



REPUBLIC OF KENYA

INN THE HIGH COURT AT NAKURU

CRIMINAL APPEAL 80 OF 2006

REPUBLIC.....PROSECUTOR

VERSUS

PETER MCHUCHE ONCHOCHI.....ACCUSED

RULING

The accused 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 night of 14th and 15th August 2005, at London Estate in Nakuru District of the Rift Valley Province, he murdered Prisca Bosibori Kenagwa, hereinafter referred to as "**the deceased**". The deceased was staying alone in a single room and used to sell chang'aa. On 14th April 2005, Charles Nyambane Onkoba, PW1, a cousin to the deceased went to her house at about 8.30 p.m. PW1 found the deceased and three customers, the accused being one of them. PW1 said the accused wore a shirt and an under pant only, he had no trousers. The trouser was hanging on the curtain. After a while, PW1 and two of the people who were in the deceased's house left, leaving only the deceased and the accused.

In the morning of the following day, PW1 was informed that the deceased had died. He went to her house and found the deceased's body lying outside her house. The body had an injury on the head.

PW1 decided to go to see a person known as Mogaka who was a friend to the accused to ask him the whereabouts of the accused. Mogaka said that he did not know where the accused was. The police were informed about the death of the deceased and together with the accused's cousin, they proceeded to the accused's place of work, spin knit Ltd, within Nakuru, where the accused was found and arrested.

In cross examination, PW1 said that when he went to see the deceased's body, he noticed that the door to her room had been broken forcefully. The padlock was just hanging on the door. When he entered the room, he found that the deceased's goods in the house had been disarranged. PW1 further stated that he did not know what time the accused left the deceased's house.

Justus Ogeto Mose, PW2, testified that after PW1 informed him about the deceased's death, they went and reported the matter to the police. He said that the accused was arrested because he was the last person to be seen with the deceased when she was alive.

When a post mortem was carried out on the deceased's body, **Dr. Noah Oloo Kamidigo, PW3**, found that the body had multiple superficial injuries of the forehead and both cheeks. There was also a deep bruise on the right shoulder. Internally, there was an injury to the bones of the front part of the head. There was also blood oozing to the left ear. The Doctor formed an opinion that the cause of the death was increased intracranial pressure due to intracranial haemorrhage due to blunt force head injury.

Police Constable Abdulahi Mohamed Maalim, PW4, testified that on 15th August 2005, he went to the scene of crime accompanied by **Sergeant Dorcas, PW5**, and **Police Constable Keitany**. They found a big crowd of people next to where the body lay. Scenes of crime personnel took photographs of the body and thereafter it was taken to the mortuary. He observed that the body lay one metre away from the door of the deceased's house which was locked.

PW5 said that after observing the deceased's body, they opened her house and found that it had been ransacked. When they returned to the police station, they found relatives of the deceased and members of the public who had brought in a suspect. The suspect was a brother to the accused who had been seen with the deceased a night prior to the discovery of her body. The suspect led the police to Menengai Industries where the accused was arrested at.

PW5 who was also the investigating officer further testified that she was informed by the deceased's neighbours who were living in the same block as the deceased that there had been a scuffle between the deceased and the accused which went on upto about 1.00 a.m. PW5 further testified that the padlock to the deceased's house was locked but the hinges were very loose.

In cross examination by Mr. Juma, learned defence counsel, PW5 said that she interviewed one of the deceased's neighbours but could not remember his name. Other neighbours were not willing to record any statements. PW5 said that she was instructed by the officer in charge of crime section, one Inspector George Karanja, not to pursue the deceased's neighbours if they were unwilling to record any statements. PW5 did not record any statements from the accused's neighbours. She said that she decided to charge the accused simply because of what that one neighbour of the deceased had said and also because of the statement by pW1.

Having carefully examined all the evidence that was adduced by the prosecution witnesses, it is clear that there is no direct evidence to connect the accused to the death of the deceased. There was only circumstantial evidence and that was adduced by PW1 to the effect that he left the accused in the deceased's house and there was nobody else apart from the accused and the deceased. PW1 did not know whether the accused left the deceased's house thereafter or not. That evidence did not positively implicate the accused. No witness told the court that the accused and the deceased were involved in any altercation on the night prior to the discovery of her body. Although PW5 said that one of the deceased's neighbours told her so, none of those neighbours was called to testify. Indeed PW5 conceded that the police carried out very shoddy investigations. The circumstantial evidence that was advanced against the accused was very weak and insufficient to cause this court to place the accused on his defence. I find that no prima facie case has been established against the accused and I acquit him under Section 210 of the Criminal Procedure Code. The accused should be set at liberty unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at Nakuru this 15th day of December, 2006.

D. MUSINGA

JUDGE

Ruling delivered in open court in the presence of the accused, Mr. Juma for the accused and N/A for the state.

D. MUSINGA

JUDGE