



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 16 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY MANDELA LUKULU.....ACCUSED

RULING

The accused is charged with murder contrary to Section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 23rd March, 2014 at Sichelechele Village, Makhokho Sub-Location, Uguhu location in Kakamega South District within Kakamega County murdered Benedict Likulu Lituro (herein referred as the deceased).

The prosecution case is that the deceased was the father to the accused. That on the evening of the material day the deceased and his wife PW2 were at home. PW2 was unwell and was resting outside her house. The deceased was inside their house. He was drunk. The accused returned back at 7.30 p.m. He was also drunk. He found his mother PW1 outside the house. His mother told him to warm his supper inside the house. The accused entered into the house. The deceased started to abuse him. The abuses continued for some time. Later PW2 heard a shout from the house. She then heard things falling from the house. She went into the house to check what was going on. She met with the accused coming out of the kitchen. She found her husband lying on the floor. He was bleeding from the mouth and nostrils. She reported to her brother-in-law but they did not get a vehicle for ferrying the deceased to hospital.

A neighbour Benard Andali PW2, received the report at 4 a.m. He visited the deceased at his home. He was not talking. He reported to the village elder PW3. They looked for a vehicle. The deceased was taken to Kakamega County Referral Hospital. He was admitted. He died on the same day at 3 p.m. A report was made at Malaika Police Station. The accused was arrested by members of the public and taken to Ikolomani AP Camp. A club was recovered. APC Kemboi PW5 escorted the accused to Malaika Police Station. PC Maingi PW4 visited the scene and investigated the case. He received the club from administration police officers from Malaika Administration Police Post.

On 25/3/14 a postmortem was conducted on the body of the deceased by a Dr. Malangachi of Kakamega County Referral Hospital. The doctor found the body with a stitch wound on the left orbital region that was covered with a bandage and multiple skull bone fractures. There was bleeding in the head. The doctor formed the opinion that the cause of death was due to severe head injury as a result of assault. PC Maingi charged the accused with the offence. During the hearing he produced the club as exhibit, P.Ex.1. Dr. Kibisu PW6 produced the post mortem report on behalf of Dr. Malangachi as exhibit, P.Ex.2.

At the close of the case for the prosecution the advocate for the accused, Mr. Ondieki, did not make any submissions. The court is at this stage required to determine on whether the prosecution has established a prima facie case against the accused.

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) EA332.

The doctor’s report indicated that the deceased died due to severe head injury as a result of assault. The accused’s mother PW1 says that the accused is the only person who was with the deceased at the deceased’s house when the deceased was injured as a result of which he was taken to hospital.

In face of the above evidence, I find that the prosecution has established a prima facie case against the accused. The accused has a case to answer and is placed to his defence.

Delivered, dated and signed in open court at Kakamega this 29th day of April, 2019.

J. NJAGI

JUDGE

In the presence of:

Mr. Ondieki for accused

Mr. Ng'etich for State

Accused j- present

Court Assistant - George