



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 56 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL MURUNGA.....ACCUSED

RULING

Introduction

1. On 10th October, 2013, the accused was arraigned before this court on a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars thereof being that he murdered JOSEPH KHATONDE on the 9th day of October, 2013 at Makhaya Village, Shitechi Sub-Location in Kakamega East District within Kakamega County.

The Prosecution Case

2. The prosecution called three witnesses. Both PW1, Christine Achesa Andrea and PW2, Benard Mbui Mate, identified the body of the deceased for post mortem examination. PW3, Maxmilla Ayuma Muteitsi testified that at about 1.00am she heard the deceased screaming and asking her for help. She was unable to offer any help because her door was locked from outside but she screamed for help. It was only at day break that she was able to enter the deceased's house and found his body on the floor with his neck in a basin. The deceased had a cut wound on the head. Though PW3 said she was not sure of the person who had cut the deceased, she had seen the accused knocking on the door of the deceased's house at about 8.00pm.

Analysis and Determination

3. I have carefully taken into account the principles on what constitutes a prima facie case. I have also carefully analysed the evidence on record. One thing to remember is that at this point, the court is not concerned with whether the case against the accused is weak or strong. That is for another stage. What the court is concerned with is whether there is such evidence on record, that if the accused said nothing in response to it, the court would be ready to convict.

4. In my considered view, there is no such evidence on record. Even if the accused were to be put on his defence, he is under no duty to exonerate himself. As things stand now, there is no evidence that the deceased died and if so, what the cause of his death was. There is also no evidence on record to inform the court as to why and when the accused was arrested. Both the doctor and the investigating Officer were not called to testify. In summary the evidence that is on record is worthless evidence, and as was stated in **Bhatt – vs – R [1957] EA 332** no amount of worthless evidence can be said to establish a prima facie case.

Conclusion

5. In conclusion, I find and hold that the prosecution has failed to establish a prima facie case against the accused, SAMUEL MURUNGA as to warrant his being put on his defence in connection with the murder of Joseph Khatonde of Makhaya Village, Shitechi Sub-Location. I therefore return a verdict of NOT GUILTY and accordingly acquit him under the provisions of Section 306(1) of the Criminal Procedure Code.

6. Unless otherwise lawfully held, the accused shall be released from prison custody forthwith.

It is so ordered

Ruling delivered, dated and signed in open court at Kakamega this 23rd day of May 2018

RUTH N. SITATI

JUDGE

In the presence of:-

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

Mr. Munyendo for Mrs. Muleshe.....for Accused

Polycap Mukabwa.....Court Assistant