



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
CRIMINAL CASE NO. 16 OF 2015

REPUBLIC-----PROSECUTION

VS.

CHARLES KIBET-----ACCUSED

RULING.

1. Charles Kibet the accused herein is charged with the ***offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.*** The particulars are that he killed **Stanely Kipkorir Kirui** on 19th September 2013 at Mengwet Sub Location of Chepalungu District.
2. The Prosecution called a total of fourteen (14) witnesses.
PW7(Dr. Kamusingi) who conducted the post mortem found the cause of death to be cardiorespiratory arrest secondary to severe haemorrhage due to a cut wound on the neck. (Exhibit 1).
3. The deceased was a worker at the home of the accused. The wife of the accused (PW1) used to brew alcohol for sale. On this material night there were several customers at the accused's home some have testified as PW3, PW4, PW11 – PW13.
4. The accused's wife and mother were also present and testified as PW1 & PW2 respectively.
5. **PW14 (Rtd IP Isaac Ibrahim)** testified that PW1 & PW2 informed him that it was the accused person who had injured the deceased with a panga.
6. From the evidence of PW1 – PW4 and PW11 – PW13 its confirmed that in the course of drinking there arose a disagreement between one Bernard Ng'eno and Hillary (PW12) who started fighting.
7. PW1 separated them but Bernard turned on her and beat her up. She screamed and her mother in law (PW2) came to her rescue. They went to their house.
8. In this house, there were several other people including the accused and deceased. Outside the house, fighting continued and this involved PW11-PW13 among others.
At one point the deceased demanded to go outside and the door was opened for him.
9. According to PW1 & PW2 the accused person did not leave the house at all during the fracas.

Contrary to what PW14 alleges to have been told by PW1 and PW2, the latter have not alluded to that kind of evidence in their testimony before this Court.

10. PW3 is the only witness who stated that the accused came out with a panga.

He however added that the accused did not do anything with the said panga.

11. Reports were made and several people were arrested including PW3, PW11 – PW13. The accused was also arrested by the assistant chief (PW8) and taken to the station.

PW5 & PW6 who are police officers did a search at the scene and a panga was recovered from the accused's house (Exhibit 2 (a)) while a sword (Exhibit 2 (b)) was found in a vegetable shamba. None of the two items had blood stains, and cannot in the absence of any other evidence be said to be the murder weapon.

12. It was the duty of the prosecution to link the panga and the sword (Exhibit 2a & b) to the murder of the deceased and then to the accused.

13. The person who was said to have attacked and beaten up the accused's wife (PW1) was Bernard Ngeno and not the deceased who was their worker.

PW1 and PW2 have confirmed that when people were fighting outside it was only the deceased who went outside and the door was locked behind him. Benard Ngeno did not testify.

14. The accused remained in the house in his room with PW1. The said door was only opened after the noises decreased, and it was then that those from the house heard that a person had been injured.

15. PW1, PW2, PW3, PW4, PW11, PW12 & PW13 were all at the scene and none has told this Court that he or she saw the accused fight with or injure the deceased person.

16. It has not even been told to this Court the kind of lighting that was outside the accused's house to enable anyone see what was going on. Moreover the evidence of PW11 – PW13 confirms that most of the people at the scene were drunk.

17. This is a case that was based on circumstantial evidence. This case is similar to the case of **SAWE VS. REPUBLIC (2003) KLR 364** where the Court of Appeal held:

i. *In order to justify on circumstantial evidence of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.*

ii. *Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.*

iii. *The burden of proving facts which justify the drawing of this inference exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.*

18. From my above analysis and in line with the holding above I do not find the evidence adduced to irresistably point to the accused as the person who committed this offence.

In the same case of **SAWE VS. REPUBLIC (Supra)** the Court held:

“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

The prosecution evidence is more of suspicion than facts.

19. My finding therefore is that the prosecution has failed to establish a prima facie case against the accused to make me place him on his defence.

Order:

He is **acquitted under Section 306 (2) Criminal Procedure Code**. He shall be released forthwith unless otherwise held under a separate warrant.

Dated, Signed and Delivered in open Court this 28th day of September, 2015.

H.I. ONG'UDI

JUDGE.