



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 27 OF 2017

(CORAM: R.E. ABURILI – J)

DENNIS OCHIENG ODHIAMBO ACCUSED

CHRISPINE OWINO ODHIAMBO.....ACCUSED

VERSUS

STATE PROSECUTOR

RULING

1. After close of prosecution case, the defence counsel submitted a no case to answer. I have considered the evidence of PW1, PW2, PW3 and PW4 on record. Gilbert Oriedi Waudi PW1 testified and stated that he never saw anything happen at the scene. He stated that he never saw the accused persons beat up the deceased.

2. PW2 a Police Officer CPL Edward Simiyu received a call from the area chief Joanes Anamu, PW3, to the effect that a thief was found stealing and was beaten by a mob. He mobilized his officers and went to the scene. They found a suspect tied with a rope and were told the suspect was the thief. They were assisted to escort him to hospital at Sagam. He was pronounced dead on arrival. The witness never mentioned the names of any of the Accused persons as to their involvement in the murder of the deceased suspect, but stated that he arrested one of the accused persons after taking the deceased's body to Yala Mortuary.

3. PW3 Joannes Anam Adongo testified and stated that he received a telephone call from PW1 saying an unknown person had been arrested by the public and was being beaten. He went and reported the matter at Yala Police Station and the following day he learnt of the death of the deceased. He stated that he did not see or meet the suspects of the offence and that the accused persons were arrested in connection with the offence after the public reported that they were present when the offence was being committed. He maintained in cross-examination by Mr. Were Advocate for the Accused persons that:

“It is the Public who said that the Accused were present at the scene of Murder.”

He denied witnessing the murder.

4. It is the duty of the prosecution throughout the trial to discharge the burden of proof. Having considered the above evidence, I am unable to find any piece of evidence connecting or associating the accused persons herein Dennis Ochieng Odhiambo and Chrispine Owino Odhiambo with the murder of the deceased Charles Opati Okinda.

5. It would be unsafe to place them on their defence as that would be shifting the burden of proof from the Prosecution to the defence contrary to the established rule of fair trial.

6. In the end, I find and hold that the Prosecution have failed to establish a prima facie case against the accused persons to warrant their being placed on their defence.

7. Accordingly, I find the Accused persons not guilty of murder the Accused persons are hereby acquitted under **Section 306(1) of the Criminal Procedure Code** and are set at liberty unless otherwise lawfully held.

8. Their respective sureties are hereby discharged. Any security deposited in Court to be released to the sureties as appropriate.

File closed.

Orders accordingly.

DATED, SIGNED AND DELIVERED IN SIAYA THIS 24TH DAY OF APRIL, 2019.

R.E. ABURILI

JUDGE