



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 89 OF 2014

REPUBLICPROSECUTOR

VERSUS

SALAM OBIRI ACCUSED

JUDGMENT

1. The accused, **Salam Obiri**, is charged with murder, contrary to S. 203 read with S. 204 of the Penal Code, in that on the 2nd August 2014, at Riontweke Sub-location, Nyamache Kisii County, murdered Carolyne Moraa Moseti.
2. The case for the prosecution was that the deceased and the accused were seen together at 1.00 pm on the material 2nd August 2014, but later on the same day the dead body of the deceased was found on a bed inside the accused's house. She had been killed but the accused was nowhere at the scene. He was later apprehended by members of the public who were about to lynch him but for the quick arrival of the police.
3. The police removed the dead body to the mortuary and after the necessary autopsy a report (P.Ex 1) was compiled indicating that the cause of death was cardiopulmonary arrest following upper airway obstruction.
4. The accused was suspected of having killed the deceased. He was formally arrested and charged with the present offence. His defence was a denial and a contention that the deceased was not known to him. He indicated that he was in church on the material date when he was called by two people who asked him to accompany them to his home. On the way, two motor cycle taxi (boda-boda) operators confronted them and shouted that they have arrested him. He (accused) could not tell what was happening. He was assaulted to the point of losing consciousness. He later found himself at Nyamache hospital.
5. From the foregoing facts, the basic issue that arises for determination is whether the deceased was murdered and if so, whether the accused was responsible for the offence. The post mortem report (P.Ex 1) clearly indicates that the deceased was strangled. There was obstruction of her upper airway.

The report also indicates that the deceased engaged in sexual intercourse or was raped prior to being strangled or was strangled during the act. These circumstances were indicative of an intention to kill.

6. The death of the deceased was therefore the result of an act of murder.

As to the alleged responsibility of the accused for the murder, there was no direct evidence by the prosecution against him. None of the witnesses saw him in the act of strangling the deceased to death.

His defence was an absolute denial. He even denied that he knew the deceased although the evidence of **Daniel Onchabo Ongera (PW 1)**, and that of the investigations officer, **P.C Gilbert Chesindai (PW 3)**, indicated otherwise.

7. There being no direct evidence against the accused the prosecution offered indirect or circumstantial evidence through David Ongera (PW 1). His testimony showed that the last person seen with the deceased before her death was the accused and that her dead body was found on a bed inside his house.

Most importantly, the deceased dead body was found in the house of the accused within a few hours after the two had been spotted together.

8. According to the investigations officer (PW 3) the accused was a boyfriend of the deceased. It was not therefore a coincidence that the two were spotted together and that the dead body of the deceased was found on the accused's bed.

Basically, the principles upon which a court may convict a suspect on the basis of circumstantial evidence were clearly set out in the case of **Republic Vs. Kipkering Arap Koske (1949)EACA 135**.

9. In that case, it was stated that the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

And, in the case of **Sawe Vs. Republic (2003)KLR 364**, it was stated that circumstantial evidence can be a basis of a conviction only if there are no other existing circumstances weakening the chain of circumstances relied upon by the prosecution.

10. And finally, in the old English case of **R Vs. Taylor Weaver & Donovan (1928)21 CR. APP R. 20**, it was stated that:

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which by intensified examination is capable of proving proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

Herein, the evidence by David (PW 1) was clearly un rebutted and was unshaken during cross-examination. It was in the mind of this court, credible and sufficient in offering strong circumstantial evidence against the accused on the basis that he was the last person to be seen with the deceased while she was alive and that her dead body was found in his house on his bed a few hours after they had been spotted together.

11. Suffice to say that these inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

Other additional evidence by the prosecution was that of **Dishon Okemwa Moseti (PW 2)**. His role was merely to identify the body of the deceased who was his niece for post mortem purposes.

12. In sum, the finding of this court is that the accused's defence was not based on any true fact as it is clear that he was with the deceased on the material date when he strangled her to death for reasons known to himself. The circumstantial evidence against himself is cogent and credible for a verdict of guilty as charged being entered and is hereby entered against him. He stands convicted for the murder of the deceased.

[Delivered and signed this 4th day of May 2017]

J.R. KARANJAH

JUDGE

In the presence of

CC Mohe/Dorothy

State Counsel – Mr. Otieno

Accused

Mr. Kaburi for accused

State Counsel: Accused may be treated as a first offender.

J.R. Karanjah , Judge

Mitigation by Mr. Kaburi: Nil.

J.R. Karanjah , Judge

Court: Accused is a first offender. J.R. Karanjah , Judge

Sentence: To suffer death as prescribed by law.

J.R. Karanjah , Judge