



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL (MURDER) NO. 105 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JAIRUS ONTITA ARICHA.....ACCUSED

JUDGMENT

1. The accused, **Jairus Ontita Aricha**, is charged with murder, contrary to S. 203 as read with S. 204 of the Penal Code, in that, on the 14<sup>th</sup> day of December 2012, at Magena Market, Kenyena Sub-county within Kisii County, jointly with others not before Court, murdered **Okari Ochichi**.

2. The case for the prosecution was that the deceased was husband to **Mercy Kerubo Okari (PW 1)** and a friend to the accused. He (deceased) died in the month of December 2012 in unclear circumstances and more than one year later, the accused visited his wife (PW 1) on 19<sup>th</sup> October 2014, while in the company of an uncle to the deceased. At the time, the accused appeared uneasy. He alleged that the matter of the deceased was “following” him.

3. He (accused) stated that the death of the deceased was haunting him. He therefore desired to appease the deceased’s spirits by donating a cow, maize and money to Kerubo (PW 1). She became suspicious of him and wondered whether he was not responsible for killing the deceased who had been murdered after having been drinking with some ladies. The incident resulted in the arrest and release of some suspects.

4. A group of villagers was attracted by the arrival of the accused at the homestead of Kerubo. The group gathered at the scene and this prompted the arrival of the area chief who arrested the accused and handed him over to the police after being suspected of having killed the deceased and being threatened with lynching in the presence of a brother to the deceased, **Job Ochichi (PW 2)**.

5. A postmortem examination on the body of the deceased conducted by **Dr. Morris Raute (PW 3)** on 17<sup>th</sup> December 2012, revealed that the deceased died from multiple injuries and internal bleeding.

The postmortem report (P.Ex 1) specifically indicated that the cause of death was cardiorespiratory arrest due to multiple injuries with internal haemorrhage due to RTA which is an abbreviation for Road Traffic Accident.

6. **C.IP Benson Naibei (PW 4)**, investigated the case after it was reported to the police. He found the body of the deceased along the Kilgoris/Kisii road on 16<sup>th</sup> December 2012. He observed that it had deep cuts on the head, arms and stomach and opined that it had been dumped at the scene from elsewhere. He arranged for its removal to Nyamache hospital where a postmortem was conducted. He later learnt that the accused and the deceased quarreled and fought inside the deceased’s bar at Magena area. Thereafter, the accused disappeared from the area only to return after a period of two (2) years with the intention of compensating the family of the deceased by buying for them a cow for the death of the deceased. It was then that he was spotted by villagers and threatened with lynching. He was however, saved by the arrival of the police at the scene and was later arraigned in Court for the death of the deceased.

7. In his defence, the accused denied any responsibility for the death of the deceased whom he said was a stranger to him. He said that he was at his home near Magena petrol station on the 14<sup>th</sup> December 2012, when the dead body of the deceased was found on a nearby road. He did not know what had happened to the deceased, neither did he know how he was killed and by whom. He (accused) was however, arrested on 20<sup>th</sup> October 2014 for an offence which he did not commit. He contended that the evidence against him was not truthful.

8. From all the foregoing evidence, the issue arising for determination is whether the deceased was murdered and if so, whether the accused was responsible for the offence.

The cause of death was a crucial factor in determining whether or not the deceased was murdered.

The evidence by the deceased's wife (PW 1) and the deceased's brother (PW 2) was insufficient to establish beyond reasonable doubt that the deceased was indeed murdered by being violently attacked by an individual or individuals. All that these two witnesses could do was to speculate without cogent facts that the deceased was murdered.

9. Another form of speculation came from the investigating officer (PW 4) inasmuch as he stated that the body of the deceased was dumped at the scene from elsewhere and inasmuch as he implied that the deceased sustained fatal injuries in a fight with the accused who thereafter disappeared from the scene.

The fact of disappearance of the accused was never confirmed by the deceased's relatives (PW 1 and PW 2), neither was the fact of a quarrel and fight between the accused and the deceased in a bar. No witness was available to confirm the alleged fight.

10. Apparently, the investigating officer fed this Court with a lot of conjecture and speculations. He did not make serious attempts to investigate the alleged murder of the deceased by the accused. If he undertook the investigations with reasonable care and seriousness he would definitely have found that the deceased may have died from a road traffic accident rather than from injuries inflicted in a fight or an attack by an individual or individuals. This was clearly demonstrated in the evidence of Dr. Raute (PW 3) whose postmortem report clearly showed that the deceased died from cardiorespiratory arrest due to multiple injuries with internal haemorrhage due to RTA which is an abbreviation for Road Traffic Accident. This is consistent with the fact that the body of the deceased was found on a road with extensive and massive injuries which most likely than not resulted from a great and violent impact with a motor vehicle or cycle rather than from a violent physical attack from an individual.

11. The fact that the deceased was murdered was thus not proved by the prosecution. Therefore, the question whether the accused was responsible for the offence did not arise. He was suspected merely because it was alleged that he had attempted to compensate or appease the family of the deceased for his death.

Mere suspicion without cogent evidence is incapable of establishing a criminal offence against a person. This is the position applying to this case and although the accused lied that the deceased was a stranger to him, he cannot be held guilty of his death on mere suspicion and conjecture.

12. In the end result, it is the finding of this Court that the accused is not guilty as charged. He is accordingly acquitted.

**[Delivered and signed this 11<sup>th</sup> day of April 2018]**

**J.R. KARANJAH**

**JUDGE**

**In the presence of**

CC - Mohe

State Counsel – Mr. Otieno

Mr. Sagwe for accused

Accused – Present