



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KERICHO**

**Criminal Case 24 of 2003**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARY CHEPKOECH RUTO.....ACCUSED**

**JUDGMENT**

The accused, Mary Chepkoech Ruto was charged with **Murder contrary to Section 203 as read with Section 204** of the **Penal Code**. The particulars of the offence were that on the 16<sup>th</sup> December 2002 at Kapkekoi village in Kericho District, the accused murdered Samuel Kiprop (*hereinafter referred as the deceased*). When the accused was arraigned before this court, she pleaded not guilty to the charge. The prosecution called a total of seven witnesses in its bid to establish the charge of murder against the accused. The prosecution was not however able to call the investigating and the arresting officers to testify in this case. This was even after the court had granted them several adjournments. On the 20<sup>th</sup> March 2007, this court denied the application made by the prosecution for the upteenth time to be granted yet another adjournment. The prosecution closed its case upon being denied their application for adjournment. When the accused was put on her defence, she chose to give an unsworn statement. She denied that she was in any way involved with the death of the deceased.

The facts of this case as can be reconstructed from the evidence adduced by the prosecution witnesses are as follows; the accused and the deceased were lovers. They lived together as husband and wife although they were not formally married. According to PW7, the deceased was married to one Silvia but had been separated from her. It was then that the accused started living with the deceased. According to PW1 David Kiprono Ruto and PW7, the deceased and the accused had lived together at the house of the deceased for a period of about two years prior to the fateful incident. The deceased and the accused were not blessed with any children. On the 15<sup>th</sup> December 2002, at about 7.00 p.m. PW4 Kenneth Cheruiyot Langat, a friend to the deceased went to the house of the deceased. PW4 and gone to the house of the deceased to fetch his shoes which he had lent to the deceased. When he reached the house of the deceased, he found the deceased quarreling with the accused. According to PW4, the deceased at the time appeared drunk. He quarrel the accused complaining that the accused had not cooked any food for him. The accused on her part was complaining that the deceased had been beating her for far too long for no apparent reason. PW3 Viola Cheron, a neighbour both the accused and the deceased, was at her house at the material time. She was in her cowshed when she heard the accused and the deceased quarrel. According to PW3, she heard the deceased complain that the accused had refused to cook lunch and supper for him. On the other hand, she heard the accused complain that the deceased had beaten her every day.

PW4 recalled that the accused and the deceased were quarreling while they were inside the kitchen. He called out the deceased. He recalled that when the deceased walked out of the door to the kitchen, he was hit by the accused with a piece of firewood on his neck. On her part, PW3 heard a thud after which she saw the accused run away. PW4 testified that after the accused had hit the deceased on his neck, the deceased fell to the ground and became unconscious. PW4 recalled that he administered first aid on the deceased with the help of PW3 who had arrived at the scene. PW3 and PW4 recalled that their effort to revive the deceased bore fruit and the deceased regained consciousness. They both testified that the deceased was at the time talking incoherently. PW4 attributed the incoherence of speech to the fact that the deceased appeared drunk. PW3 and PW4 made a decision to inform the brother of the deceased, PW1 David Kiprono Ruto of what had transpired. PW1 lived within the neighbourhood.

When PW1 arrived at the scene, he was assisted by PW3 and PW4 to take the deceased to his house where they put him on his bed. PW4 testified that he inquired from the deceased if he was injured. The deceased told him that he was injured on the back of his neck but he was feeling no pain. Similarly PW1 and PW3 recalled that the deceased told them that he was injured on the back of his neck. They recalled that the deceased was drunk at the time. PW3 and PW4 testified that they left the deceased under the care of PW1 and went to their respective homes. PW1 testified that the deceased told him that he was hit on the back of his neck by the accused with a piece of firewood. The firewood which was allegedly used by the accused to assault the deceased was marked for identification by the prosecution, but the same was not produced in evidence. The three witnesses, *i.e.* PW1, PW3 and PW4 identified the said piece of firewood when it was shown to them during their testimony court.

