



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**CRIMINAL CASE 11 OF 2003**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**GEOFFREY KIPROTICH BOEN ..... ACCUSED**

**JUDGMENT.**

The accused was charged with **murder** contrary to **section 203** as read with **section 204** of the **Penal Code**.

The particulars of the offence were that on the 4<sup>th</sup> day of August, 2002 at Singoronik village in Kericho District, Rift Valley province, the accused murdered Sarah Chepkemoi Tiony, hereinafter referred to as to **“the deceased.”**

The prosecution evidence briefly stated was that on 4<sup>th</sup> August 2002 at around 6.00 p.m., **Javan Kiprotich Too, PW1**, was at his home together with some other people and they were taking an illicit brew known as **“chang’aa”**. **PW1** used to sell Chang’aa at his home. The deceased was one of the people who were there. The accused and the deceased bought chang’aa worth Kshs. 200/= which they took upto about 9.00 p.m. Shortly after 9.00 p.m. the deceased left and the accused followed her. The deceased’s house was about 500 meters away from the home of PW1. The accused is a neighbour of the deceased.

After about two hours, while PW1 was asleep, he heard someone screaming. He went out but the screams ceased and so PW1 went back to bed. Early in the morning PW1 was woken up by his sister who informed him that someone had been murdered and the body was lying on the road. PW1 went to the scene and saw a woman’s body lying across the road. The body had no top dress. PW1 decided to make a report to the area Chief. He also informed the chief that the deceased and the accused had left together. Thereafter the accused was arrested from his house.

**Lilly Chebet Too, PW2**, the wife of PW1 gave more or less the same evidence as PW1. She said that the accused’s home is next to that of the deceased. According to her, the two left at about 11.00 p.m.

**Benson Bor, PW7**, was the Chief of Iraa location. After he received the report regarding the death of the deceased from PW1, he went to the scene. He proceeded to the accused’s house and arrested the accused and took him to Sosit police station. He returned to the scene of crime with the police. They proceeded

to break into the accused's house. They found a trouser and an under pant which had faeces under the accused's bed. There were human faeces at the scene of the crime. They also recovered a lady's sweater from the accused's house. The sweater was so big that it could not have belonged to the accused's wife who was said to be of a small body.

**Police Constable Robert Mutai, PW3**, who was among the police officers who accompanied PW7 to the scene testified that the deceased's private parts were not covered. There were signs of struggle at the scene. The deceased's neck showed that she had been strangled. The face also had bruises. The scene was muddy and the accused was wearing muddy clothes when he was arrested. The deceased's body was lying about 50 meters from the accused's house. From the scene to the deceased's house was about 100 meters.

**Dr. Kibet Peter Shikuku, PW5**, who performed a postmortem on the body of the deceased testified that the deceased's eyes had a redish and bluish colour associated with lack of supply of oxygen. The deceased's body also had bruises on the left forehead, neck, left side upper abdomen and the waist line. Both thighs had mud. He formed an opinion that the cause of death was cardiorespiratory arrest secondary to suffocation from a blunt object and excessive bleeding.

In his unsworn defence, the accused stated that there were many people in the home of PW1 where they were taking chang'aa. He further stated that he left the home of PW1 and went home alone. He slept until the following day when he was woken up. He denied having seen the deceased person on his way home.

Mr. Motanya for the accused submitted that the circumstantial evidence that had been adduced by the prosecution witnesses was insufficient to warrant a conviction against the accused. He urged the court to acquit him.

Mr. Koech, State Counsel, urged the court to find that there was sufficient circumstantial evidence to warrant a conviction of the accused.

I have considered all the evidence on record as well as the submissions by counsel. Although the accused denied that he left the home of PW1 together with the deceased or immediately after she had left, there is sufficient evidence from both PW1 and PW2 that the two were drinking chang'aa together and they left together. Alternatively the accused followed the deceased immediately after she left. The home of the deceased was next to that of the accused. It is therefore possible that they decided to leave to their respective homes together. There is no evidence that any other person followed up the deceased and the accused.

There is *prima facie* evidence that the deceased was sexually assaulted and then strangled to death. Her private parts were found uncovered. There were signs of struggle at the scene which was muddy. The same kind of mud that was at the scene was found on the accused's clothes. There were faeces at the scene and the accused's trouser and under pant were found under his bed having faeces as well.

It is trite law that in a case depending exclusively upon circumstantial evidence, the court must, before deciding upon a conviction, find that the inculpatory facts are incompatible with the innocence of the accused and incapable of any other explanation upon any other hypothesis than of guilt, see **MWITA – VS- REPUBLIC** [2004] 2 KLR 60.

In this case, the accused, though he did not have the burden of proof, did not explain how his clothes were all muddy, just as the scene of the crime. He also did not give any explanation as to why his trouser and under pant had faeces just like there were faeces at the scene. The accused was the last person to be seen with the deceased alive. The deceased was found dead about 50 meters from the accused's house. He was arrested shortly after discovery of the deceased's body, a few hours after her death. All the evidence on record points to the accused person as the only one who caused the death of the deceased. I find that there is sufficient circumstantial evidence to convict the accused for murder as charged and hereby convict him accordingly.

**DATED AT KISII THIS 3<sup>RD</sup> DAY OF JULY, 2009.**

**D. MUSINGA**

**JUDGE.**

**SENTENCE:** The accused, having been found guilty of murder is now sentenced to death as by law prescribed. Right of appeal within 14 days from the date hereof.

**JUGDMENT SIGNED AND DELIVERED AT KERICHO THIS 3<sup>RD</sup> DAY OF JULY, 2009**

**D. MUSINGA**

**JUDGE.**