



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 9 OF 2012.

REPUBLIC :::::::::::::::::::: PROSECUTOR

VERSUS

ANNE NASIMIYU WANJALA :::::::::: ACCUSED

J U D G M E N T.

The accused, **Anne Nasimiyu Wanjala**, is charged with murder, contrary to section 203 read with section 204 of the Penal Code, in that on the 4th February, 2012, at Kapomboi Farm Trans Nzoia County, murdered Leah Nafuna.

The case for the prosecution was that on the 5th February, 2012, a police reservist, **Isaac Kipekemei Ndiema (PW1)**, received a report from a village elder that a woman was found lying down near a river while injured. The said woman was taken to the local trading centre and to Endebess District hospital where she died from her injuries which were allegedly inflicted on her by the accused.

Another police reservist, **Daniel Kirwa (PW2)**, confirmed that he found the deceased woman lying on the ground with injuries. He then heard people saying that the deceased had been assaulted and injured by the accused.

Betty Naliaka (PW3), daughter to the deceased identified the deceased's body at Endebess District hospital for post mortem purposes. She indicated that the deceased had left home sometime ago and it was not known where she had gone until information reached her family that she had been assaulted and killed.

The post mortem report (P. Exh. 1) produced by the investigating officer, **IP Amos Namasaka (PW4)**, indicated that the deceased died from cardio respiratory arrest due to severe anaemia caused by severe cut wound on the head. He (PW4) indicated that the accused assaulted and seriously injured the deceased after she (accused) found her (deceased) with her (accused) husband. That, in doing so, the accused used a stick. She was therefore charged with the present offence.

In her defence, the accused denied the offence and stated that she was at home on the material date at 10.00 p.m. when she heard screams of a woman after her husband had left the house and a person shouted at him to remove his woman from a nearby house.

She (accused) proceeded towards the direction of the screams and found a group of people fighting at that scene. She went away to call a village elder and later slept at a neighbour's house. On the following day, she heard that the body of a woman had been spotted at a nearby river. She went there to look for her husband but was asked to board a vehicle which took her to Endebess police station where she was to wait for her husband who did not show up. She was later charged in court with the present offence.

From all the foregoing evidence, it is not disputed that the deceased met her death after being assaulted and occasioned injuries which later proved fatal.

The post mortem report indicated that she sustained deep cut wounds on the head leading to severe anemia and eventually to her death.

The basic issue for determination was whether the fatal injuries suffered by the deceased were inflicted by the accused.

The defence raised was a denial and an indication that the accused was arrested and charged without good cause and probably as a cover up for deeds committed by her husband.

The prosecution did not provide any direct evidence against the accused. The two police reservists (i.e. PW1 and PW2) stated only what they had been told by others. None of them saw the deceased being assaulted by the accused although they assisted to take her to hospital.

The investigating officer (PW4) contended that the deceased was assaulted by the accused but the contention was not backed by any evidence. He therefore relied on hearsay and rumour to prefer the present charge against the accused. He talked of a stick or sharp piece of wood as having been the assault or murder weapon but he did not produce it in evidence nor did he show its linkage to the accused and the murder of the deceased. He indicated that the accused assaulted and/or fought with the deceased due to a love triangle involving them and the accused's husband. However, no evidence was given in support of that indication.

In sum, not even a scintilla of evidence was obtained by the investigating officer (PW4) to implicate the accused with the present offence. Hearsay and rumours could not suffice in linking the accused to the offence. It cannot therefore be said that the accused was the person who assaulted and inflicted fatal injuries on the deceased. The prosecution has thus failed to prove its case against the accused who must now be found not guilty as charged and acquitted accordingly.

Ordered accordingly.

[Delivered and signed this 3rd day of December, 2014.]

J.R. KARANJA.

JUDGE.