



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO.81 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

SARAH MUTINDA KATIKU.....ACCUSED

RULING

1. The accused herein **SARAH MUTINDA KATIKU** is charged with the offence of murder contrary to sections 203 as read with section 204 of the Penal Code, Cap 63. It is alleged that on the 31st day of October, 2015, at Ngwata Area, Mlolongo Township in Athi River Sub-County within Machakos County the accused murdered **MWANJALA MWASI**. The accused person denied having committed the offence thereby imposing the prosecution to prove her guilt in order to secure a conviction against her.

2. The accused was represented by J. Kamanda Advocate whilst the State was represented by Mr Machogu.

3. Regarding the standard of proof, the Prosecution has the duty to prove all the ingredients of the offence beyond reasonable doubt. **See: Woolmington vs. DPP [1935] AC 462**. However, this does not mean proof beyond shadow of doubt. If there is a strong doubt as to the guilt of the accused, it should be resolved in favour of the accused person. Therefore, the accused person must not be convicted because she has put a weak defence but rather that prosecution's case strongly incriminates her and that there is no other reasonable hypothesis than the fact that she committed the alleged crime.

4. Prosecution must prove all the ingredients of the offence of murder in order to sustain a conviction thereof. As per the elements provided for under section 203 as read with section 204 of the Penal Code, the prosecution must prove the following ingredients beyond reasonable doubt:-

i. That the deceased died;

ii. That the death was unlawfully caused;

iii. That there was malice aforethought; and

iv. That the accused person directly or indirectly participated in the commission of the alleged offence.

5. The prosecution called a total of nine (9) witnesses in support of its case. **Pw1 was Margaret Mutheni Mutuku** who testified that on 31.10.2015 she heard the deceased calling out her name and when she went outside she saw the deceased on fire and saw the accused leaving the house of the deceased. She later took the deceased to the hospital but he died the following day.

6. **Pw2 was Bernice Mwangeli Mutuku** who testified that she was a house-girl of the deceased and was staying with Pw1 who was her sister. It was her testimony that on 31.10.2015 she found the deceased with the accused in the house whilst she was preparing supper and she left and later found fire burning in the house of the deceased. She told the court that she saw the accused running from the burning house and when she opened the door, the deceased came out burning. She later heard that on 1.11.2015 the deceased died.

7. **Pw3 was Alice Akinyi** who testified that on 31.10.2015 she heard noises from the house of the deceased and she went to his house with a bucket of water whereupon the deceased later informed her that he had been burnt by a lady called Mutindi. She stated that she later learnt that the deceased had died. On cross examination, she stated that the deceased in response to questions from the members of the public who had gathered claimed that the accused had burnt him.

8. **Pw4 was Mwanjala Mariota** who told the court that on 31.10.2015 she received a call that her father had been burnt and she went to the

scene then to hospital and while on the way to Machakos Hospital the deceased informed her that Sarah Mutinda had burnt him. She told the court that on 3.11.2015 she attended the post mortem and identified the deceased's body.

9. **PW5 was Virginia Mutia Mwajala** who testified that on 31.10.2015 she received a call that her father had been burnt and that she went to the scene and while on the way to Machakos Hospital the deceased informed her that one Sarah Mutinda had gone to his house and demanded for kerosene, cash and cooking oil and had informed her that he did not have and an altercation ensued where he slapped her and that the lady went to the kitchen and took a stove that was burning and threw it at him. She added that the deceased died on 1.11.2015 and on 3.11.2015 she attended the post mortem and thereafter recorded a statement.

10. **Pw6 was Pc Keen Ekal** who told the court that he was based at Mlolongo police station and recalled on 18.10.2015 when the accused came and reported that she had been quarrelling with her husband and in the process touched a burning stove that caused her burns and that he later established that the accused had thrown a burning stove at the deceased. On cross-examination, he testified that the accused made the report on 31.10.2015.

11. **Pw7, Cpl James Olago** testified that he received images that he was requested to print and he tendered the photographs of the scene under Section 78 of the Evidence Act.

12. **Pw8 was Sgt Richard Nyakundi** and the investigating officer in the matter and who stated that on 1.11.2015 he confirmed that on 31.10.2015 a report had been made that the deceased had been burnt by the accused and that he went to the scene where he established that the accused was the suspect. He stated that he went to the accused's house on 2.11.2015 and who informed him that she and the deceased had an altercation and that they had tumbled over a burning stove. However he established that the accused had hurled a burning stove at the deceased and that the accused had made a report to the police and had concealed information as to what happened.

13. **Pw9 was Dr Bernard Midia** who conducted the autopsy on the deceased. His examination revealed that the deceased had 80% burns on his body and he formed the opinion that the deceased died due to complications that arose from 82% second degree burns.

14. Thereafter, prosecution closed its case. Upon closure of the Prosecution's case, the learned defence counsel, J. Kamanda filed submissions relating to a 'no case to answer'. It was the learned counsel's submission that the prosecution has fallen short of making a prima facie case to the required standard and therefore prayed that the court so finds and that the accused be acquitted at this stage. The state did not file any submissions.

15. It is trite law that prior to placing an accused person on his/her defence, the prosecution is required to have established a *prima facie* case against such accused person. It is now a well-established principle of law that a *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence placed before it would convict the accused person, if no evidence or explanation was set up by the defence. *See Ramanlal .T. Bhatt vs. R [1957]E.A 332*, where the East African Court of Appeal held that a *prima facie* case could not be established by a mere *scintilla* of evidence or by any amount of worthless, discredited prosecution evidence.

16. Also, in the case of *State Vs Rajhnath Ramdhan, Amoy Chin Shue, Sunil Ramdhan and Rabindranath Dhanpaul. H.C.A No. S. 104/1997*, J.P. Moosali while quoting Lord Parker C.J.in *Sanjit Chaittal Vs. The State (1985). 39. WLR. 925* stated that:

"A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence adduced by the prosecution to prove an essential element in the alleged offence; b) when the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it..."

17. I have carefully evaluated the prosecution's evidence. I find that, in the absence of any explanation to the contrary from the defence, the prosecution evidence does establish the three (3) ingredients of the offence of murder. It is not in dispute that there was death as a result of burns. On the question of the accused's participation, this court finds that, in the absence of any evidence to the contrary, the evidence of PW1, Pw2, Pw3, Pw4 and Pw5 does establish participation of the accused person. In arriving at the above conclusions, I do recognize that at this stage, the standard of proof is not proof beyond reasonable doubt as required for a fully-fledged criminal trial. Rather, what is essential is such evidence which if taken literally or on the face of it would establish the essential ingredients of the offence of murder, as well as the accused's' participation therein.

18. For those reasons, I find that there is some evidence adduced against the accused person to establish a *prima facie* case against her and sufficient to put her on her own defence for the offence of murder contrary to sections 203 and 204 of the Penal Code, Cap 63. Indeed the accused was seen fleeing from the scene and further she did report about the incident to the police and hence she was squarely placed at the scene of crime and she has to make a defence.

19. In the result it is my finding that a prima facie case has been made out by the prosecution to require the accused to make a defence. I find she has a case to answer and is now called upon to make her defence in line with the provisions of Section 306(2) of the Criminal Procedure Code.

It is so ordered.

Dated and delivered at Machakos this 28th day of October, 2019.

D. K. Kemei

Judge