



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 37 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

EF.....ACCUSED

RULING

1. The accused is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 16th May, 2015 at [particulars withheld] village, Lusengeli Sub-location in Wodanga location within Vihiga County, he murdered VV (herein referred to as the deceased).

2. The prosecution called 7 witnesses in the case. At the close of the prosecution case the advocate for the accused **Mr. Ondieki** submitted that there is no prima facie case established against the accused on the grounds that Dr. Amunga PW7 stated that the deceased died out of natural causes. That in the circumstances it is needless to place the accused to his defence. Counsel cited the cases of **Ramanlal Trambaklal Bhatt –Vs- Republic (1957) EA) 332, DPP –Vs- Geoffrey Mukonza Mwangangi (2018) eKLR** and **Frankline Muthoka Mumo –Vs- Republic (2019) eKLR** on what amounts to a prima facie case.

3. The state did not make submissions on whether the accused has a case to answer.

4. The case for the prosecution was that the deceased was a son to the accused. That at the time that the deceased met his death he was aged 8 years. He was staying with the accused and his mother LA who was wife to the accused. Petronilla Mudoga PW1 and Miriam Odhiambo PW 6 were neighbours to the accused. That on that evening of 15/5/2015 PW1 and PW6 received a report from the accused's wife that the deceased was sick. They went to the home of the accused. They found the child. PW6 talked to the child. The child told her that his father had given him a drug that he had taken. He said that his father had thrown the packet containing the drug into their shamba. The accused took the child to hospital. PW1, PW6 and the accused's wife went to the shamba. They found a packet with the print "rat poison". They gave the packet to the accused's wife. The wife followed her husband to hospital. The accused took the child to Mbale Hospital. He was attended to and discharged. He was returned home. He died on the following morning at 5 a.m. A report was made at Mudete Police Station. Cpl. Chacha PW5 and other police officers went to the home of the accused. They found the body of the deceased. The wife to the accused took them to their shamba where they found a sachet of rat poison. They took the body to Mbale Hospital mortuary. The accused was charged.

5. Dr. Amunga PW7 performed a post mortem on the body of the deceased. He could not determine the cause of death. He removed part of the stomach, liver, heart and kidney to be sent to the government chemist for assessment of toxic agents. The investigating officer PW5 prepared an exhibit memo and escorted them together with the rat poison sachet to the government chemist Nairobi. They were examined by a government analyst PW4. He did not find any evidence of toxicology on the body parts forwarded. The sachet was found to contain rodenite. During the hearing the government analyst produced the toxicology report as exhibit, P.Ex 4. The investigating officer PW5 produced the exhibit memo as exhibit, P.Ex 5. Dr. Amunga produced the postmortem report as exhibit, P.Ex 6. The toxicology report from the government analyst had not been brought to his attention before he testified in court. The report was shown to him in court. He then ruled out the cause of death to have been poisoning and ascribed it to natural causes. In cross-examination the investigating officer stated that in face of the toxicology report the cause of death was not poisoning.

6. A *prima facie* case, it has been held, means:-

“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 – See Ramanlal Trambaklal Bhatt –Vs- Republic (1957) EA 332.”

7. The prosecution case was based on the ground that the accused had administered rat poison on the deceased. This was ruled out by the report of the government analyst PW4 and the evidence of Dr. Amunga PW6. The investigating officer eventually admitted that there was

no evidence that the cause of death was due to rat poisoning.

8. In the foregoing, there is no evidence on which the accused can be placed to his defence. It was established that the deceased died out of natural causes. The prosecution has not established a *prima facie* case against the accused. The accused has no case to answer. He is accordingly acquitted of the charge under the provisions of Section 215 of the Criminal Procedure Code.

Delivered, dated and signed in open court at Kakamega this 11th day of March, 2020.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Ondieki for Accused

Miss Omondi for State/Prosecutor

Accused - present

Court Assistant - Polycap

14 days right of appeal.