



**REPUBLIC OF KENYA.**  
**IN THE HIGH COURT OF KENYA AT KITALE.**  
**CRIMINAL CASE NO. 32 OF 2013.**

**REPUBLIC ::: PROSECUTOR.**

**VERSUS**

**R A M )**

**MONICAH CHEBETI JOHN ) ::::::::::::::::::::::ACCUSED.**

**SUSAN NAKOI ALIAS VERONICA )**

**AKIRU LOKWADEA )**

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

The three accused viz **R A M (A1)**, **Monicah Chebet John (A2)** and **Susan Nakoi (A3)**, are charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the night of 17th/18th August, 2013, at [Particulars Withheld] Pokot County, jointly with others not before court murdered Thomas Okwako Okumali.

The case for the prosecution was that on the material night at about 11.30 p.m., a police reservist **James Kibor Lopokei (PW2)**, was at his home when he was called by phone by the first accused and informed that a suspected rapist had been apprehended. He proceeded to the scene at about 12.30 a.m. and found the deceased lying on the ground and surrounded by a group of people. He (deceased) was naked and had been lynched by a mob of people.

The police reservist (PW2) called the police who arrived at the scene and took the deceased to hospital where he died while undergoing treatment.

A neighbour to the deceased and the accused persons, **Daniel Mulu (PW3)**, was at his home when he was called on phone and informed that people were fighting at the place called [Particulars Withheld]. He went there and found that police officers were already there. He saw blood stains and noted that the body of the deceased was in the police vehicle. He was later asked to record a statement.

**P.C. George Ogweno (PW4)**, was the officer who investigated this case and one of those who proceeded to the scene after being notified that a mob of people was lynching a person. On arrival at the scene, he (PW4) found the deceased having been lynched by the mob. The deceased had multiple injuries on the head and was bleeding from the mouth and nose and was surrounded by the three accused among others.

The police officer (PW4) and his team were informed that the deceased had entered into the house of the first accused with the intention of raping her and that when alarm was raised, members of the public came to the rescue of the first accused and assaulted the deceased along with the three accused. The deceased was taken to hospital where he died.

Consequently, the three accused were arrested and charged with the present offence.

**Dr. Nicholas Rono (PW1)**, conducted a post mortem on the body of the deceased and completed the necessary report (P. Exh.1) indicating that the deceased died from hypo-volanic shock due to severe head injury consistent with assault.

In their defence, each of the three accused denied the offence and contended that none of them participated in assaulting and eventually causing fatal injuries to the deceased.

Accused one indicated that she was the first to raise alarm when she realized that the deceased had entered her house and had attempted to rape her. It was then that the deceased was apprehended by a group of people and assaulted while attempting to escape.

Accused two was awakened by shouts and screams and when she ventured outside her house found that the deceased had already been assaulted and was being taken to the hospital by the police.

Accused three was also awakened by screams. She dashed out of her house and saw the deceased running out of the first accused's house. He was however apprehended by a crowd of people and beaten up. She (A3) in the meantime went to the rescue of the first accused.

In essence, the accused indicated that they were arrested and implicated with the offence without good cause and only after they had been called by the police to record statements.

From all the foregoing evidence, it was clearly established that the deceased was a victim of what is commonly referred to as "mob-justice". He was apprehended just after having attempted to rape the first accused. Those who apprehended him were the accuseds' neighbours and other persons. They took the law into their own hands instead of handing over the suspect deceased to the police.

The police reservist (PW2) and the police officer (PW4) arrived at the scene after the deceased had been assaulted and seriously injured. They were therefore not in a position to state with certainty and beyond reasonable doubt that the three accused or any one of them participated in the fatal assault against the deceased.

The neighbour (PW3) also found the deceased already beaten up. He did not see the three accused assaulting the deceased.

The defence by the three accused that they did not participate in the fatal assault of the deceased was therefore credible since there was no credible and cogent evidence to indicate otherwise.

Most likely than not, the three accused were arrested and charged simply because they may have raised the alarm which attracted other neighbours and villagers to the scene and also because the police could not find the actual people who assaulted and fatally injured the deceased and had to settle on the three accused if only to have them take responsibility for the death of the deceased.

All in all, there was no evidence sufficient enough to charge the three accused with the present offence. The prosecution has thus failed to discharge its burden of proof.

The three accused must and are hereby found not guilty as charged and are acquitted accordingly.

**[Delivered and signed this 9th day of April, 2014.]**

**J.R. KARANJA.**

**JUDGE.**