

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

HIGH COURT CRIMINAL CASE NO. 4 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

RONALD KIPKOECH BII.....ACCUSED

RULING

1. The accused, Ronald Kipkoech Bii, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 16th day of February 2015 at Getarwet village in Buret District within Kericho County, he murdered Mercy Cheronno.

2. The prosecution called 4 witnesses in support of its case against the accused. At the close of the prosecution case, Ms Koech for the accused submitted that the accused had no case to answer. The basis of her submission is that the prosecution evidence was purely circumstantial— none of the witnesses saw the accused kill the deceased. She submitted that even though the accused was seen beating the deceased, her death was not due to the injuries sustained as a result of the beating but due to strangulation. Ms Koech argued that someone else could have gone to the accused's house and strangled the deceased when the accused had gone to the house of PW2, Samuel Kiprop Bii, to inform him that the deceased was sick.

3. The state's submission was that it had adduced overwhelming evidence that showed that the accused was the person who murdered the deceased. PW1 had seen the accused beating the deceased mercilessly, using three canes all of which broke, one after another, at which point he continued to kick the deceased as she lay on the ground. He then picked her up and took her inside the house they shared.

4. PW2's evidence was that the accused woke him up later that night and told him that the deceased was sick. He had accompanied the accused to his house and seen the deceased lying on the bed with blood oozing from the back and thighs. Upon looking closer, he realised that she was dead. PW3, the doctor, produced a post mortem report that showed that the deceased died as a result of strangulation.

5. The prosecution conceded that the evidence against the accused was circumstantial, but it was circumstantial evidence that pointed to an inference of guilt against the accused. The deceased was last seen alive when she was being mercilessly beaten by the accused. She was later found dead in the room she shared with the accused.

6. I have considered the evidence on record and the submissions of the parties. I note from the evidence that the accused had been assaulting the deceased on the day of her death, and had then taken her inside the house in which they were living together. He had later that night gone to call his brother, PW2, to ask for help as the deceased was sick. She was in fact dead, and the medical evidence was that the cause of death was strangulation.

7. While the evidence against the accused is circumstantial, I am satisfied that the prosecution has established a prima facie case against the accused. I therefore place him on his defence in accordance with section 306 (2) of the Criminal Procedure Code. I also inform him of his right to inform the court whether he intends to give sworn or unsworn evidence in his defence, and whether he intends to call any witnesses.

Dated Delivered and Signed at Kericho this 21st day of February 2018.

MUMBI NGUGI

JUDGE