

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 14 OF 2013

REPUBLIC PROSECUTOR

VERSUS

DAISY JEROP CHESUM ACCUSED

R U L I N G

1. The accused, Daisy Jerop Chesum, was charged with murder, contrary to S.203 as read with S.204 of the Penal code, in that on the 22nd April 2013 at Kipkundur village Kapcherop Elgeyo Marakwet County, jointly with others not before court murdered Sammy Kiplimo Cheronu.

The case for the prosecution was based on the evidence led by Kipsor Kandie (PW1), Benjamin Kiplagat Maiyo (PW2), Dr. Odhiambo Edward (PW3) and PC James Kiarie (PW4).

2. At the close of its case, the prosecution was required to establish a '**prima facie**' case to warrant that the accused be placed on her defence. Such a case is one in which a reasonable court properly directing its mind to the law and the evidence before it would convict if no evidence is led by the defence.

3. Herein, the supposedly key witness were Kandie (PW1) and Maiyo (PW2) but they did not implicate the accused with the offence other than saying that she was in their company aboard a motor vehicle when they were waylaid and attacked by thugs who beat them up while sparing the accused with whom they left with the motor cycle thereafter. Dr. Odhiambo (PW3) merely produced the post mortem report to show that the deceased died from severe head injury due to assault. PC Kiarie (PW 4) merely suspected the accused and charged her on the basis that she rode away with the thugs and reported the matter to the police later.

4. The evidence foregoing did not and was not capable of establishing the material ingredients of the charge against the accused. She was not with the thugs at the time of the attack but with the victims. She did not participate in the assault meted out against the victims including the deceased by the thugs. The fact that she was spared the beatings and rode away with the thugs for her to later report the matter to the police was not sufficient evidence to implicate her with the offence. There was absolutely nothing to show that she and the thugs had a common intention to assault, rob and kill the deceased.

5. Consequently, it cannot be held by this court that the prosecution has established a prima facie case to warrant that the accused be placed in her defence. She does not therefore have a case to answer and is hereby acquitted and set at liberty unless otherwise lawfully held.

Ordered accordingly.

J. R. KARANJA

JUDGE

23.07.2015

Read and signed this 23rd day of July 2015.

In the presence of Mr. Tigogo for accused and Mr. Kakoi for state.