



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO.12 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

THOMAS OMOLLO ODHIAMBO.....ACCUSED

JUDGMENT

[1] The accused, **Thomas Omollo Odhiambo**, is charged with murder, contrary to **Section 203** as read with **Section 204** of the **Penal Code**, in that on the night of 17th/18th April 2015, at East Kagan Location, Rangwe-Homa Bay County, he murdered Oliver Goga Goga.

[2] The case for the prosecution was that the deceased was the eldest son of **Tabitha Atieno Odira (PW1)** of Kogor village-Rangwe. His dead body was found by a businesswoman, **Hellen Adhiambo Oyugi (PW2)**, on the 18th April 2015 at 6.30 a.m. lying in a thorny bush facing upwards. She initially thought that the deceased was drunk as normal but on checking him closely realized that he was dead. He was well known to her. She informed his mother accordingly. The information reached the area chief who called the police.

[3] Earlier, on the 17th April 2015, at 7.40 p.m., a school leaver, **Fred Opiyo Oreta (PW3)**, heard some people quarrelling with a view to engaging in a fight outside his house. He left the house and proceeded to a nearby road where he recognized the voices of the accused and the deceased and actually saw them when the headlights of a passing motor vehicle illuminated their faces. They were previously known to him. He briefly listened to their verbal exchanges and when he could not hear them anymore, he walked back to his home. He was on the following day attracted by wails from people and learnt that the deceased was found dead and lying in a bush near his home.

[4] **David Odoyo Miyare (PW4)**, woke up as usual on the morning of the 18th April 2015. He was expected to later join the deceased and help him construct a kitchen for his mother. But, before leaving for the deceased's home, he heard screams emanating from there. He then

rushed to the scene and was shocked to learn that the deceased was dead. He found the dead body of the deceased lying on the ground facing upward with an injury on the head, neck, and chest and clothed with a jacket he (PW4) had lent to the deceased.

[5] An Assistant Chief of Konyango sub location, **Yona Otieno Gordon (PW5)**, was on 20th April 2015, informed by a colleague based in Rangwe that a murder suspect had been spotted in his area. He passed the information to the area youths who traced and apprehended the suspect, identified as the accused herein. He (accused) was found in possession of a knife and was later handed over to the police.

PC Frank Otieno (PW6) of Rangwe police station investigated the case and eventually charged the accused with the present offence. He produced a postmortem report (P. exhibit 3) compiled and signed by Dr. Osuri. He also produced a medical P3 form (P. Exhibit 4) on the accused's mental status.

[6] In his defence, the accused denied the offence and stated on oath that he was a fisherman based at Ndhoho beach in Karachuonyo and that on the material 17th April 2015, at 7.30 p.m., he was at his place of work undertaking his normal business. He knew the deceased as a village mate but did not know what happened to him. He was arrested on 20th April 2015 and later arraigned in court. He contended that Fred (PW3) lied in court against him due to a previous land dispute between their families and that he knew nothing about the charge.

[7] From all the foregoing evidential facts, no dispute is raised with regard to the fact that the deceased died from hypovolemic shock due to injuries to his head, neck and abdomen possibly caused by a sharp weapon in execution of a criminal transaction in the form of an assault against the person of the deceased.

It would not therefore be far-fetched for this court to opine that the deceased suffered fatal injuries after being violently assaulted by a person

or persons unknown at the time.

[8] The accused was later arrested after being suspected of having been the assailant. He was allegedly found with a knife (Exhibit 2) which was however not linked to the offence by any forensic evidence.

He denied the charge and as usual the obligation to prove the charge against him beyond reasonable doubt lay with the prosecution. The only way that the obligation could be discharged was by cogent and credible evidence showing that the accused was positively identified as the person or one of the persons who assaulted the deceased and occasioned him fatal injuries. In particular, considering that the accused raised an alibi as his defence.

[9] It was not for him (accused) to prove his alibi, but for the prosecution to discredit, dislodge or disprove it. In that regard, the evidence of Fred (PW3) was most vital as it tended to place the accused at the scene of the offence at the material time. Indeed, the witness stated that he heard the accused and the deceased quarrelling with the intention of fighting. He firstly, recognized them by their voices as they were his neighbours and persons known to him. He secondly, recognized them by physically seeing them when the headlights of a passing vehicle illuminated them.

[10] What the witness clearly suggested was that his recognition of the accused and the deceased was by voice and by physical observation in conditions which were favourable for such identification made possible by light from a passing vehicle. He said that he left them within the vicinity of the place he saw them and went home. He did not say that he saw them fight other than hear them exchange verbal threats. He could not therefore tell what happened to either of them after he went home.

[11] Even if it were to be found by this court that the evidence by Fred (PW3) could not directly prove that the deceased was assaulted and fatally injured by the accused, it provided circumstantial evidence to the effect that the accused was the last person seen with the deceased while he was alive. This is more so, considering that the identification evidence by Fred (PW3) was not really discredited or dislodged by the defence and therefore proper and reliable and having the effect of disproving the accused's alibi.

[12] There was also further evidence from Fred (PW3) and David (PW4) that the accused and the deceased were never in good terms and that the "bad blood" between them often caused them to quarrel and fight whenever they met. The indication that the two were heard quarrelling and yearning for a fight on the material night was a confirmation of their strained relationship and also a confirmation that the accused was the last person to be seen with the deceased while he was alive. The fact that the dead body of the deceased was discovered on the following morning with bodily injuries caused by a sharp weapon created a strong inference that he was assaulted and fatally injured by no other person but the accused.

[13] Indeed, there were no other co-existing circumstances which could weaken or destroy the inference. It is therefore this court's finding that the circumstantial evidence availed against the accused was credible enough to justify the inference that he was responsible for the death of the deceased. Accordingly, the prosecution's burden of proving the case against the accused beyond reasonable doubt was effectively discharged.

[14] In sum, the accused is hereby found "**GUILTY**" as charged and is accordingly convicted.

J.R. KARANJAH

JUDGE

07.11.2019

[Dated and delivered this 7th day of November, 2019]