



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 15 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSHUA MUTHOMI RINGERA.....ACCUSED**

**JUDGMENT**

**1. JOSHUA MUTHOMI RINGERA** (the accused) faces a charge of murder Contrary to Section 203 as read with Section 204 of Penal Code that on 20<sup>th</sup> February 2012 at **KAPCHEMENYES** farm in **ELDORET EAST** within the Rift Valley Province, he murdered **JANE JERUTO KOSGEI**. He denied the charge.

This matter was partly heard by Ngenye (J) and Kimondo (J) who has since been transferred from the station.

**2.** PW3 a minor named **E C** told the trial court that she used to spend the nights in the house of her aunt **JANE JERUTO** (deceased) who brewed alcohol. On 19.02.2012 at about 4.00pm, the accused whom she knew as **JAMES MUTHOMI** went to the deceased's house and he was served some alcohol. He joined them in looking for a missing needle. Later when she left to go and meet their father at **MOIBEN** junction, she met the accused, who gave her Ksh.20/- to buy him airtime – she obliged, brought airtime and returned to give him the same by the roadside, she then proceeded to **MOIBEN** and linked up with her father, then returned home.

**3.** PW3 explained that the deceased lived in the same compound as her parents, and used to sleep on a bed in the house whilst PW3 and two of her siblings slept on the floor.

**4.** At about 12.00am, PW3 heard a knock at the door, and the deceased got up and opened the door. She stated it was the accused who asked the deceased whether they had found a needle they had been looking for earlier in the day. PW3 stated:

***“I had been seeing the accused for the last two weeks. He would pass by my aunt’s house which he visited for about a week. I knew it was the accused who had come at night because no one else knew we were looking for a needle earlier in the day.”***

The deceased collected a lamp from the room where PW3 was sleeping. The accused was welcomed into the house, and given a seat. He then asked for the deceased daughter **NELLY** but was told she was not in the house. He asked who else was inside the house and deceased disclosed that there were three children sleeping inside the house.

The accused made a phone call to **NELLY**, asking where she was then gave the deceased the phone to talk to her PW3 stated:

***“... The phone was on loud speaker. I heard the conversation Nelly told my aunt she could not come back home as it was late. James then made another call. I then dozed off and slept.”***

**5.** PW3 described the deceased's house as having two rooms, which were separated by a transparent bed sheet so she could see through to the sitting room from where she slept.

On cross examination she stated:

***“We were sleeping in one room. ...my aunt left us sleeping to go to open the door. They were talking in the sitting room” – describing the separating curtain as white.***

**6.** Meanwhile **NELLY CHEPKEMOI** (PW1) who had been on a drinking spree from bar to bar to bar told this court that the accused whom she knew as **JAMES** aka **JOSHUA RINGERA** had called her on 19.2.2013 explaining a desire to meet her friend **AGNES CHEROBON**, but the latter was not interested. She explained that **JAMES** was the accused's nickname. He called her again at 3.00pm, requesting her to

join him at a bar where he was, but she declined. He again called her at 8.00pm, asking where **CHEROBON** was, and at midnight he again called, asked where she was – she claimed she was at home,

She stated:

**“...Joshua had called me on his phone at 12.30am. He wanted to know where I was. He then gave his phone to my mother to ask me at what time I would be going home, but I told mum I was not going home that night.”**

On cross examination she stated that it seemed the appellant was forcing her mother to talk to her, although her mother did not disclose that to her. She was categorical that he accused was not her boyfriend but had wanted to befriend **JEROBON**.

7. In the morning of 20.02.2013, at 7.00am, **GILBERT KIPCHUMBA** (the deceased's son) who had his own house was with one **NELVIN**, was on his way to work, when he stumbled upon his mother who lay on the ground bleeding from the mouth. He also noticed a used condom next to her – she was dead. He called his sister PW1 and his uncle informed them about the mother.

