



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BUNGOMA**

**CRIMINAL CASE NO.56 OF 2007**

**REPUBLIC.....PROSECUTOR**

**VRS**

**DEBORAH A. OKOCHETE..... ACCUSED**

**JUDGMENT**

The accused Deborah Etyang Okochete is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the night 25<sup>th</sup> & 26 of November, 2007 at Apokor Village in Teso District within Western Province murdered Charles Pangisi Okochete. She pleaded not guilty of the charge.

The facts of the case are that the deceased and his wife the accused were residents of Apokor Village in Moding Location of Teso District. On the 25/11/2007 at around 7.00 p.m the couple accompanied by their son Kennedy Okochote who is PW1 in this case had supper together. PW1 went to sleep in a separate house at around 8.30 p.m leaving his parents in their house which is about 25 metres from that of PW1. The following morning, PW1 woke up at around 6.00 a.m and went to work in his farm. At around 7.00 a.m PW1 heard the accused screaming from her home. He went there to find out what was happening. PW1 found his uncles and neighbours gathered in the home. The deceased was on his bed in a critical condition and with an injury on the left eye. The deceased was taken to hospital but died while undergoing treatment. The accused was arrested and charged with the offence.

It was the evidence of PW1 that when he woke up in the morning, he did not see his father. Before he went to sleep the previous night PW1 confirmed that the deceased had no injury and had not complained of any illness. Neither had the deceased complained of having been assaulted by anyone. PW2 a neighbour to the accused testified that he went to the home of the deceased on the 24/11/2007 and he talked with the deceased. He was inquiring about his maize that had been stolen from his shamba which he had leased from the deceased. The accused was present and she got upset by the inquiry resulting into her shouting at PW2. PW2 said that the deceased was in good health condition at that time. According to

PW2 the deceased left home later in the day and went to drink liquor in a nearby market. PW2 did not see the deceased again until the following morning when he assisted relatives to take the deceased to the hospital. PW3 was going to his farm at around 7.00 a.m when he heard screams coming from the house of the deceased. He proceeded to the home where he was followed by other people. The witness found the accused at home and the deceased lying on a bed in critical condition. The deceased was in such a poor state of health that he could not talk. PW5 did not witness the incident. On the 26/11/2007 around 8.00 a.m the witness was informed by PW1 that his father had died as a result of an injury on his left eye. He went to the home of the deceased and found that the deceased was still alive but unable to talk. PW6 was the brother of the deceased. He heard screams from the house of the accused and went there. When the accused saw him she ran away towards the river. He saw the deceased on the bed with the blood oozing from the left eye and wearing blood-stained clothes. He was one of the people who took the deceased to hospital. PW7 the father of the deceased was the Assistant Chief of Moding Location. He heard the accused calling for help in her house and proceeded there where he found his son in a critical condition. PW8 was a neighbor of the deceased. She did not witness the incident. The witness joined other people in the house of the deceased after the accused called for help. She was the wife of PW2 who was later arrested as a suspect and released afterwards. PW10 a police officer from Malaba Police Station accompanied relatives of the deceased among them PW7 to Tanaka Nursing Home where the post mortem was performed. The case was investigated by PW11 Corporal Edward Wachilonga from CID Office Teso district. He visited the scene and recorded the statements of witnesses. He found the accused under arrest of members of the public. After investigations he charged the accused with the offence.

The accused person in her sworn statement of defence denied the offence. She testified that on the 25/11/2007 she was at home around 8.00 p.m when her husband returned from a drinking spree. He called her from outside and said that he had fallen in the river on his way home and had sustained injuries. The deceased did not show his wife the injuries but went straight to bed without taking supper. When the accused woke up the following morning at 6.00 a.m she noticed that the accused was not talking and was critically ill. She called her brothers and informed them of the developments. When they came to the house the accused observed the deceased and noted that he had a visible injury on the left eye. The deceased was taken to hospital by his brothers. The accused was later arrested but she committed the offence.

