



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 27 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

SHADRACK KIPKEMOI RUTO.....ACCUSED

J U D G M E N T

1. The accused was charged with the offence of **Murder contrary to section 203 as read with Section 204 of the Penal Code**. The particulars of the offence were that **on the night of 3rd and 4th October 2009 at Chesubet village in Elgeyo Marakwet County murdered Hellen Chelagat**.

2. The accused denied the offence. The prosecution called 4 witnesses to prove their case. Their evidence can be summarised as hereunder.

3. **PW1 Jonathann Kiplimo Koskei** testified that he was a village elder at Chesubet location. He said that while he was planting his beans a child came and informed him of the incidence. He went to the deceased house where he found many people. The deceased house was locked from outside with a padlock. There was a child crying inside. He broke the window and with the assistance of light from his phone managed to see the deceased lying on the floor and covered with a blanket.

4. He called the Assistant Chief as well as the police and broke the door. The deceased had injuries on the neck as well as the face. The small boy told him that the accused had quarreled with the deceased at night and fought. The police collected the body as well as the pangas. The accused disappeared for 4 years between 2009 – 2013 when he was arrested on 8/8/2013.

5. **PW2 Monica Jeptum Ruto** was the sister to the deceased and step sister to the accused. She also testified that on 4th October 2009 a child by the name Jepkemoi came and told her of the incident. She rushed to the scene and upon seeing the deceased body she lost consciousness. Later the police came and collected the body. She said that the accused had stayed with the deceased for a month.

6. **PW3 Charles Korir Komen** is a step father to the accused and the deceased was her daughter. He said that he was in his house on 4/10/2009 when he got the information. His place to that of the deceased was about 7 Km. He arrived at the scene and saw the body which had the neck almost severed. The body was taken to the mortuary. He later identified the body during post mortem exercise.

7. **PW4 Dr. Blustus Kagundi** from Makueni County Referral hospital produced the post mortem report on behalf of Dr. Mulande Gilbert who performed the same. He concluded that the cause of death was decapitation with severe bleeding from the tissue.

8. When put on his defence the accused gave unsworn evidence denying the charge. He said that he had come visiting his step sisters Gladys, Monica and the accused whom he had not seen for a long time. They did spend several days together and left on 23rd September 2009 back to his home at Tindiret. In the year 2013 he came back and was arrested and accused of killing the deceased.

Analysis and Determination

9. I have read carefully the proceedings herein as well as the submissions by both counsels. The relationship between the deceased and the accused was not disputed. It was not also in dispute that the accused had visited after going away for a long time and that during the visit he stayed in the deceased house.

10. It is equally undisputed that the deceased had issues with her husband and the husband had left the house for her. That the domestic dispute with the husband was to do with money and had led to misunderstanding.

11. The fact of the deceased death and how it was caused was well captured in the post mortem report.

12. The big question however is who killed her? The most appropriate person to tell us would have been the young boy called Newton who was rescued from the house. He allegedly told PW1 that the deceased had fought with the accused that night.

13. For some reasons however the child was not traced and or called to testify. None of the witnesses saw the accused spend the night in the house of the deceased.

14. Infact the Murder weapon used (panga) was collected but not produced. Perhaps a DNA test ought to have been done.

15. I do agree with the learned State counsel that in the absence of Newton the matter became purely based on circumstantial evidence. Even then the circumstantial evidence must be watertight.

16. Mere suspicions however stronger it is cannot be a basis for conviction. The unsworn evidence of the accused simply narrated

how he came after along time and received by PW1 his father as well as his step sister. It appears that both the accused and his next of keen were people not necessarily very close given the period he was away.

17. Was there any suspicions of malice aforethought on the part of the accused? I do not find any. No evidence was led to suggest that there was bad blood between him and the deceased. If anything there was bad blood between the deceased and her husband.

18. Consequently it would be reasonable to grant the accused the benefit of doubt. For the foregoing reasons the accused is hereby acquitted under the provisions of Section 215 of the Criminal Procedure Code. He is set free unless lawfully held.

Judgment read, delivered, signed and dated at Kitale on 26th day of September, 2018.

H.K. CHEMITEI

JUDGE

26/09/18

In the presence of:

Mr. Kakoi for State

Mr. Chebii for Accused - Absent

Accused – present

Court Assistant – Kirong

Judgment read in open court.