



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 7 OF 2011

REPUBLIC.....APPELLANT

VERSUS

WILSON KIPLAGAT CHEROP.....RESPONDENT

RULING

WILSON KIPLAGAT CHEROP is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on the 10th day of February 2011 at Kapkoi village in Keiyo South District, within the Rift Valley Province, murdered *Godfrey Kiprotich Rono*.

The prosecution case is that on 10th February 2011, *Ambrose Kimayo Barchoge*, the PW-1 in this case, was at his mother's home at about 8.30 p.m. He heard screams emanating from the road side, about 100 metres away. A person was screaming saying in Swahili, "usiniuwe", meaning

"don't kill me". PW-1 using his phone called the area Assistant chief, namely *Albert Kiplimo Chemoiwo*, PW-2 in this case. PW-1 told PW-2 that he had found someone lying off the road. PW-2 called an AP by the name of *Cheruiyot* and they both proceeded to the scene using a motor bike. Upon arrival they recognized the victim as one *Geoffrey Rono*. He was lying beside the road, face downwards. The Assistant chief sent someone to call the victim's brother, who's PW-4 in this case. PW-4 was called and visited the scene. He found *Godfrey Rono* lying along Kaptarakwa-Iten road, with blood on the face. He stopped a vehicle which rushed him to Moi Teaching and Referral Hospital. The victim had a cut on the back of the head. He was admitted and at 3.00 a.m he was pronounced dead. The body was taken to the mortuary.

At the scene, one black shoe/sandal was recovered. PW1 said it was for *Wilson Cherop*. A meeting was held on 12th February, 2011 at noon about the incident. The meeting was aimed at finding the owner of the shoe. They were however unable to know the owner. Later they were told the accused had surrendered at Kaptagat police station.

On 17th February, 2011 post mortem was conducted on the deceased's body by *Dr. Macharia Benson* who gave evidence as PW-3. He found that the body was of a 54 years old person. Had blood stained bandage on the head. There was forehead laceration of about 6 x 1cm and another on the upper part of left eye of 3 x 1.5 cm. On the right side was another of 1 x 0.8 cm and also on the vertex of the head of 3 x 0.5 cm.

Internally, he had depressed fracture of the skull measuring 2 x 1 cm. The right side of the skull had bruises and extensive bleeding in the left side of brain.

He was of the opinion that the cause of death was intra-cranial bleeding, due to head injury, due to blunt force trauma. He took blood samples of which he handed to the investigating officer. He produced the report as exhibit 2.

The prosecution were not able to secure the attendance of their other witnesses and after they were denied an adjournment they were forced to close their case prematurely.

At this juncture, I got to determine as to whether a prima facie case is established against the accused person, so as to warrant him be placed on his defence.

Of all the prosecution witnesses none saw the accused person committing the alleged offence. The only evidence that connects him to the offence is of the allegation by PW-1 that the one found black shoe/sandal at the scene, belonged to him, and the allegation by PW-2 and PW-4 that the accused surrendered himself at Kaptagat police station.

On the recovered shoe/sandal at the scene (PMFI-1), PW-1 apart from stating that he knew it was for the accused did not tell the court how he knew that. He did not point out any peculiar specific mark which would have enabled him recognize it as such, without a possibility of having made a mistake. On cross examination about it he said;

“I know that the shoe/sandal was Wilson’s. Wilson stays nearby. Don’t sell shoes. I did not give them to Wilson as a gift. I know his shoes. Many people have these types of sandals. There is no name of the accused on the shoe. I know that shoe belong to Wilson – even though many others have a similar shoe/sandal. Don’t know where Wilson bought the shoe. Don’t know the date he bought it”.

It is clear that what was recovered was one sandal. The other was not got. The accused never had it. There is no evidence the recovered sandal was of his feet size. We don’t know how it found itself there and when. If there are many of the kind in the market, no evidence differentiated the recovered one from what may have been bought by any other person. There is also no evidence that the owner of the sandal or whoever took it there, is the one who killed the deceased. There is also no evidence that the deceased himself is not the one who had the sandal. The evidence is of little probative value if any, to the effect that it is the accused person who killed the deceased.

The claim that the accused surrendered as the culprit at Kaptagat police station is all hearsay. The officer he surrendered to never gave evidence and if at all he surrendered we don’t know the circumstances under which he did so. The claim is therefore inadmissible as evidence.

Given the foregoing it is explicit beyond doubt, that the prosecution have failed to establish a prima facie case against the accused person, in relation to the offence charged with. For the reason he’s acquitted of the offence under Section 210 of the Criminal Procedure Code.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 25th day of July, 2018.

In the presence of:-

1. Mr. Oboru holding brief for Mr. Chepkwony for the accused
2. Ms. Kagali for state prosecutor
3. Mr. Mwelem- Court clerk