



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 32 OF 2010

REPUBLIC.....PROSECUTOR.

VERSUS

LISORENG MINAITA KASIRKOI

KIRADOMO LOMANITA MINAITA).....ACCUSED.

J U D G M E N T.

The accused, **Lisoreng Minaita Kasirkoi** and **Kiradomo Lomanita Minaita** are charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 24th April, 2010 at Ptalin Central Pokot district, jointly with others not before court murdered, Ritakwang Kanyanguny.

The case for the prosecution was that on the material date, **Christopher Keditai (PW2)**, was at his home at about 6.00 a.m. when he heard screams emanating from the direction of a place called Kapri. He realized that the screams were those of his brother's wife. His brother was the deceased herein. He rushed to the scene and found the body of the deceased at the bank of a river. The body had fresh deep cuts on the head. He called out for help while noting that footprints and blood trail showed that the body had been dragged from the house of the first accused. He enquired from the wife of the first accused who had arrived at the scene on whether she knew anything about the death of the deceased. He went to the home of the first accused whose clothes were near the body of the deceased. He (PW2) found blood stains in the house of the first accused and was informed by his wife that he (first accused) disappeared from the scene due to shock. He (PW2) reported the matter to the police.

The body of the deceased was taken to Kapenguria District Hospital where it was identified by his mother, **Cheposokai Kanyanguny (PW1)**, for post mortem purposes.

Lokirangole Kanyangole (PW3), proceeded to the home of the first accused to drink "chang'aa" on the material date at about 1.00 p.m. he found the first accused and others drinking traditional brew. He joined them. The deceased was his brother and was among the people drinking the brew. He (PW3) remained at that place briefly and thereafter went away. He never saw the deceased again until the following day when his body was found by a river. He saw the body and noted that it had cut wounds on the head. He realized that the first accused had disappeared.

Daniel Kapelinya (PW4), an assistant chief by occupation, was approached by two people on the 9th May, 2010, at about 4.00 p.m. and handed a letter from the area District Officer (D.O). The letter required that two criminal suspects be pointed out for arrest by the two people. The first to be pointed out and arrested was the second accused. The other suspect had reportedly escaped to another location.

CIP John Kiringi (PW5), officer commanding Marich police station, received the necessary report and proceeded to the scene where he found the body of the deceased with injuries on the head. He conducted investigations and in the process retrieved a pullover found near the body allegedly belonging to the first accused. He also proceeded to the house of the first accused where he saw some blood stains. He gathered that the first accused and the deceased had been drinking when they quarrelled and fought. He concluded that the first accused was the prime suspect.

He (first accused) was later arrested and charged together with the second accused who was allegedly with him during the aforementioned fight.

The I.O. (PW5), arranged for a post mortem on the body of the deceased and took necessary photographs. He produced the post mortem report (P. Exh. 2) indicating that the cause of death was cardiorespiratory arrest due to severe head injury.

In his defence, the first accused (Lisoreng) said that he was a herdsman by occupation and on the material date he went to herd his livestock leaving behind his wife who was preparing changaa. He returned home in the evening and took the alcohol. Thereafter, he proceeded to sleep and on the following day he was informed that a person had been found dead near a river. He went there to enquire but later, people started burning his houses and killing his animals. He feared for his life and went to the chief's office to make a report. He did not know who had killed the dead person but was later arrested together with other people who included the second accused.

The second accused (Kiradomo) said that the first accused was his uncle and on the material date he (accused two) had gone to fetch food for his wife who had just given birth. He returned home in the evening and slept. On the following day he heard that a person had been found dead at a river. He went there and found that the dead person was the deceased who had allegedly been drinking alcohol at the home of the first accused. He (accused two) ran to the chief's office to make a report after villagers started burning his houses. He was later arrested together with others and taken to Marich Police station from where he was brought to court together with the first accused after failing to pay Ksh. 30,000/= demanded by the police.

In essence, both accuseds denied having been responsible for the death of the deceased. The burden to establish their guilt lay with the prosecution.

From the evidence, it is apparent that the deceased died from severe injury inflicted on his head.

The issue for determination was whether the fatal injury was inflicted upon the deceased by both accused or any one of them.

There was no eye-witness to the offence. The body of the deceased was found near the bank of a river with injury on the head. The deceased's brother (PW2) on arriving at the scene suspected the first accused as having been responsible for the death of the deceased for reason that his cloth was found near the body and his house had blood stains.

The cloth according to the investigations officer (PW5) was a pull-over belonging to the first accused.

Blood stains were also seen in the house of the first accused by the investigations officer who said that the deceased had fought with the first accused while they were drinking alcohol.

Suspicion was also cast upon the first accused because he was said to have disappeared from the scene after the body of the deceased was found at the river.

As for the second accused, there was no piece of evidence implicating him. According to the I.O (PW5), he was with the first accused when a fight erupted between the first accused and the deceased.

Strangely enough, no witness other than the I.O mentioned anything to do with a fight between the

deceased and the first accused. Indeed, the two and others could have earlier been drinking alcohol with the deceased but nobody said that they fought and in the process the deceased was killed. The second accused was never linked to the fight even if it occurred.

There was absolutely no evidence against the second accused to warrant the present charge against him.

The evidence against the first accused was essentially circumstantial but it was not cogent and credible enough to lead to the conclusion that he was responsible to the exclusion of any other person for the death of the deceased.

At most, the evidence against him was based on mere suspicion to the effect that his cloth was found at the scene, that blood stains were seen in his house and that he disappeared from the scene. However, there was no evidence to prove that the cloth belonged to him, neither was there any evidence that blood stains were seen in his house and if they were stains from the deceased's blood.

Disappearance from the scene after an offence would be a vital factor in linking a person to an offence but it would all depend on the circumstances. Herein, the first accused indicated that he ran away from the scene when irate villagers set his houses on fire and injured his animals no sooner had the body of the deceased been discovered at the river.

In the upshot, the prosecution has failed to establish beyond reasonable doubt that the accused or any one of them were responsible for inflicting fatal injury upon the deceased.

Consequently, both accused are found not guilty as charged and are hereby acquitted accordingly.

[Delivered and signed this 5th day of August, 2014.]

J.R. KARANJA.

JUDGE.