



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 64 OF 2011

REPUBLIC PROSECUTOR

VERSUS

KIBOR ROTICH ACCUSED

J U D G M E N T

1. The accused, ***Kibor Rotich***, was charged with murder, contrary to section 203 read with S. 204 of the Penal Code, in that on the ***27th November 2011***, in Elgeyo Marakwet County, jointly with others not before court murdered ***DC***.
2. The case for the prosecution was to the effect that the deceased was married to ***AC (PW3)***, and ***SJK (PW4)***, and on the ***26th November 2011***, he returned home from Kapcherop and slept. He left home on the following material date at around lunch time and went for a drink. He did not return home for the night and on the following day reports were received by his wives that he had been assaulted.
3. The wives (***PW3 and PW4***) and others including an assistant chief, ***James Kimwogo Chomobei (PW5)***, proceeded to the scene of the assault and found the deceased in a state of injury. He was taken to hospital but passed away while undergoing treatment. At the time of the assault, the deceased was in the company of ***SJ (PW1)***. They were walking together when the deceased was allegedly hit on the head with a '***rungu***' by the accused who according to ***Solomon Kimeli Kiplagat (PW2)***, spent the material night at home.
4. ***S (PW1)*** and the father of the accused are the persons who implicated the accused who presented himself at Kapcherop Police Station and informed ***Cpl. Geoffrey Kavai (PW6)***, that he was the person being searched by the police for assaulting the deceased. He indicated that he assaulted the deceased with a stick after a quarrel and escaped to his sister's home for fear for his life. He was therefore arrested and charged with the present offence after investigations revealed that the deceased and ***S (PW1)*** were engaged in sexual intercourse in a bush when the deceased was hit on the head with a stick by the accused.
5. A post mortem carried out on the body of the deceased revealed that he died from severe head injury due to blunt trauma. The defence by the accused was denial to the effect that he was at his home with his brother (***PW2***) on the material night and on the following day he learnt that the deceased had been assaulted. He proceeded to Ortum hospital but learnt that the deceased had been taken for further treatment at Moi Teaching and Referral hospital where he passed away while undergoing treatment for head injuries.

6. At a later stage, he (accused) was confronted by a crowd of people alleging that he was involved in the death of the deceased. He decided to save himself by proceeding to Kapcherop Police Station where he reported the matter after which he was tortured by the police to the point of admitting a crime that he did not commit. He contended that he did not commit the offence.

7. From the evidence, it is not disputed that the deceased met his death after being assaulted and suffering serious injury to his head which later led to his demise.

The issue for determination was whether the accused was involved in the unlawful act and if so, whether he acted with a clear intention to kill the deceased.

8. By and large, the key witness was **S (PW1)**. She was the person who actually implicated the accused. She informed the chief (PW5) as much but the chief did not find her reliable because at the time she reported to him, she appeared confused.

The investigating officer (PW6) appeared not to have interrogated her but from his investigations she was engaging in sexual intercourse with the deceased in a bush when the assailant emerged.

9. In her testimony before the court, she (PW1) did not come out as a truthful witness due to her contradictory evidence which indicated that on one hand the accused was the assailant and on the other hand he was not. She indicated that the deceased and herself had taken “changaa” (traditional Liquor) at the time and that she stated in her statement to the police that the deceased was assaulted by unknown persons as he and her engaged in sexual intercourse. She said that she could not recognize the assailant since it was during night hours.

10. The father of the accused who according to the chief (PW5) indicated that the deceased was assaulted by the accused was not called to testify and confirm or otherwise deny the information to the chief attributed to him.

The alleged confession or admission made by the accused to the investigating officer (PW6) had no force of law or any probative value as it was not lawfully obtained by an authorized officer. In any event, the accused alleged that he was tortured by the police in order to confess or admit his involvement in the death of the deceased.

11 Basically, the evidence by the prosecution was not credible and cogent enough for a finding that the accused was involved in the unlawful act of assault which led to the death of the deceased. His defence was not dislodged or discredited by any evidence from the prosecution.

Consequently, this court must now pronounce the accused not guilty as charged and acquit him accordingly.

J. R. KARANJA

JUDGE

[Delivered & signed this 23rd day of July 2015]