



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**CRIMINAL CASE NO. 16 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DANCAN SIAMBI.....ACCUSED**

**J U D G M E N T**

1. The accused, **Dancan Siambi**, is charged with murder, contrary to S. 203 read with S.204 of the Penal Code, in that on the night of **2nd / 3rd March 2010**, at Kipsongo Trans-Nzoia West District, murdered **Regina Karani Oduor**.
2. The case for the prosecution was to the effect that the deceased was married to the accused and they lived at Kipsongo within Kitale Town. On the **2nd March 2010**, their neighbour **Vincent Ouko (PW4)**, heard some noises in their house. He proceeded there and found the deceased lying on the ground with the accused standing beside her. His attempts to find out what had happened proved futile and he left the scene. Later, he heard that the deceased had died while in hospital.
3. A village elder, **Wycliffe Wanyonyi (PW 5)**, was at the Kipsongo trading centre on **3rd March 2010**, when he heard people saying that the accused had assaulted and seriously injured his wife. He **(PW5)** proceeded to the home of the couple but found nobody. He learnt from neighbours that the accused's wife had been rushed to hospital. He contacted the area chief but later heard that the accused's wife had died while undergoing treatment at the Moi Teaching and Referral Hospital Eldoret. He indicated that the accused and his wife lived a stormy life marred with domestic squabbles.
4. **Petronila Taga (PW3)**, sister to the deceased, went to the home of the deceased on the **3rd march 2010**, and found her husband, the accused. He told her that the deceased had left in the morning and had not returned. She **(PW3)** did not believe him. She left the scene and returned later only to find that the deceased was injured and was on a motor cycle being taken to the hospital by the accused. She reported the incident to her parents **Albert Henry Karani (PW1)**, and **Olive Khasian Oduor (PW2)**. They were informed that the deceased had been assaulted and seriously injured by her husband.
5. **Cpl, Corleta Musau (PW6)**, received the necessary report and carried out investigations which revealed that the accused and the deceased were involved in a fight in their matrimonial home. She **(PW6)** visited the deceased in hospital and found that she was in a coma with a serious injury on the head. She **(PW6)** visited the scene of the offence but did not recover any weapon. She later traced and arrested the accused after the deceased passed away while undergoing treatment. She eventually preferred the present charge against the accused.

6. In his defence, the accused denied the offence and stated that he was a driver by occupation and on the material date he was at Lokichar in Turkana County where he had taken some goods. His wife called him in the process and said that she was unwell. He sent her money for drugs and later returned home from where he transported some goods to Kisumu before returning in the night only to find that his wife was intoxicated and had injuries on her body. She could not explain what had happened to her. He took her to hospital on the following day when her condition worsened. Her relatives appeared at the scene and treated him with hostility to the extent of preventing him from seeing his wife in hospital at Kitale and Eldoret. He was later arrested and charged after his wife passed away.

7. From all the foregoing evidence, the basic issue for determination is whether the deceased was killed as a result of an unlawful act, and if so, whether the accused was the person responsible for the act.

The defence raised by the accused is a clear indication that he was not responsible for the death of the deceased in any manner and that he could not tell what happened to her when he found her intoxicated with injuries on her body. He implied that he was implicated in this matter by her relatives.

8. The obligation to prove the alleged involvement of the accused with the death of the deceased lay with the prosecution. It was therefore incumbent upon the prosecution to prove beyond reasonable doubt that the deceased died from injuries occasioned to her by the accused.

The post mortem report (P.Ex.1(a)) revealed that the cause of death was aspiration pneumonia following severe head injury due to blunt trauma. This therefore indicated that the deceased died from a head injury which could have been caused by anything from an act of violence to an accident.

9. The allegation that the accused was responsible for assaulting and occasioning fatal head injury to the deceased was not proved by the evidence availed against him by the prosecution. None of the prosecution witnesses saw the accused assaulting and injuring the deceased. Vincent (**PW 4**), only heard noises from their house but he could not tell what was happening. He could not tell whether the deceased was injured or drunk. The village elder (**PW5**) only knew that the couples often engaged in domestic squabbles but could not tell whether the deceased was assaulted and seriously injured by the accused on the material date.

10. He (**PW5**) had known the couple for more than four (4) years. The deceased's sister (**PW3**) merely saw injuries on the deceased but could not tell how they were caused. She however, told her parents (**PW1** and **PW2**) that the deceased had been badly beaten by the accused. There being no evidence showing and proving that the deceased was assaulted and fatally injured by the accused, the fact that she may have been accidentally injured due to her alleged state of intoxication could not be overruled. The accused's defence of innocence cannot therefore be disregarded and is actually sustainable in view of the insufficient evidence adduced against him.

11. In sum, the prosecution failed to prove that the death of the deceased was as a result of an unlawful act of assault committed against her by the accused. Consequently, the accused is hereby found not guilty as charged and acquitted accordingly.

**J. R. KARANJA**

**JUDGE**

[ Delivered and Signed this 19th of August 2015 ].

**J. R. KARANJA**

**JUDGE**