



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 18 OF 2012

REPUBLIC..... PROSECUTOR

VERSUS

PETER EKIBOR.....ACCUSED

RULING

PETER EKIBOR is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on the 4th day of March 2012 at Naiberi area in Eldoret Municipality, in Uasin Gishu County, within Rift Valley province, the accused murdered FLORENCE NACHAMU.

The prosecution case is that on 4th March 2012 at 4.00 p.m, PW-1 a police officer who at the time was attached to Eldoret police station, was called by Inspector Lumumba who was then the Deputy OCS, Eldoret police station. He was told that there was a report from a member of the public that a body of a woman suspected to had been murdered by her husband was lying dead inside their house at Lotonyok village. PW-1 accompanied the deputy OCS together with officers from the scene of crime, to the scene. They found the door to the house open. They entered and found the deceased lying on a mattress. The body was covered with a blanket. On checking the body he saw injuries on the head, chest, stomach and both legs. There was no fresh blood at the scene. The entire scene had been cleaned. The body was photographed. They moved it to Moi Teaching and Referral Hospital, mortuary.

On 7th March 2012 at about 7.30 p.m PW-3 was the duty officer at Eldoret police station. He was called by the Deputy OCS, Inspector Lumumba through the phone. He was instructed together with PC Koome and PC (Driver) Ngunji, to proceed to Naiberi area and pick a suspect from a member of public called Rono. The alleged suspect had allegedly committed murder on 4th March, 2012. They proceeded to the said place and found the suspect held within a bar by its owner, Mr. Rono. They re-arrested the suspect. They however could not get out of the bar as members of public were unruly, with desire to lynch him. They requested for reinforcement from Eldoret police station and when it was availed they took him to Eldoret police station.

On 8th March 2012 PW-4 was assigned the case to investigate by the OCS, Chief Inspector Muli. He visited the scene where the body was collected from, of which was the house of the accused and the deceased. There were blood stains in the house, in the sitting room on the floor. He interrogated the accused who said his wife went home drunk and they had a dispute. He went to Moi Teaching and Referral Hospital mortuary to view the body. The deceased was in a Blue jeans skirt and a red blouse. She had bruises all over the body and on the back. He then went back to the station and recorded witnesses' statements.

The post mortem was conducted on the body of the deceased at Moi Teaching and Referral Hospital on 16th March 2012 by Dr. Francis Ndiangoi. He noted that the body had linear bruises on the arms and the back consistent with whip lashes. There were bruises over the left Zygoma area. There were post mortem injuries on the forehead and the right ring finger probably by predation by rats. Internal examinations revealed bruises on the right side of the ribs and muscles. The stomach had partially digested

food. He was of the opinion that the cause of death was shock due to extensive subcutaneous bleeding, due to blunt trauma. He thus filled the post mortem report and issued death certificate No. 360700.

The accused was then charged with the offence in the information sheet. At this point this court must determine as to whether a prima facie case is established against the accused person, by the prosecution, to warrant him be placed on his defence.

In this case there is no eye witness to the alleged incident of murder. The police moved in after it had been allegedly committed. The member of the public who reported the incident on 4th March, 2012 to the police was not disclosed and was not a witness in the case. PW-1 who got to the scene on the very same date found no weapon of murder and no blood. He alleged the entire scene had been cleaned. However PW-4 the investigating officer who visited the scene on 8th March 2012, that is 4 days after PW-1 had been to the scene, alleged to had seen blood stains in the sitting room, on the floor. This is a contradiction in the prosecution case that was not resolved by the time of

closure of their case. There is no evidence that the

body had an open wound or had bled externally. The photographs taken at the scene by scene of crime officers were not availed in court and produced as exhibits. It would appear the evidence that there were blood stains in the sitting room, on the floor, by PW-4, was of his own imagination or creation. The evidence does not point firmly that the deceased was murdered in the house where the body was found. There is also no evidence that the deceased was only living with the accused in the said house. There is also no evidence that accused was with the deceased at the time she met her death. The allegation by PW-4 that he interrogated the accused and he said the deceased got home drunk and they had a dispute, is not a confession by him admissible as evidence. The said officer did not even seek to establish whether the deceased had taken alcohol prior to her death to ascertain the alleged claim. Even the alleged basics that the accused was living with the deceased in the said house and that he was her husband, were not proved by the prosecution. What the prosecution advanced is mere hearsay which is not admissible as evidence.

The bottom line is that there is neither direct nor circumstantial evidence that suggests that it is the accused person who committed the alleged offence. It is not clear on the basis of which he was arrested and charged with the offence. What is in place as evidence is far from establishing a prima facie case against him, and is as such acquitted of the offence under *Section 210* of the *Criminal Procedure Code*.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 13th day of June 2019.

In the presence of:-

- (1) Mr. Okara for the accused
- (2) Ms. Kagali for state prosecutor
- (3) Ms Sarah - Court clerk