

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 30 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ASC.....ACCUSED

RULING

The accused Abdul Shiraz Chaudry is accused of killing his wife SAK contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on the night of 6th February 2015 at Boss & Joy Apartments along Suswa Road in Parklands Nairobi. The accused pleaded not guilty to this charge.

Nineteen (19) witnesses have testified for the prosecution. I have considered their evidence to determine if it establishes a case upon which the accused can be placed on his defence. In brief, the accused and the deceased Saima were married. They had two sons, both bearing names with initial S. According to PW1 AMK, the relationship between the accused and the deceased was not a happy one. The deceased was said to often leave the matrimonial home and go to live with her parents during those domestic misunderstandings. At the time of the death of the deceased, they lived a few blocks away from her parents in Parklands Nairobi.

On 6th February 2015 the deceased visited her parents. She left in the evening to go to her home. She lived with the accused and their little boy while the bigger boy lived with her father PW1 and his family. On 7th February 2015 at around 7.30am PW1 was informed by a guard that the accused was calling the bigger boy to go to see him. PW1 allowed the boy to go. The boy did not return. Evidence shows that the boy was taken by his father the accused to South C to her other grandparents.

PW1 expected the deceased to visit them at about 9.00am on 7th February 2015. When she failed to go this caused some concern. PW1 sent a house girl to go and check on the deceased. She delayed in returning. PW1 told one of his daughters F

to join him to go to deceased's home. They found the house locked. With the help of the caretaker SS (PW6) and manager of the building MW (PW9) the house was opened. The deceased was found lying on a mattress inside the bedroom. The matter was reported to the police who visited the scene and moved the body to MP Shah Hospital. It was examined and found to have multiple stab wounds. The opinion of the doctor was that the accused had died due to excessive bleeding due to penetrating force trauma.

Further evidence shows that on 6th February 2015 the accused had approached W (PW9) the manager. He informed him that he, the accused, wanted to move out of House No. 18 where he lived with his family. W told him that he would like to inspect the house before the accused left. They agreed to have the house inspected on 7th February 2015, a Saturday. On 7th February 2015 the accused returned to W. He was in company of his small boy. He told W that he was leaving and that his wife was asleep and she would call W when she woke up to go to inspect the house. Later that morning W learned of the death of the deceased when her relatives went to him to help open the door to the accused's house for them.

The same morning on 7th February 2015 the accused, in company of his son, told SS (PW6) that his wife was sleeping and that a woman would be coming to his house to wash clothes. He said that the woman should not wake his wife up but should ring the bell. PW6 told the court that no woman came to wash clothes.

The accused went to his parents' home in South C at about 7.30am. He told his parents, AKC (PW7) and TKC (PW8) that the deceased and the other son would be joining them later. After dropping the young son at his parents' home he returned to Parklands to his father in law (PW1) and picked the other boy. His mother PW8 confirmed that the accused left after dropping the younger boy and returned after one hour with the bigger boy. He told his mother that the deceased would join the boys at 2.00pm.

The accused was arrested on 1st March 2015 near Gymkhana Club on Forest Road (now Prof. Wangari Mathai Road). The circumstances leading to the arrest of the accused are that Haji Haziz Kassim (PW3) a relative received information that the accused had been spotted around Gymkhana Club. He sought help from PC Abduba Jattani (PW14). They went to Gymkhana Club. They found the accused sleeping inside a shack made of plastic papers. He was arrested and taken to the police station and later charged with this offence.

I have considered all the evidence and the submissions from the prosecution and the defence. The gist of the submissions by the defence is that the evidence does not point to the accused to the exclusion of others as the person who killed his wife. Mr. Ochako submitted that the evidence leads to suspicions and that suspicion however strong cannot provide the basis for inferring guilt which must be proved by evidence beyond reasonable doubt. On this point Mr. Ochako cited Criminal Appeal No. 2 of 2002 Sawe v. Republic reported in (2003) KLR. Mr. Ochako also took issue with the manner the case was investigated submitting that it was poorly investigated.

After taking into account all the circumstances leading to the death of the deceased, the evidence availed to this court and submissions, I find that I am satisfied that the prosecution has made out a *prima facie* case against the accused person. As a consequence of that finding, it is my view that the accused has a case to answer and I hereby proceed to place him on his defence in compliance with section 306 (2) Criminal Procedure Code. Orders shall issue accordingly.

Dated, signed and delivered this 27th day of June 2019.

S. N. Mutuku

Judge