



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERICHO**

**HCCR NO.13 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VRS**

**AUGUSTINE KIPKEMOI BOSIBEN.....ACCUSED**

**RULING**

1. The accused in this matter, Augustine Kipkemoi Bosiben is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 23<sup>rd</sup> day of March 2014, at Kalyonguet location, he murdered Vincent Kipchumba Korir.

2. The prosecution called 7 witnesses and produced exhibits in support of its case. On behalf of the accused, Learned Counsel, Mr. Motanya, submitted that the prosecution had not established a prima facie case against the accused. According to Mr. Motanya, the prosecution case was full of contradictions, and the prosecution had failed to establish the major ingredient of murder, malice aforethought. His submission was that both the accused and the deceased were drunk at the time of the incident and their judgment was impaired. It was his submission that the deceased was the aggressor and the accused acted in self defence. In his view, the offence of murder has not been established to the required standard to warrant the accused being placed on his defence.

3. In response, Ms. Keli for the state submitted that the state had made out a prima facie case to warrant placing the accused on his defence. From the prosecution witnesses who were, in the state's view, reliable credible, consistent and corroborative, the prosecution had shown that the accused had stabbed the deceased with malice aforethought.

4. I have considered the evidence adduced by the prosecution and the submissions of defence counsel and counsel for the state. I note that two of the prosecution witnesses were eye witnesses to the offence. PW1, Selly Chelangat, the owner of the homestead where the offence took place and PW6, Kenneth Cheruiyot Langat testified that they saw the accused stab the deceased on the head and on the cheek. The accused was heard to quarrel with the deceased, from whom he was demanding alcohol. He was seen to pull a pen knife from his jacket pocket and stab the deceased.

5. The post mortem report showed that the deceased died as a result of massive haemorrhage following laceration of the major blood vessels of the neck. The testimonies of the other prosecution witnesses, PW2, PW3 and PW4, corroborated the evidence of PW1 and PW3. They were present when the incident occurred and assisted in offering first aid to the deceased. They arrested the accused and disarmed him.

6. From his submissions on behalf of the accused, I note that Counsel for the accused tacitly concedes that the accused did stab the deceased. He submits on the one hand that the accused stabbed the deceased in self defence, and on the other that the accused and the deceased were drinking and the judgment of the accused was impaired. The offence of murder has therefore, in the view of Counsel for the accused, not been proved.

7. At this stage in these proceedings, the only issue I need to address my mind to is whether or not the prosecution has established a prima facie case against the accused. In **Ramanlal Trambaklal Bhatt vs R [1957] E.A 332 at 334 and 335**, the court stated as follows with respect to what amounts to a prima facie case:

***“It 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.” See also R vs Jagjiwan M. Patel and Others (1) T.L.R. (R) 85.***

8. In view of the exposition of what amounts to a prima facie case in **Ramanlal Trambaklal Bhatt v. R and R vs Jagjiwan M. Patel and Others**, which I have set out above, and taking into account the evidence before the court, I am satisfied that the prosecution has established a prima facie case against the accused to warrant placing him on his defence.

9. I therefore place the accused on his defence in accordance with section 306 of the Criminal Procedure Code. I also inform him of his right under section 306 (2) of the Criminal Procedure Code to inform this court whether he intends to give a sworn or unsworn statement in his defence, and whether he intends to call any witnesses.

**Dated Delivered and Signed at Kericho this 31<sup>st</sup> day of January 2018.**

**MUMBI NGUGI**

**JUDGE**