



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Case 28 of 2004

REPUBLIC.....PROSECUTOR

VERSUS

VERONICAH KIBET EGO.....ACCUSED

JUDGEMENT

The Accused VERONICAH KIBET EGO was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 13th May, 2004 at Chemurgui Village, Chepsongol Sub-location, Chepsigot Location in Keiyo District within the Rift Valley Province murdered Richard Kimutai Ego.

The prosecution called eleven (11) witnesses. PW 1 testified that the Accused was the wife of the brother of deceased, Richard Kimutai Ego. He said that on 13th May, 2004 he met the deceased and his daughter Chepkoech Kimutai. That the deceased went to release his goats at about 7 a.m. He went with his daughter who assisted him. That the Accused was left in the house as she sold busaa. That she left the house, went after the deceased and joined him. That the Accused came back after two hours. He asked her why she left her customers. That she said that the drinks were about to get finished. PW 1 left at about 2.30 p.m. When he came back he found the children alone. The deceased had not come back. The accused was not present. The deceased daughter said that her father had not returned from grazing the goats. That the neighbours had assisted in collecting the goats and put them in the boma. It was about 6 p.m.

PW 1 said that the next day he went to the deceased house and found that he had not come back. The accused also had not come back. He said that the deceased never slept out. He organized a search team. They looked for the deceased in two groups. One searcher came and said that he had found the body of the deceased near the bank of River Irip. He sent the information to the Elder and the Sub-Chief.

PW 1 said that he went to see the body. There was blood at the back of the head. One arm was holding the roots of a tree. The Police arrived at 4 p.m. and took the body away. He said that he knew the relatives of the husband of the Accused. That she had been chased by her husband. That she went back to her family and used to join the deceased. They lived together. He was not aware of any differences between the deceased and Accused. The deceased's wife had passed away. PW 1 said that when Veronica, the Accused returned her clothes were dirty. He said that when the deceased left the house he was a little drunk and so was the Accused. He said that the deceased was a strong man but used one hand as he had a broken shoulder.

PW 2 said that on 13.05.04 at about 12.30 p.m. She was grinding millet. She saw the deceased take goats for grazing. She said that she saw the Accused follow the deceased. She said that later at 4 p.m. she went to the deceased's house. That she saw the Accused crying. That she said that she had been told that someone had died at her home. She did not say who had died. That the Accused was crying and screaming. PW 2 said that the Accused asked one Jonathan to accompany her to her family's home. That she ran and fell down. That they poured water on her and she got up. She took a jerry-can and put four (4) litres of alcohol. That she had no injuries.

PW 2 said that at around 6 p.m. she went back to the deceased house to look for busaa. The deceased had not returned. That the goats had returned on their own. The next day at 5 a.m. PW 2 went to the deceased house, and did not find him. She later learnt that his body had been found. She went to the scene and saw the body. She said that Veronicah, the Accused came to live with the deceased to look after his sick child. They lived peacefully and never quarreled.

PW 2 said that the Accused came back after two (2) days. She said that the deceased had sent her to buy maize at Mosop. However, she did not come with any maize.

PW 3 said that he went to the deceased's house at 3 p.m. He did not find the deceased. He found the Accused. He bought a tin of busaa. That the Accused asked him to escort her to Mosop. That somebody had died at her home. He escorted her to the Kabarnet – Iten Road. She then left on foot. He later heard that the deceased had died.

PW 4 said that on 13th May, 2004 he was going to drink busaa. He met Veronica Kibet and Richard Kimutai Ego, the Accused and deceased. They were moving goats along the river. He spoke to them. That the Accused told him that she had busaa but there was nobody to sell. He did not see them quarrel. He later went to the deceased house. He only found children. He was told that the Accused had gone to Mosop. The deceased had not returned. The next day, he went to the said house at 5 p.m. He was told that the body of the deceased had been found and it had been taken away by the Police. He went to look after the deceased's children. On the second day the Accused returned. That she said she was from Mosop and had heard that the deceased had been taken to hospital. That an elder called Joseph took her to the Chief.

PW 5 was the Village Elder. He said that on 14.05.04 at about 8 a.m. PW 1 came to his house and narrated about the deceased's disappearance. PW 5 ordered that the deceased be looked for. The body of the deceased was found. PW 5 saw the body. The deceased wore a trouser but no shirt. He saw no injury on the body. The Police came at 4 p.m. and took the body away. He said on 15.05.04 at 1 p.m. the Accused went to his house. She was shivering and looked worried. He took her to the deceased's house. She refused him to leave her. PW 5 said that since the Police had asked for her, he took her to the Chief who took her to the Police. He said the deceased and Accused had not quarreled.