The defence counsel, Mr. Makali in his written submissions contended that the prosecution had failed to establish that the accused caused the death of the deceased. There was no direct evidence implicating the accused as having caused the injuries which led to the death of the deceased. The evidence is purely circumstantial and too weak to sustain a conviction. The counsel argued that the accused was arrested on mere suspicion because she had spent the night with the deceased in the same house. He urged the court to acquit the accused.

In this case there was no eyewitness who saw the accused inflicting any injury on the deceased. The evidence is wholly circumstantial. The court bears the task to decide whether the circumstantial evidence is water-tight to justify a conviction. PW1 told the court that he had seen the deceased before he went to bed at around 8.30 p.m and that the deceased had no injury. In cross-examination, PW1 said that the last time he saw his father was at lunch time on 27/11/2007. This contradicts his earlier evidence that he had seen his father in the evening of 25/11/2007 when the two had dinner in the house of the deceased. PW1 also said that he entered the house of the deceased in the morning of 25/11/2007 and took a panga to go and use in the shamba. This evidence was later contradicted by his own statement to the effect that he did not enter the house that morning. The evidence of PW2 to PW7 was that each one of them heard the accused screaming and rushed to the house of the deceased. The witnesses said that they found the deceased in a critical condition. Most of the witnesses assisted to take the deceased to hospital. That evidence does not suggest in any way that the accused committed the offence. The investigating officer PW11 told the court during cross-examination that the evidence he gathered did not point any guilty to the accused in respect of the death of the deceased. Infact the witness had recommended that a public

inquest be held. This decision was overturned by his seniors who ordered that he carries further investigations with a view of charging the accused. The doctor formed the opinion that the deceased died of extradural haematoma due to severe head injuries. There is no direct evidence to prove that the said injuries were inflicted by the accused. The fact that the accused was in the same house with the deceased before he fell critically ill is not sufficient to hold her responsible for causing his death. Apart from the penetrating eye injury on the left eye, the doctor found that the deceased had several bruises on the lower spine. During cross-examination, the doctor said that the injuries on the spine were caused by a blunt object. He went on to say that the blunt object could be anything blunt including falling. The cause of death is however not in dispute. The prosecution have a duty to prove that the accused caused the injuries on the deceased and that she had malice aforethought as she did the act. The accused assumes no legal burden of establishing her innocence. Before the incident the accused was not involved in any conduct that points guilty to her. In her defence, she denied the offence and explained that on the material evening the deceased came home drunk. He had injuries which he said were caused by falling in the river. PW2 and other witnesses corroborated the evidence of the accused that the deceased was a habitual drunkard. He used to sell liquor in his own house and frequented the nearby market where he used to drink liquor. Indeed PW2 told the court that on the material day, the deceased left his home at 2.00 p.m and went to take liquor in the market. It is highly probable that on his way back the deceased may have been assaulted or fallen down thereby sustaining injuries. PW2 confirmed that he had other people who went to the deceased's house that morning suspected that he was unconscious due to drunkenness. PW2 said in cross-examination that he and other witness gave the deceased cow milk, cassava and sorghum in an attempt to bring an end to the hangover.

It is established law that in order to justify a conviction wholly based on circumstantial evidence, the inculpatory facts must not only be incompatible with the innocence of the accused, and be incapable of explanation upon any other reasonable hypothesis than that of her guilt, but also that the said facts must exclude co-existing circumstances which may tend to weaken or destroy the inference of guilt. The facts before me are not sufficient to draw an inference guilty on the accused.

It is my finding that the prosecution have failed to prove the offence of murder against the accused person. I come to the conclusion that the accused is not guilty of the offence and acquit her under section 215 of the Criminal Procedure Code. She is hereby set at liberty unless otherwise lawfully held.

**F. N. MUCHEMI**

**JUDGE**

Judgment dated and delivered in open court this 23<sup>rd</sup> day of March, 2011 in the presence of the accused, the defence counsel Mr. Makali and the State Counsel Mrs. Leting.

**F. N. MUCHEMI**

**JUDGE**