On the following day in the morning *i.e.* the 16<sup>th</sup> December 2002, the deceased was found lying dead at the door to his main house. According to PW2 Andrea Kiprotich Ruto, PW3 and PW7, they were woken up at about 6.00 a.m. by screams emanating from the house of the deceased. They went to investigate and found the deceased lying dead near the door to his house. Although PW1, PW3 and PW4 had testified that they had not seen any visible injuries on the body of the deceased on the night before after the assault, when they saw the deceased in the morning, there was an injury on his eye. PW2 testified that there was blood near the eye of the deceased. PW7 was however categorical that he had not seen any visible injuries on the body of the deceased. At that time, PW1 had also arrived at the scene. PW7 made the decision to inform the police at Sosiot Police Station of the incident.

Meanwhile, PW1, accompanied by other members of the public, went to the home of the accused where they apprehended her and brought her back to the scene of crime. The accused was arrested by the police when they arrived at the scene to collect the body of the deceased. On the 21<sup>st</sup> December 2002, PW6 PC Simon Nyambane then based at Sondu Police Station accompanied the relatives of the deceased who included PW1 and PW7 to Kericho District Hospital mortuary. The post-mortem was performed by PW5 Dr. Stephen Oketch. He observed that the deceased had multiple bruises on his scalp, on the face above the eye, and over the shoulders and the lower limb. The deceased had defecated on himself. His lungs were congested. There were fluids which were frothing on the surface. He formed the opinion that the deceased had died due to cardiopulmonary arrest caused by strangulation. The post-mortem report was produced as *prosecution exhibit No.1*. Dr. Oketch examined the accused on the 31<sup>st</sup> December 2002 and formed the opinion that the accused was mentally fit to stand trial. The P3 form was produced as *prosecution exhibit No. 2*.

As stated earlier in this judgment, the prosecution did not avail the arresting and the investigating officers during the hearing of this murder trial. This was even after they had been given numerous adjournments. It should be noted that the trial of the accused commenced on the 27<sup>th</sup> July 2004 and by the 20<sup>th</sup> March 2007, the prosecution had not availed the said witnesses to offer their testimony before this court. This court refused to grant further adjournments hence the decision by the prosecution to close its case before calling the said witnesses.

When the accused was put on her defence, in her unsworn statement, she denied that she assaulted the deceased as alleged by the prosecution witnesses. She testified that on the 15<sup>th</sup> December 2002 she woke up as usual and did her household chores. She recalled that the deceased woke up and went on his

errands away from home. The deceased did not return home until after 5.00 p.m. At that time, the deceased was drunk. She recalled that the deceased demanded to be given food and when she told him that she was at the time cooking supper, the deceased got annoyed, picked a quarrel with her and then slapped her. She recalled that she was angrily at the time and decided to leave the homestead of the deceased. She recalled that she left the homestead of the deceased when the deceased was in good health. She went to her parent's home and spent the night there. On the following day, she was shocked and surprised when people came to her parent's home and apprehended her on allegation that she had killed the deceased. She specifically denied that she had assaulted the deceased. She recalled that she had lived with the deceased as his wife. She therefore testified that she was not involved with the death of the deceased.

This being a criminal case, it is the duty of the prosecution to establish the guilt of the accused to the required standard of proof beyond reasonable doubt. The onus of proving the guilt of an accused person is on the prosecution. This burden does not shift to the accused. The accused is under no obligation to prove her innocence. Her duty is restricted to raising reasonable doubt on the prosecution's case. This court is required to evaluate the evidence adduced by the prosecution witnesses, and the defence offered by the accused, so as to reach its determination whether the prosecution established the guilt of the accused.

In the present case, the prosecution offered direct evidence to establish that it was the accused that assaulted the deceased and thereby caused him to sustain fatal injuries. The prosecution established that the accused and the deceased lived together as husband and wife although they were not formally married. The deceased and the accused lived alone in what may be referred to as their matrimonial home. They did not have any children. It was apparent from the evidence adduced by the prosecution witnesses, and by the accused in her defence that the said "marriage" was not a happy one. The deceased used to beat the accused. On the evening of the 15<sup>th</sup> December 2002, PW3 and PW4 heard the accused quarreling with the deceased. The deceased was complaining that the accused had not prepared any food for him. On her part, the accused complained that the deceased beat her up everyday.

