



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL CASE NO. 74 OF 2013**

**REPUBLIC.....APPELLANT**

**VERSUS**

**MARTHA MORAA ONSONGO.....RESPONDENT**

**RULING**

*MARTHA MORAA ONSONGO* is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of the offence being that on the 6<sup>th</sup> day of September, 2013 within Uasin Gishu County, she murdered *JO*.

The prosecution case is that prior to the year 2012, the deceased and his parents who offered evidence as PW1 and PW-2, were living in the plot of the accused person. At the time PW-2 who is the mother of the deceased, was working for the accused person as a house help. When they decided to shift from the plot in the year 2012, given their meagre income, they requested the accused person to stay with deceased in her house for him to assist her in house chores, and on her part meet his upkeep, school fees as well as tuition fees. By that time the deceased was schooling nearby, at [Particulars Withheld] High School. The accused person was kind enough to accept the request. She lived with the deceased in her house for about an year before he met his death. During the time they had a cordial relationship and the deceased at no time did he ever complain to his parents and his teachers about her. Shortly prior to the time he met his death, he had visited his uncle at Huruma Estate in Eldoret where he stayed for a week.

The circumstances surrounding his death are that he opened school together with the rest of students on 3<sup>rd</sup> September 2013. He was in Form 3 East. The students were assigned general cleaning work within school of which they finished at 10.00 a.m. They went for tea and at 11 a.m they started on their exams. They left school at 6.10 p.m. On 4<sup>th</sup> September, 2013 and 5<sup>th</sup> September they all sat for exams. However, on 6<sup>th</sup> September 2013 the deceased did not attend school. On this day, at about 8.00 a.m, the accused called PW-2 and told her to rush to her (accused's) house. She reached there and upon arrival found the accused's farm hand standing just inside the door while the accused was standing in the sitting room. The deceased was seated on a sofa set. PW-2 asked the accused what had happened to him and she told her to ask him. She tried to speak to him but he did not respond. She discovered that he was dead. She started screaming. She went to the road and called PW-1, her husband. While PW-1 was on his way home he met PW-1 and they both went to the accused's house. PW-1 saw the deceased seated on a chair in the house. He had no visible injury. The accused called a Boda boda rider. When he arrived PW-1 placed his son on it and sat supporting him. They rushed him to Moi Teaching and Referral Hospital where he was pronounced dead on arrival.

The post mortem was conducted by *Dr. David Chumba* (PW-6) on 10<sup>th</sup> September, 2013. According to him the body had bruises all over and abrasions. Below the bruises there was haematoma (blood under the tissue). The body had no blood. Internal organs and systems were okay. He made the opinion that the cause of death was severe bleeding due to haematoma (blood clots) following blunt trauma on soft tissues. The weapon used to inflict the injuries was a blunt object which was used with a lot of force.

PW-5 investigated the case and according to him some witnesses disclosed that the accused used to harass the deceased. On cross examination he said that some witnesses recorded in their statements that they used to hear sounds from Accused's home that suggested beatings were taking place. Given the evidence the accused was arrested and charged.

At this juncture the court must determine as to whether a prima facie case is established against the accused person so as to warrant her be placed on her defence.

The evidence against the accused person is circumstantial given that no witness saw her assault the deceased at any given time

or/immediately prior to his death. The circumstantial evidence is that the deceased was with her prior to his death. The claim by PW-5 that some witnesses revealed that the accused used to harass the deceased and had heard sounds from accused's home that suggested beatings were taking place, is hearsay as no prosecution witness alleged so, and is therefore inadmissible as evidence. It therefore does not form part of the available circumstantial evidence.

PW-1 and PW-2, who are the parents of the deceased expressed that the accused had a cordial relationship with the deceased and according to PW-2, she had even bought him a mobile phone. The accused is the one who called PW-1 and informed her about the condition of the deceased on 6th September, 2013. The post mortem report does not disclose when the observed bruises and abrasions were inflicted and also whether all of them were inflicted on one day. There is evidence that the deceased had visited his uncle for a week before the school opened. It is hard to over rule a possibility of him having been assaulted at the place. There is also evidence that PW-2 found the accused with her farm hand on 6th September, 2013, at the scene. This farm hand and the uncle the deceased visited were not called as witnesses. They were also possible suspects or crucial witnesses. Given the evidence it is not possible to pin point when the offence took place, where and who committed it. The deceased was a day scholar. He could as well have been assaulted outside school and or outside home, and given the evidence by PW-3 on cross examination, that he was a timid boy. Failed to report about it.

In ***Muhammed and 3 others vs Republic 1KLR 722*** the court regarding circumstantial evidence stated as follows:-

***Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for a reasonable inference of the occurrence of the fact in issue. The circumstances should be of conclusive nature and tendency and they should be such as to exclude every other hypothesis save for the one proposed to be proved.***

The circumstantial evidence in this case is short of pointing irresistibly to the guilt of the accused person. She had no motive for the alleged murder and in addition to other observations already made on the available circumstantial evidence, the murder weapon was not recovered.

Prosecution circumstantial evidence just raises a weak suspicion against the accused as the culprit, and suspicion, however strong, in law, cannot provide the basis for a conviction.

In this case, given the available evidence, if the accused was to remain mute on her defence, the evidence would be short of warranting a conviction. There is therefore no need of placing her on her defence. The evidence fails to establish a prima facie case against her and is therefore acquitted of the offence of murder under *Section 210* of the *CPC*.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 5<sup>th</sup> of March, 2019.**

In the presence of:-

- (1) Mr. Omboto for the accused
- (2) Mr. Mulamula for state /prosecutor
- (3) Mr. Mwelem- Court Assistant