



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 57 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

BENIGNO KUBASU ANGASA.....ACCUSED

RULING

INTRODUCTION

1. The accused **BENIGNO KUBASU ANGASA** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on 2nd day of July 2014 at 9.00 p.m. at Kariobangi South 56 stage within Nairobi County murdered **SARAH KERUBO**.

2. He pleaded not guilty and to prove its case against him the prosecution called a total of ten (10) witnesses and at the close of the prosecution case it was submitted that a *prima facie* case had been made out against the accused person to enable the court put him on his defence. It was submitted that the accused was positively identified and put at the scene by witnesses who were his neighbours. It was further stated that the accused took the deceased to Total Nursing Home when she was already dead.

3. On behalf of the accused it was submitted that no case had been made out by the prosecution. It was submitted that the prosecution evidence did not connect in any way connect the accused to the crime. It was submitted that the prosecution case was full of presumption and therefore the court should not put the accused on his defence so as to fill the gap in the prosecution case. In support of the said submission the following cases were submitted:-

a) **REPUBLIC v ABDI IBRAHIM OWL [2013] eKLR**

b) **REPUBLIC v ISAAC KARIUKI MURONG'A [2016] eKLR**

4. At this stage of the proceedings, the court is only called upon to rule on whether the prosecution has established a *prima facie* case to warrant putting the accused on his defence as was stated in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332 at pg 335** as follows:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court could not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case, nor can we argue that the question whether there is a case to answer depends only on whether there is “some evidence irrespective of its credibility or weight sufficient to put the accused on his defence.”

A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence... It may not be easy to define what is meant by 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.” (Emphasis added)

5. All that the court is required at this stage is not whether or not the accused is guilty but whether there is enough evidence upon which should the accused opt not to tender in any evidence in his defence in exercise of his constitutional rights under Article 50 (2) (i), the court can proceed to convict on the evidence on record.

6. I have taken into account the submissions herein, the authorities in support thereon and the evidence on record and without commenting thereon so as not to prejudice the defence of the accused person, and in particular the evidence of **PW1** and **PW2** the neighbours of the

accused and deceased, **PW4** the mother of the deceased on the past relationship between the accused and the deceased and **PW5** who received the initial report from the accused and is satisfied that the prosecution has established *prima facie* case to enable me put the accused on his defence, which I hereby do.

7. The accused is therefore advised on his rights under **Section 306** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at Nairobi this 19th day of April, 2018

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Mathenge for the accused

Accused present

Court clerk Paul