



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL NO. 87 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

EVANS RATEMO.....ACCUSED

CYRUS MAKORI OGERO.....ACCUSED

RULING

1. A “prima-facie” case is one in which a reasonable court properly directing its mind to the law and the evidence before it would convict if no explanation is offered by the defence.

The prosecution, at the close of its case, is required to provide not only sufficient evidence, but also credible evidence for purposes of establishing such “prima-facie” case and thus establish the material ingredients of any one charge facing an accused person.

2. Herein, both accused are alleged to have murdered Nicholas Momanyi (deceased) on the 18th July 2013, at Mwamosioma Sub-location, Kisii County.

The evidence led against them by the prosecution was that of **Hesbon Matagaro (PW 1)**, **Simon Omwenga Momanyi (PW 2)** and **PC Ambrose Kibaina (PW 3)**.

What came out of that evidence was that the deceased was on a motorcycle taxi (boda-boda) being driven at the time by Hesbon when they came under violent attack from a gang of unknown people and in the process the deceased was fatally injured while the motorcycle operator managed to escape. Later, the two accused were arrested and charged after being suspected to have been part of the violent gang.

3. The dead body of the deceased was recovered in a maize plantation by his brother (PW 2) and others. The scene was visited by PC Kibaina (PW 3) and his team. They recovered a blood stained stick, a blood stained shirt and a blood stained shoe. They were informed that the motorcycle taxi operator and another were suspected of having been involved in the crime.

The police officers removed the body of the deceased to the mortuary. The autopsy carried out by a doctor revealed that the deceased died from severe head injury due to multiple cut wounds and blunt force trauma to the head due to assault (see, P.Ex 2).

4. The blood stained items were forwarded to the Government Analyst for necessary examination. The ensuing report (P.Ex 1) did not reveal anything positive with regard to the two accused who were treated as the prime suspects and charged accordingly. The evidence expected to confirm the suspicion was that of the three aforementioned prosecution witnesses but it fell short of doing so either directly or indirectly.

Hesbon (PW 1) did not see and identify the people who attacked him and the deceased. Simon (PW 2) was not at the scene during the attack. He could not really state what happened on that material date and time which led to the death of his brother.

5. Both witnesses (PW 1 and PW 2) did not at all implicate the two accused even though they confirmed that the death of the deceased was as a result of a criminal act. Their evidence coupled with that of the investigating officer (PW 3) was incapable of establishing the material ingredients of the offence of murder against the two accused and showed that the accused were arrested and charged on mere suspicion.

Ultimately, the prosecution failed to establish a “prima-facie” case against both accused to warrant them to be placed on their defence. The two have no case to answer and are hereby acquitted and set at liberty.

[Delivered and signed this 26th day of April 2017]

J.R. KARANJAH

JUDGE

In the presence of

Njoroge/Dorothy CC

Ms. Ouko - State Counsel

Mr. Okenye for accused

Accused 1-2

J.R. Karanjah , J