



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 22 OF 2017 [MURDER]

STATE.....PROSECUTION

VERSUS

PASCAL OCHIENG OYOKO.....ACCUSED

RULING

1. This ruling determines whether after the prosecution case against the accused person **Pascal Ochieng Oyoko** was closed on 26/5/2020, the accused person has any case to answer or he should be acquitted and discharged from the Information of Murder dated 20/9/2017.
2. The accused person herein is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
3. Particulars of the charge are that on the 6th day of September 2017 at around 21 hrs. at Ochiengu Sub-location in Rarieda Sub-county within Siaya County, the accused murdered one **Linda Atieno Odiembo**.
4. The accused pleaded Not Guilty to the charge and the Prosecution called 11 witnesses including PW5 who was recalled for a trial within a trial leading to a ruling that declared the accused person's statement under inquiry inadmissible.
5. At the close of the Prosecution case on 26/5/2020 the defence counsel Mr. Odongo filed written submissions on 28/5/2020 urging this court to acquit the accused person on the ground that the prosecution had not established a prima facie case against the accused person to warrant him to be placed on his defence. He relied on **Bhatt v Republic [1957] E.A 332** on the legal onus which is always on the Prosecution throughout the prosecution or trial, to prove the guilt of the accused person beyond reasonable doubt.
6. Counsel submitted that none of the 10 prosecution witnesses saw the accused commit the offence and that there is no direct evidence linking the accused to the offence.
7. He submitted that PW1 and PW2 did not see the accused person, PW4's evidence had no probative value and that the court having declared a purported confession a nullity, PW5's evidence was not useful and that therefore there was no evidence to warrant placing the accused person on his defence.
8. The Prosecution did not submit.
9. Having considered the evidence adduced by all the Prosecution witnesses and excluding the accused person's statement under inquiry as it was recorded in violation of the Evidence Act (out of court confession Rules, 2009, and the submissions by counsel for the accused, the question is whether a prima facie case has been established to warrant the accused person to be placed on his defence.
10. The burden of proof always lie with the prosecution throughout the trial to prove their case against the accused person beyond Reasonable doubt. However, at this stage, the prosecution is only expected to establish a prima facie case against the accused person to warrant him being placed on his defence. A prima facie case is not necessarily one that must succeed and neither does it mean that the burden of proof is being shifted to the accused from the prosecution.
11. In addition, is of the opinion that a prima facie case has been established against the accused person, it should not delve into the merits or demerits of the evidence adduced by the Prosecution witnesses.
12. This is so because doing so would prejudice the accused person's right to be presumed innocent until proven guilty. Even if an accused is placed on his defence, he still retains his innocence until proven guilty and he may as well elect to exercise his constitutional right under Article 50(2) of the Constitution, not to give any self-incriminating evidence and or to remain silent.
13. Having considered the entire evidence as adduced by the prosecution witnesses and the submissions by his counsel, I am satisfied that

even without the evidence of PW5 on the statement under inquiry recorded from the accused and which was disallowed by this court, the prosecution has established a prima facie case to warrant the accused person being placed on his defence.

14. Accordingly, the accused person **Pascal Ochieng Oyoko** be and is hereby placed on his defence and the provisions of Section 306(2) of the Criminal Procedure Code and Article 50(2) of the Constitution on his rights are hereby explained to him.

15. Orders accordingly.

Dated, signed and Delivered at Siaya, this 22nd Day of June, 2020.

R.E. ABURILI

JUDGE