



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL (MURDER) CASE NO. 45 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

BONFACE AGOYI KWAVALAI.....ACCUSED

R U L I N G

The Charge

1. The accused herein Bonface Agoyi Kwalalai was arraigned before this court on 26th August, 2013, on one count of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars were that on the night of 24th and 25th day of August, 2013 at Lirhembe Sub-Location in Kakamega South District within Kakamega County, he murdered one BEATRICE IGANJI.
2. The accused pleaded not guilty to the charge as a result of which the prosecution called four witnesses in an effort to prove the charge against the accused.

The Prosecution Case

3. The prosecution called four (4) witnesses and from their testimonies the prosecution case was that at about 2.00pm on 24th August, 2013, the deceased herein BEATRICE IGANJI left her mother's home accompanied by her younger sister Hellen Litwachi PW2. They also took the deceased's baby with them and headed for the accused's home which was not far from the deceased's home. On arrival at the accused's home, both accused and deceased left together. They were quarrelling over some money although they told Hellen Litwachi (Hellen) that they were going to Sigalagala to buy vegetables.
4. When the deceased and the accused took long in returning home, Hellen took the deceased's child and returned home where her mother Rosemary Khasiala Shileho PW1 (Rosemary) was. As the evening wore on and the night came both Hellen and Rosemary went to sleep.
5. On the following day at about 6.00am Rosemary received news that the deceased had been killed. She went to the scene and found the deceased's body lying just outside the accused's house. The matter was reported to Malaika Police Station and the report was received by the then DCIO, Chief Inspector Kenneth Otieno, who testified as PW4 and was also the Investigating Officer. He went to the scene and while he was there, the accused was brought to the scene by Inspector Kariuki, the then Deputy OCS of Malaika Police Station. After investigations, the accused was charged with this offence.
6. On 27th August, 2013, Dr. Dixon Mchana Mwaludindi, PW3 conducted a post mortem examination after the body had been identified to him by Rosemary and one Roseline Ambayi. Dr. Mchana testified that the body of the deceased had bruises on the forehead head both forehands as well as one large bruise on the left upper thigh. There was also a fracture involving the neck on the 2nd and 3rd neck bones. The doctor formed the opinion that the cause of death was an unstable neck fracture with evidence of blunt force trauma following assault.

Submissions on no case to answer

7. At the close of the prosecution case Mr. Osango, Advocate for the accused submitted the prosecution had failed to establish a prima facie case requiring the accused to be placed on his defence. On his part prosecution counsel relied on the evidence on record.

Analysis and Determination

8. The principles to be applied in a case like this one were laid down by the Court of Appeal for Eastern Africa in the celebrated case of **Bhatt – vs – R [1957]EA 332**. I need not set them out here. Applying the stated principles to the instant case, I am satisfied that the prosecution has met the threshold for establishment of a prima facie case against the accused herein. I therefore make a finding that the accused has a case to answer. In doing so, the accused may give sworn or unsworn evidence. If he gives sworn evidence, he may be asked questions both by the court and the State. In either case the accused is at liberty to call witnesses. The accused may also choose to remain silent and let the court decide the case on the evidence that is before it.

9. I now call upon the accused to tell the court which option he intends to adopt in defending himself.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 29th day of May 2018

RUTH N. SITATI

JUDGE

In the presence of

Mr. Ngetich (present).....for state

Mr. Osango (present).....for accused

Polycap.....court Assistant