



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

HCCR NO.56 OF 2011

REPUBLIC.....PROSECUTION

VRS

JOSEPH ARAP NGETICH.....ACCUSED

RULING

1. The accused faces a charge of murder contrary to **section 203** as read with **section 204** of the **Penal Code**.
2. Six (6) witnesses testified on behalf of the prosecution. The cause of death was found to be strangulation (EXB1).
3. There was no eye witness to this incident. The evidence before this court is purely circumstantial.
4. The evidence is that the deceased and others PW1 included spent a better part of 25th December 2011 eating and drinking at PW1's home.
5. At 2.00 p.m PW1, the deceased and others left for Kapsoit Market to further enjoy themselves. They were already drunk by then.

The deceased only took soda while at Kapsoit.
6. He eventually left for home at 8.00 p.m. PW1 gave him kshs.50/- for transport but there is no evidence on how he went home and/or who took him.
7. It is also not clear if he ever arrived at his home on 25th December 2011 night.
8. All the witnesses who have testified heard screams. They went to the accused's home where the screams were coming from. The deceased had already died.

9. **Where was his body found?**

- PW1 says he found the body lying beside the path to the deceased's house.
- PW2 says the body was lying just outside the accused's house.

- PW3 says the body was lying next to accused's house.
- PW6, Investigating Officer stated that the deceased's mother woke up and found the son's body lying on the ground and she screamed. This ground was where?
- The deceased's mother happens to be the accused's wife who is not a compellable witness by virtue of section 127 (2) (ii) as read with section 217 (3) of the Evidence Act. She did not testify.

10. PW6 (Investigating Officer) went to the scene and did what he says he did. He did not explain where this scene was. Was it at the the accused's home, deceased's house, or on the footpath? The exact point of the scene from the evidence of PW1, PW2, PW3 and PW6 is wanting.

11. An assistant chief is alleged to have come to the scene among many other people (e.g PW1 to PW3) and according to PW1, the assistant chief asked the accused what had happened to the deceased. While locked up in his house, he is alleged to have responded saying:

“The deceased was about to kill me, so I was defending myself.”

12. The alleged assistant chief did not testify in this matter. PW2 and PW3 who were present did not testify as to ever hearing such utterances by the accused.

13. It has come out from the evidence on record that the accused and deceased were father and son respectively. It has also been indicated that their relationship was not cordial.

The existence of a bad relationship *per se* would not be sufficient to found a conviction. There must be other evidence to support the suspicion.

14. In the Case of **Sawe V R [2003] KLR 364** the Court of Appeal held that:

“7. Suspicion, however strong cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

15. In the same Case of **Sawe V R (Supra)** the court stated the following on circumstantial evidence:

“1. In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than of his guilt.

2. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.”

Also see **Raphael Isolo Echakara & Another V Republic Court of Appeal KSM (CRA No.44/13); Nzivo V Republic [2005] 1 KLR 699.**

16. It is clear from these authorities that in a case based on circumstantial evidence the chain must be continuous with no other evidence breaking it.

17. In the present case, the accused has not been placed anywhere in the chain, save for his locking himself up in his house. Why was he locking himself up in the house? Was it for fear of victimization or was it because he had committed the offence?

18. It is not clear if the deceased was taken upto his home that night. We do not lose sight of the fact that he had been drunk that evening from the effects of the feasting at PW1's home. Even PW1 and PW3 did not bother to find out if their brother was safely at home that night.

19. If the accused was placed on his defence and he elected to remain silent, this court would not have sufficient evidence to convict him.

20. Based on the above reasons, I find that no *prima facie* case has been established against the accused person who I hereby acquit under section 306 (2) of the Criminal Procedure Code.

Signed, dated and delivered this 8th day of March, 2016.

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H. I. ONG'UDI

JUDGE