



woke him (first accused) up and sent his (PW3's) sons to report the matter to the police.

A village elder, **Wilson Kemoi (PW4)**, also arrived at the scene and found the deceased lying down with burns on the head, face and left hand. He reported the matter to the area assistant chief before the police officers arrived at the scene and removed the dead body of the deceased.

**Joseph Petakwang (PW5)**, son to the deceased, identified the body of the deceased at Kapenguria hospital for post mortem purposes.

**Dr. Josphat Kiprotich Sanga (PW6)**, carried out the post mortem and signed the necessary post mortem report (P. Exh. 1) indicating that the cause of death was cardiorespiratory arrest due to carbon monoxide poisoning.

**Wilson Kipkech Chepkilimo (PW7)**, was also one of those who arrived at the scene in the morning and found the dead body of the deceased with burns.

**P.C. Zablon Sikolia (PW8)**, carried out the necessary investigations by recording statements from witnesses. He concluded that the deceased had been assaulted, strangled and burnt to death by the two accused. He therefore charged them with the present offence.

Both accused denied the offence and indicated that they did not know how the deceased died.

The first accused (Nyaris) stated that he was at home on the material date. He lived with the deceased and on that day they had put up a house with help from others. In the process, they took traditional liquor (changaa) and were joined by the second accused. The drinking continued upto past midnight when he (first accused) went to sleep due to drunkenness. He proceeded to where his children were and slept with them. He was awakened later by screams from women including his wife. He then saw the deceased lying on the ground with facial burns. She was dead. He did not know what had happened but was later arrested together with other family members. He became very surprised when the present charge was preferred against him.

The second accused (Stephen) said that he left his home at 2.00 p.m. and went to visit the first accused who lived with the deceased. He found them together with others drinking changaa while helping the deceased in constructing her house. He joined the group but left them briefly at 5.00p.m. He returned at 7.00 p.m. and joined the drinking party of the first accused, the deceased and others. He was required on duty at midnight as he worked as a prisons officer based in Kapenguria. He left the group at that time and proceeded to work. On the following morning he heard that the first accused had been arrested for reasons that he (second accused) did not know. He was later called to the police to record a statement but after doing so, he was later approached by police officers and arrested at his place of work. He was then charged with the present offence. He did not know how the deceased died neither was he at the scene at the time.

From all the foregoing facts narrated by both the prosecution and the defence, it is evidently clear that the death of the deceased may have been as a result of a freak accident in which she was exposed to carbon-monoxide and suffered bodily burns at the same time. The possible explanation for this was that she was extremely intoxicated due to excessive changaa drinking together with the two accused and others. Nobody witnessed any untoward act against the deceased by the two accused or any one of them immediately prior to her death. The only thing witnessed by the first accused's daughter (PW1) and probably his wife who was not called to testify was the drunk and disorderly conduct displayed by the first accused while drinking changaa together with the deceased, the second accused and others. However, he daughter (PW1) left the scene and went to a neighbour's house where she spent the night. She did not know what went on while she was away. What the first accused said is that they drank upto past midnight when he went to sleep with his children until he was awakened in the morning by screams. Indeed, among the first persons to arrive at the scene that morning was Selina (PW2). She found the first accused sleeping with a blanket covering him. She said that he was sleeping with his children.

Petakwang (PW3), is the person who woke up the first accused.

The second accused was not even found at the scene by any of the witnesses when the deceased was discovered dead.

Basically, there was no scintilla of credible direct and/or indirect evidence suggesting any linkage of the two accused with the death of the deceased. They were merely suspected because they had been drinking changaa with the deceased prior to her death. There was no evidence to show that they assaulted, strangled and burnt the deceased as indicated by the investigations officer (PW8). That suggestion was completely out of line and inconsistent with the evidence of the witnesses who were at the scene before and after the fact. It would appear that other than recording statements from witnesses, the investigations officer never made any attempt to dig deeper and come up with a clear determination of how the deceased met her death. He therefore resorted to conjecture based on the fact that the deceased and the two accused were drinking changaa together before she met her death. He did not even make an attempt to find out the cause of the burns on the body of the deceased and how they occurred.

In the upshot, it may safely be stated that the prosecution has failed to prove beyond reasonable doubt that the death of the deceased was as a result of a criminal act perpetrated by the two accused or any one of them.

Consequently, the two accused are herein found not guilty as charged and acquitted accordingly. This case should have first and foremost been approached by way of a public inquest before any decision was made to prefer the murder charge against the two accused.

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

**J.R. KARANJA.**

**JUDGE.**