The quarrel continued until PW4 called out the deceased from the kitchen where he was quarreling with the accused. When the accused stepped out of the kitchen, PW4 testified that the accused hit the deceased on his neck with a piece of firewood. PW3 who was at her nearby house, recalled hearing a thud after the deceased had quarreled with the accused. PW3 and PW4 testified that the accused hit the deceased once with the piece of firewood. The deceased collapsed to the ground and became unconscious. PW3 and PW4 saw the accused ran away from the homestead of the deceased. PW3 and PW4 administered first aid on the deceased. They succeeded in resuscitating the deceased. They then called PW1, the brother of the deceased to come to the assistance of the deceased. The deceased was taken to his bedroom where he was left to sleep.

PW1, PW3 and PW4 recalled not having seen any visible injuries on the body of the deceased when they assisted him to lie on his bed. However, on the following day, the body of the deceased was discovered lying near the door of his house with bruises on his scalp and with a cut near his eye. According to post-mortem which was performed by PW5, the deceased died due to strangulation. The said evidence of the post-mortem is inconsistent with the injuries which PW3 and PW4 testified that was inflicted by the accused when he hit the deceased on the back of his neck. It was the view of this court that strangulation involved a deliberate act of squeezing the neck of the deceased and not just a single hit on the back of his neck. PW1, PW3 and PW7 testified that they found the deceased the following morning lying dead next to the door to his house. He was not on the bed that he had been left to lie the previous night by PW1, PW3 and PW4. The accused denied that she was involved in any way with the death of the deceased. The accused however disappeared from the scene after she had assaulted the deceased and spent the night at her parents' home.

I have evaluated the evidence adduced by the prosecution witnesses. It was the prosecution's case that the accused assaulted the deceased on the back of the neck with a piece of firewood. PW4 testified that he saw the accused hit the deceased on the neck with a piece of firewood. PW3, a neighbour rushed to the scene when she heard a thud from the compound of the deceased. I saw PW3 and PW4 as they

testified before this court. In my view, the said two witnesses were truthful, honest and credible witnesses. Their testimony was credible. The said two witnesses told the truth when they testified that the accused hit the deceased on the back neck causing the deceased to temporarily become unconscious. The deceased was revived. He told PW3, PW4 and PW1, his brother that he was feeling no pain at his neck. The deceased at the time appeared drunk. The deceased was put to bed by his brother.

On the following morning, the deceased was found lying outside his house with injuries on his face. These injuries were seen for the first time by PW1, PW2 and PW7. The deceased appears to have sustained these injuries after he was left to sleep in his house. The post-mortem report revealed that the cause of death of the deceased was due to strangulation. The cause of death of the deceased was inconsistent with the evidence adduced by the prosecution witnesses concerning the manner of the assault of the deceased by the accused. It was therefore clear that although the accused assaulted the deceased on the back of his neck with a piece of firewood, the said assault was not the cause of death for the deceased. The accused ran away from the homestead of the deceased after the assault. It was therefore apparent that the deceased met his death by the hands of other people, other than the deceased. It was the people who killed the deceased that caused him to have the facial injuries that were seen on the morning when his body was found lying outside his house. Taking into consideration the totality of the evidence adduced, this court finds that the prosecution failed to prove its case to the required standard of proof beyond reasonable doubt. The medical evidence contradicts the eye witness account of PW3 and PW4.

This court has no option but to disagree with the finding by the assessors who were of the opinion that the accused should be found guilty of the lesser charge of manslaughter as the prosecution had established that it was the accused that assaulted the deceased and caused him to sustain fatal injuries. It was the view of this court that the said assessors did not take into account the medical evidence adduced by the doctor who performed the post-mortem on the body of the deceased. The accused is acquitted of the charge of murder. She is ordered set at liberty and released from remand custody unless otherwise lawfully held.

**DATED at KERICHO this 7<sup>th</sup> day of November 2007**

**L. KIMARU**

**JUDGE**