

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 24 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

SYLVESTER OTIENO ALIAS KARAFU.....ACCUSED

RULING

1. **Sylvester Otiemo alias Karafu** is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 18th day of October 2018, at **Bumala** Township in **Butula** Sub-county of **Busia** County, murdered **Jacinta Akoth**.
3. The prosecution case was that on 18th October 2018 the accused punched the deceased severally on the head and the chest. She later passed on while undergoing treatment.
4. After the close of the prosecution case, the only issue for determination is whether a *prima facie* case has been established against the accused. The Court of Appeal in the case of **Ramanlal Trambakal Bhatt vs. Republic (1957) E.A. 332 at 335**, defined a *prima facie* case in the following terms:

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.

This is what is going to guide me in this case in finding whether the prosecution has established a case for the accused to be called upon to tender his defence.

5. The evidence on record is crystal clear that after the incident of 18th October 2018, the deceased complained against the accused to have punched her on the head and kicked her on the chest. This is what John Ouma Okumu (PW2) who witnessed the incident testified to.
6. P.C Sebastian Saji (PW5) testified that he was the one who recorded the report of the deceased on 18th October 2018. She reported that the accused had kicked her on the chest and punched her on the head.
7. On the 22nd October 2018 the deceased sought treatment at Kunyangu Sub-county hospital and complained of headache and chest pains secondary to a blow.
8. On the 8th November 2018 the deceased died while undergoing treatment. When Dr. Hillary Kiplagat (PW3) conducted a post mortem on the body of the deceased, he found a perforation at the ileum (part of the small intestine). This perforation caused faecal matter to leak into abdominal cavity. This led to septic shocked from which the deceased succumbed.
9. There was no nexus of the perforated gut and the complaint against the accused by the deceased. Had there been a complaint against the accused of having battered her on the abdomen, it would not have been difficult to connect the injury to the action. Since the injury of the deceased was on a different part of the body and which cannot be logically linked to the complaints she made against him, I find that the prosecution has failed to establish a *prima facie* case against the accused. I accordingly acquit him of the offence of murder under section 306 (1) of the Criminal Procedure Code. He is set at liberty unless if he is otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 28th day of May, 2019

KIARIE WAWERU KIARIE

JUDGE