8. **FRANCIS MUTAI KOSGEI** (PW5) brother to deceased and father to PW3 testified that while at **ITEN** (where he had opted to spend the night, his phone rang at about midnight and the caller (a man) introduced himself as **JAMES** working for Kenya Power, and asked where he was. PW3 said he was far away. Wherefrom James said he was near PW5's home. PW5 confirmed that he lived in the same homestead as the deceased. The next morning as PW5 approached his home, he noticed a large crowd gathered and soon learnt that someone had been found lying dead near the homestead. When he got to the scene he saw used condoms and the deceased's panty was on her waist. She lay flat on the ground with blood oozing from her nose.

**“I knew James about one month to the incident. I casually related to him. We only greeted each other. I knew James voice.”**

He identified the accused as the person known to him by the name James saying he first met him at an Indian's shop where he was doing casual work and they exchanged telephone numbers.

9. **AGNES CHEROP** (PW6) a neighbour to the deceased confirmed that on 19.2.2012 at about 3.00pm she was in the company of PW1 at **CHEPKONGA** when the accused called to ask where she was. He then joined them, bought them soda and left.

On 20.02.2012, she went to the deceased's house but did not find her. Upon inquiry from **GILBERT** (PW3) the later said the accused had come home at 12.00am, asking for her and **NELLY** and that after a brief chat, the accused requested the deceased to escort him saying he feared that the dogs might bite him; and the deceased obliged.

10. A post mortem report produced by **DR DAVID CHUMBA** (PW7) found that the deceased had blunt injuries on the upper limbs and loosening of two upper teeth. Internally the cranium was having pressure caused by haemorrhage sub-arachnoid haemorrhage was related to the blunt force and there was a rupture of a major blood vessel. The manner of death, in his opinion, was natural.

He sermed up thus:

**“We could not identify the cause of the rupture of the blood vessel.”**

On cross examination the Doctor explained that the increased intra-cranial pressure was caused by a rupture of blood vessels in the brain and the most common cause is hypertension or defects in the blood vessels or disorder.

He also stated that:

**“...We found a few blunt injuries to the upper limbs and loosening of the upper teeth. They were not sufficient to cause death. They are not associated with the haemorrhage in the brain.**

11. Upon being placed on his defence, the accused confirmed that he was at the deceased's home with friends who were drinking busaa but he did not partake of the same as he is a teetotler. The deceased requested to use his phone to make a call to her daughter – he obliged.

After a while he called the same daughter (**NELLY**) to ask when she was coming home and she confirmed. He then left and was surprised the next day to see police arresting him in relation to the death of deceased. He did not know what caused her death.

12. No one saw the accused murder the deceased, but he was suspected to be the culprit because he was the last person witnesses learnt was with the deceased – at least upto about 12.30am. Secondly, he made calls to determine where the other adult family members were, giving raise to suspicion that he wanted to ensure that whatever mischief he carried would not be interrupted. The prosecution case basically revolves around circumstantial evidence, and **MR OKARA** has submitted that the circumstances left such gaps as to rule out accused being the culprit, especially because the investigating officer failed to attend court and testify. The prosecution seems to want to suggest that the accused having ensured that no adults were within the homestead, lured the deceased, forcefully had sex with her, then killed her – that is why there is repeated reference to condoms being found near the body.

13. Unfortunately the investigating officer did not testify to confirm if indeed he collected any condoms from the scene and whether they were subject to further analysis to establish whether traces of the accused's DNA were found on them.

Secondly there is no evidence, not even from the Doctor to suggest that the deceased was sexually molested.

Thirdly from the medical evidence, it is apparent that the deceased suffered a stroke where a blood vessel in the brain burst, leading to increased pressure in the brain and her death.

14. The blunt injuries noted were of such minor significance that the Doctor ruled out the possibility of being the cause of the cranial haemorrhage. It will appear that upon suffering the hypotensive stroke, the deceased fell and sustained the minor injuries and the upper limb and the upper teeth got loose. But even if it was to be assumed that the accused inflicted those injuries, the Doctor was categorical that the same could not have led to her death.

15. Consequently the evidence is not sufficient to sustain a conviction, and this court returns a finding of **NOT GUILTY** under Section 306 of the Criminal Procedure Code.

16. The accused shall be set at liberty forthwith unless otherwise lawfully held.

**DATED, SIGNED and DELIVERED at ELDORET this 18<sup>th</sup> day of September 2018.**

**H. A. OMONDI**

**JUDGE**