REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 36 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

SILVESTER CHIKOLO SHIKHUBARI.....ACCUSED

RULING

1. The accused herein, Sylvester Chikolo Shikhubari, was charged with the offence of murder, contrary to section 203, as read with section 204 of the Penal Code, Cap 63, Laws of Kenya. It is alleged that the accused on the 18th and 19th May 2011, at Ikhumbura village, murdered Rose Khamoye.

2. The accused person denied having committed the offence, and a plea of not guilty was entered. The prosecution has presented its case against the accused, and court is now to determine whether he has a case to answer. In *Republic vs. Abdi Ibrahim Owl* [2013] eKLR, a *prima facie* case was defined as follows:

> *"Prima facie" is a Latin word defined by Black's Law Dictionary, 8th Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted". "Prima facie case" is defined by the same dictionary as "The establishment of a legally required rebuttable presumption". To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklal Bhatt Vs. R [1957] E.A 332 at 334 and 335, the court stated as follows:*
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> *"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 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.""*

3. It was said in *Republic vs. Joseph Kioko Muthoka* [2020] eKLR that:

> *"3. The question that this court has to deal with and answer at this stage is therefore whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to will, convict if the accused chose to give no evidence. It was therefore held in Ronald Nyaga Kiura vs. Republic [2018] eKLR, wherein paragraph 22 it is stated as follows:*
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> *"It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of Ramanlal Bhat vs. Republic [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.""*

4. In the instant case, PW1 testified that he was informed that the accused had killed his wife and that when he went to the house of the accused, he found the deceased on her bed with an injury on the shoulder. PW2 testified that on the material day of the alleged incident, the accused had come home at about 7.00 PM and threatened to beat them up. She stated that they ran and left the deceased behind, only to be informed later that she had been stabbed to death by the accused.

5. PW3, PC Robert Mugo, testified that on the 19th May 2011, the death of the deceased was reported at the police station and that he and other officers proceeded to the home of the deceased. He stated that he found the deceased on her bed with three stab wounds on her left shoulder. He stated that they collected a knife, which was marked as P Exhibit 1, a grey track suit, marked as P Exhibit 2, a torn T-shirt, marked as P Exhibit 3, a multi-coloured blouse P Exhibit 4 and a jeans P Exhibit 5. PW4, Lawrence Kinywa, an analyst at the Government Chemist, testified that the blood samples on the knife, blouse and the track suit matched that of the deceased, while that on the pair of trousers matched that of the accused person. He produced the report, and the same was marked as P Exhibit 6. PW5, a pathologist, testified that he performed an autopsy on the body of the deceased, and confirmed that the cause of death was an unstable cervical spine injury, due to blunt trauma following assault.

6. From the evidence, it is clear that the deceased was last seen with the accused person, and that at that time the accused was in a fit of anger, and wanted to beat up members of the family. Having considered the material placed before court, particularly the evidence of the PW2, who testified that he witnessed the assault by the accused on the deceased, it is my finding that the prosecution has established a *prima facie* case, the accused has a case to answer, and he shall be put on his defence.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18th DAY OF DECEMBER, 2020

W MUSYOKA

JUDGE