



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 49 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KIMAIYO BARSULAI.....ACCUSED

RULING

1. DAVID KIMAIYO BARSULAI (the accused) was charged with murder Contrary to Section 203 as read with Section 204 of the Penal Code that on 15th June 2014 at **KETIGOI** village, **MAOI** Location in **KEIYO SOUTH** District within Elgeyo Marakwet County, murdered **CYNTHIA JERUIYOT KIPRONO** (Deceased)

2. The prosecution case was based on the evidence of PW1 (**JOSEPH KURGAT SAWE**) who told the trial court that on 15.06.2014 at 8.00pm a young man named **EVANS** went to his home and informed him that **CYNTHIA JERUIYOT** had been killed and her body was lying near the river. He accompanied the reporter to the scene and noted that the deceased lay dead with a cut on the neck.

He informed the area Assistant Chief **SAMUEL MALEL BARSULAI** (PW2), who also visited the scene, and relayed the information to police.

3. According to both PW1 and PW2, when the information reached the police, they said **DAVID KIMAIYO BARSULAI** (accused) had already surrendered himself at the AP Camp. PW1 who was a brother to the deceased further stated;

“... I knew David as he was a fellow villager. David was Cynthia’s lover, and many times they would be walking together.”

He however did not know how the deceased met her death or what led to her death.

4. The Assistant Chief (PW2) also confirmed he did not know how the deceased met her death nor was he aware of any relationship between the deceased and the accused.

5. **MUSA KIPRONO** (PW3) the deceased’s father told the court that his daughter left their home on 25th April 2013 at about 6.00pm to deliver milk to a certain old lady, but failed to return home. The next morning he was informed that her body was lying along the road – he went to the scene and confirmed – observing that she had a cut on the back of the neck.

He stated:

“While at the scene, the District Officer called the chief to say a suspect had surrendered to the Administration Police...”

He was not aware of any relationship which may have existed between accused and deceased.

On cross examination he explained that the deceased was estranged from her husband and had returned to her ancestral home, and upon her request he had given her land to till. He confirmed that there was a time when the deceased’s husband Geoffrey attacked the accused but he could not tell whether it was on allegations of a love affair.

“... her husband Geoffrey came to fight David Kimaiyo alleging he had a love affair with the wife. That is what I heard people say.”

Although he insisted that the accused was the one who killed the deceased, he conceded that he was not present when she was killed.

6. **PC ISMAEL BISHAR** (PW4) who took over the investigation file on 3rd April 2019 following transfer of the Investigating Officer to **BUSIA** said he recalled seeing the accused in police cells with an indication that he had surrendered himself at **KAMISOI AP Camp**, further that the accused had confessed to the murder and a statement of confession had been recorded. However this confession was not presented to the court nor did the officer who purportedly recorded the confession testify. Apart from that, the officer to whom the accused surrendered to, did not testify in court to confirm the circumstance under which such surrender was made. He produced a post mortem report showing deceased died of haemorrhagic shock.

7. Consequently the evidence presented is based on statements of witnesses who confirmed they did not know who murdered the deceased, and the claims that accused surrendered himself and confessed to the officer remain hearsay evidence as the persons who could have shed light on the same failed to testify in court.

8. Could it be that her husband Geoffrey who was unhappy with her relationship with the accused was the hand behind the killing? The prosecution failed to discharge the burden as to warrant placing the accused on his defence and I return a finding of **NOT GUILTY** under Sec. 306 (1) CPC.

He shall be set at liberty forthwith unless otherwise lawfully held.

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

H. A. OMONDI

JUDGE