PW 6 identified the deceased body for purposes of post-mortem. PW 7 was a brother to the deceased. He also identified body of the deceased the post-mortem being carried out by Dr. Bett. PW 8 said the Accused was her Step-mother. That on 13.05.04 at 3 p.m. she found her crying. She said that she had quarreled with PW 1 Thomas Arusei, a neighbour. She said that Veronica's skirt and blouse were torn. That Veronica took some busaa. That she left the house and fainted after 50 metres. PW 8 said that she poured water on the Accused. Accused woke up but did not answer their questions. That the Accused entered the house and collected her clothes. She said she was going away.

PW 8 said that the deceased did not come back from grazing the goats. That at 3 p.m. the Police came. She learnt that the deceased body had been found at the river. She said that the Accused and the deceased were lovers. She said that on the morning of 13.05.04, the deceased did not drink. In cross-examination she said that she did not see anybody take the goats to the field. She said that the Accused and deceased did not quarrel or fight.

PW 9 an Administration Police officer testified that on 15.05.04 a Village Elder with three (3) others escorted the Accused to the Chepsikot A.P. Post. They said that she had killed someone. PW 9 notified

the Police at Tambach who took her away. PW 10 was the Investigating Officer. He said that on 14.05.04 at 1 p.m. he received a report of a death from another Police officer. A body had been found along Irip River bank. That it belonged to one Richard Kimutai Ego. He went with his colleagues and found the body. The body had no injuries. It had a trouser but no shirt. They removed the body to Iten District Hospital.

That on 15.05.04, he got information that a suspect had been arrested. He went with another officer and collected the suspect. On 18.05.04, he witnessed the post-mortem on the deceased. Upon investigations he formed the opinion that the Accused had killed the deceased by strangulation. He said he did not obtain any evidence of any dispute or quarrel between the two.

PW 11 was Dr. James Bett. He carried out the post-mortem. He said that the body was examined on 18.05.04. The deceased was 50 years old. He had a bruise on around the neck and another on the chest. He said that ribs Nos. 1 and 2 were broken. That the cause of death was cardio-respiratory arrest due to strangulation.

The prosecution closed their case at this point.

Upon consideration the Accused was placed on her defence. She gave an unsworn statement. She said that on 13.05.04, she was with the deceased until 12 noon. She then went to Mosop to buy maize. She came back the next day when a neighbour told her that the deceased was sick. That he said that she was being asked for. That she left and went to her mother's. The following day she was told that Richard Kimutai Ego had died. That she fell down and fainted. She said that she went to the Chief like others to give her statement. That she was arrested by the Police from Tambach.

I have considered the evidence of the prosecution witnesses. I have analysed their testimonies and that of the Accused. None of the witnesses saw the deceased and the Accused in any fight or struggle. There was no eye witness that the Accused strangled the deceased or assaulted him. There is no evidence that the Accused caused the injuries on the deceased. There is no evidence that the Accused caused the injuries on the deceased. There is no evidence that she broke his two ribs and/or strangled him to death.

PW 1 said that the deceased left his house at 7 a.m. with his daughter. PW 2 said that she saw the Accused follow the deceased at 12.30 p.m. as he took the goats for grazing. I find these evidence to be inconsistent. PW 4 said that he met the deceased and Accused grazing goats along the river. He did not see them quarrel. He did not state the time. This evidence is not corroborated and it would be unsafe to find that on this basis the Accused killed the deceased.

The conduct and demeanour of the Accused was extremely suspicious and questionable. But this cannot be sufficient for this Court to conclude that she killed the deceased. She definitely was a suspect and could still be so. But the circumstantial evidence here is weak and insufficient to convict her. Proof of murder must be beyond any reasonable doubt. Considering the sentence this Court must uphold that standard of proof.

The absence of any motive and the good relationship between the two increases the doubt in the mind of the Court. There is no single suggestion that the Accused had any grudge or motive to justify any harm to the deceased. To the contrary they were lovers who lived together peacefully.

The absence of an explanation as to her whereabouts for two (2) hours is not by itself evidence to proof that she killed the deceased. What comes clear from the evidence of PW 2 and PW 4 is that the river bank is used by passers-by and one cannot rule out that the deceased could have been assaulted by some other person.

I find that there was no malice aforethought on the part of the Accused.

Of significance is that PW 8, the daughter of deceased alleged by PW 1 to have gone with her father did not say that she saw the Accused follow the deceased. He evidence was crucial as she was with the

two and she left them in the house, to get firewood.

As a result I do find that the prosecution have not proved their case beyond any reasonable doubt as required by law for her to be convicted of the offence of murder.

I do hereby acquit her of the charge and is discharged. The Accused shall be released forthwith from custody unless otherwise lawfully held.

DATED AND DELIVERED AT ELDORET ON THIS 23RD DAY OF JULY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:-

Mr. Misoi holding brief for Mr. Okara for the Accused

Mr. Chirchir for the State

Accused