traces of blood on the floor of a sitting room which appeared to have been mopped. They noted that the accused's face had injuries which he alleged were as a result of a fight with the deceased over a sum of Kshs.8000/= which she had allegedly stolen from him.

[4] Information gathered by the police from members of the public at the scene revealed that the accused and two other persons had actually assaulted the deceased whose dead body was removed to the mortuary after which the accused was arrested and eventually charged with the present offence.

[5] JANE ACHIENG OLANG (PW2), a sister to the deceased, learnt of the deceased's death on the 8th June 2015. She later learnt from a step mother of the accused called "**Nyakambogo**" that the deceased and the accused had fought and by bad luck the accused killed the deceased.

On 9th June 2015, she (PW2) identified the body of the deceased for postmortem purposes. Her sister, **MARY ATIENO ONDAGO** (PW3), witnessed the postmortem conducted on the body of the deceased on 11th June 2015.

[6] DR. PETER OGOLA (PW4), conducted the postmortem and compiled the necessary report (**P. Exhibit 1**) indicating that the cause of death was severe head injury due to skull fracture due to blunt trauma.

PC NANCY KOSGEY (PW5), indicated that a domestic brawl between the accused and the deceased ended in the death of the deceased from injuries inflicted on her by the accused.

[7] In his defence, the accused denied the charge and indicated that he had been married to the deceased for a period of five (5) years but they had not been blessed with any child. He was not at home on the material date as he had driven some cattle to Oyugis where he remained for the whole day. It was on the following day that he was informed that the deceased had been assaulted on arrival home from her fish business.

He returned home and found the deceased already dead from serious injury. He then reported the matter to the police.

[8] It is evident from all the foregoing evidence and in particular, the evidence of the doctor (PW4) that the deceased's death was as a result of severe head injury caused by blunt trauma. Therefore, the basic issue for determination is whether the accused either acting alone or in concert with others was the person responsible for assaulting the deceased and occasioning her fatal injury.

[9] Although there was suggestion from the prosecution through **Jane Achieng (PW2)** that the accused and the deceased were involved in a fight after having seriously quarreled on the material date, neither **Jane** nor any other witness who testified in court witnessed the said quarrel and fight.

At most, the witnesses relied on hearsay in an attempt to establish the accused's criminal culpability in the death of the deceased. He implied in his defence that he could not have been culpable and was indeed not culpable as he was away in Oyugis on the material date and time of the offence.

[10] The prosecution therefore fell short of leading direct evidence against the accused.

However, the evidence by Cpl. Brenda (PW1) indicating that the accused had falsely reported to the police that the deceased was attacked and injured by unknown thugs and the fact that he attributed injuries on his face to a fight with the deceased over a sum of Kshs.8000/=, was sufficient and credible indirect evidence against him.

[11] Further evidence by Cpl. Brenda, indicated that the deceased's body was found on the following day in a bedroom and with a fresh injury on the forehead, but in the sitting room traces of blood were seen although efforts to conceal them were made by mopping of the floor. These factors also provided sufficient indirect evidence against him and were compounded by the fact that the deceased and the accused lived alone in their own house although it was strongly suspected through information gathered from members of the public by the police that the accused may have been assisted by third parties who are still at large to assault his wife.

[12] For all the foregoing reasons, it is the finding of this court that the alibi offered by the accused was clearly discredited and reduced to an afterthought by the very cogent and credible circumstantial evidence against him which shows that he was responsible or one of those responsible for inflicting fatal injuries upon the deceased in what may have been a domestic brawl gone awry.

However, the fact that the fatal injuries could have been inflicted in a fight between the accused and the deceased probably with interference from third parties it cannot be said that malice aforethought to sustain a charge of murder was clearly established.

[13] In the circumstances, the accused is hereby found guilty of manslaughter contrary to **Section 202 (1)** of the **Penal Code** and is convicted accordingly.

J.R. KARANJAH

JUDGE

26.02.2019

[Delivered and signed this 26th day of **February, 2019**]