



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 10 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

CORRETY JERUTO AYABEI.....ACCUSED

RULING

1. The accused person herein, **Correty Jeruto Ayabei**, was charged with the offence of murder, contrary to **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. It was alleged that on the 19th day of January 2019 at Kipsieni Village in Kibendo Sublocation within Elgeyo Marakwet County, she murdered **Mercy Cheyech Kapora**. The accused denied that charge and the Prosecution called 8 witnesses in proof thereof; and the question to pose at this stage is whether a *prima facie* case has been made out against the accused to warrant her being placed on defence for purposes of **Section 306(1)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**.

2. At the close of the Prosecution Case, learned counsel were given time to file their respective written submissions herein. **Ms. Ayugi**, for the for the accused person, relied on her written submissions filed on **11 February 2021**. In her view the Prosecution has failed to prove the essential elements of the charge of murder, in that, although the *actus reus* has been proved, there was no demonstration that the accused had malice aforethought necessary to complete the offence of murder. She referred the Court to the cases of **Republic vs. Fondo Kalama Kitsao**, Malindi High Court Criminal Case No. 3 of 2015 and **Republic vs. Elizabeth Kemunto Ooga** [2017] eKLR to support her arguments.

3. **Ms. Ayugi** further submitted, on the authority of **Republic vs. S E** [2017] eKLR that the accused was provoked by her husband **PW3** into committing the offence, taking into account the Mental Assessment Report produced by **PW7** on behalf of **Dr. Pappa**. That report reveals that the accused was unkempt and that she disclosed to the doctor that the husband had sold her goats without her consent and brought a new wife home, **“which caused her psycho-social distress”**. Thus, according to counsel, this aspect of the Prosecution case was not clearly brought out, opening the way to the possibility that there were events that could have provoked the accused to commit the act complained of. She accordingly urged for the acquittal of the accused on the ground that the Prosecution has failed to make out a *prima facie* case against her.

4. On behalf of the State, **Ms. Kegehi** submitted, vide her written submissions filed herein on **23 February 2021**, that all the ingredients of the offence of murder, namely, the death of the deceased and that the death was caused by the accused, were well proved. She added that this was a case of recognition,

granted that the accused was well known to the identifying witness, **PW1**. In her submission, the evidence of **PW1, PW2, PW4** and **PW5** placed the accused at the scene and linked her with the crime; and that the manner in which it was committed gave clear proof that the accused had the intention to cause the death of or inflict grievous harm to the deceased. She consequently urged the Court to find that the Prosecution has established a *prima facie* case against the accused person to warrant her being placed on her defence.

5. I have given due consideration to the evidence so far placed before the Court along with the written submissions filed herein by learned counsel. Needless to mention that, at this stage, the Court need not be satisfied beyond reasonable doubt as to the guilt of the accused person. Nevertheless, the evidence must be such that **a reasonable tribunal, properly directing its mind to the law and the evidence could convict on if no explanation is proffered by the defence; failing which the accused person would be entitled to an acquittal without further ado.**

6. In **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** this was explained thus:

Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one:-

“Which on full consideration might possibly be thought sufficient to sustain a conviction.”

This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case.

Nor can we agree that the question whether there is a case to answer depends only on whether there is:-

“some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence.”

A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “prima facie case,” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

7. Evidence was adduced herein by **PW1** that the deceased, **Mercy Cheyech Kapora**, was her sister-in-law and the co-wife of the accused as both were the wives of her brother **Penax Korir Kipyego (PW3)**. **PW1**'s testimony was that, at about 8.00 p.m. on the **19 January 2019**, she was at her parent's home with the deceased, and her younger sister **Emmy Chesang** and her daughter **Michelle Jerop**. She explained that they were in the kitchen, seated at the centre of the first room, while **Emmy Chesang** was preparing supper in the adjacent room. According to her the kitchen was well-lit with the aid of a solar lighting contraption she referred to as D-light; and that the accused suddenly entered the kitchen armed with a panga, with which she proceeded to cut the deceased on the left side of her neck without saying anything.

8. **PW1** further told the Court that she screamed for help, and thereby attracted the neighbours, such as **Jonathan Kipkemoi Kipyego (PW2)**, and a Nyumba Kumi elder known as **Edwin Kiplagat (PW4)**; and that it was **PW4** who managed to wrest the panga from the accused and arrested her. The deceased was rushed to Iten County Hospital but died while undergoing treatment. The accused was handed over to Tambach Police Station by **PW6, APC Lazurus Kosgei** and his colleagues. The incident was investigated and postmortem conducted by **Doctor Sharon Anyango (PW7)**, who formed the opinion that the cause of death was massive bleeding due to a deep cut wound on the lateral aspect of the deceased's neck, involving the veins, arteries, muscles and spinal bone. **PW7** produced the postmortem report as the **Prosecution's Exhibit 2**.

9. In the light of the foregoing, there is sufficient evidence connecting the accused with the unlawful death of the deceased. I am therefore satisfied that the is *prima facie* evidence connecting the accused with the murder of the deceased. She is accordingly hereby placed on her defence to answer the Charge of murder pursuant to **Section 306(2) of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya.**

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF APRIL, 2021

OLGA SEWE

JUDGE