



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 87 OF 2015

REPUBLIC.....RESPONDENT

VERSUS

SUNDAY MACHARIA KAMAU.....ACCUSED

RULING

1. The accused 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 the of 29<sup>th</sup> day of August 2015 at Kambi Moto Estate in Huruma area within Nairobi County murdered **FLORENCE WANGECHI**.

2. He pleaded not guilty and to prove its case against him the prosecution called a total eleven (11) witnesses and the close of the prosecution case it was submitted by the prosecution that *prima facie* case had been made out against the accused to enable the court place him on his defence.

3. On the other hand the defence filed written submission allegedly under Section 210 of the Criminal Procedure Code which applies to the subordinate court. It was submitted that there was no malice aforethought established since the deceased and the accused were lovers who were staying together and that the cause of the differences was provocation by the deceased inviting another boyfriend to the place where they were drinking. It was therefore submitted that the accused should have been charged with manslaughter.

4. At this stage of the proceedings all that the court has to determine is whether the prosecution has established a *prima facie* case to enable the court place the accused persons on their defence. Prima facie case has been defined in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** 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. In the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

*“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a borderline case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”*

*(Emphasis added)*

6. The court is further cautioned not to make elaborate comments on the evidence on record if the same was to put the accused on his defence so as not to prejudice the defence which the accused might opt to offer.

7. With this in mind I have looked at the evidence tendered in court on behalf of the prosecution and in particular the evidence of PW2 and PW4 both sisters of the accused and the accused submission herein and have come to the conclusion that prima facie case has been established by the prosecution to enable me put the accused on his defence which I hereby do so as to give the same an opportunity to state his side of the story and to advance the defences which might be available to him as indicated in his submission. The accused is hereby advised of his rights under **Section 306** of the **Criminal Procedure Code**.

**DATED, DELIVERED and SIGNED at Nairobi this 25<sup>th</sup> day of September, 2018.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Ms. Wegulu for the State*

*Mr. Kiptum for Nyachoti for the accused*

*Mr. Molombo for Chege watching brief for the family*

*Accused present*

*Court assistant Karwitha*