



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 62 OF 2015
REPUBLICPROSECUTOR
VERSUS
P N A.....ACCUSED
R U L I N G

Introduction

1. The accused person herein, P N A is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on the 25th day of September, 2015 in Kakamega North Sub-County within Kakamega County, murdered D N N. The accused denied committing the offence. Thereafter the prosecution called 6 witnesses in an attempt to prove the charge of murder against the accused person.

The Prosecution Case

2. The accused and the deceased are husband and wife. On the material day, the accused person came home while under the influence of alcohol and took their youngest child, a boy and a knife and led him towards the sugarcane plantation with the intention of slaughtering him. On realizing what the accused intended to do to the young boy, the deceased followed them with the sole intention of saving her son. Her daughter M M, PW1 followed the deceased to sugar cane plantation which was about 200 metres away from the homestead. According to M, the accused also carried a metal bar with him. At the sugar cane plantation the deceased and M found when a neighbour had rescued the young boy from the hands of the accused; but because the deceased did not know this fact, she asked the accused where their young son was.

3. It was upon being asked that question that the accused turned on the deceased and hit her on the right side of chest just between the ribs. He also hit her on the chin and on top of the head.

4. As the deceased fell down and lost consciousness, the accused stepped on her stomach. At that point M ran home and reported the matter to her paternal grandmother but the grandmother remained indifferent saying she was tired of the issues afflicting the accused's family. When she came to the deceased and her children went to her maternal home from where she was taken to hospital. The deceased succumbed to the injuries.

5. The accused was subsequently arrested and charged with the present offence. Dr. Mchana testified as PW4 and told the Court that the deceased had injuries on the left side of the chin, minor injury below the

skin on both sides of the ribs minor injury in the scalp but with no fracture, but with massive swelling and a bruise on the forehead. The cause of death was given as closed head injury secondary to blunt force trauma following assault.

Analysis and Determination

6. From an analysis of the evidence set out above, the issue that arises for determination is whether the evidence as a whole establishes a prima facie case requiring the accused person to be placed on his defence. As held on the case of **Bhatt- vs – R [1957] E A 332**, what the prosecution needs to do at this stage is not to prove its case against the accused person beyond any reasonable doubt. What needs to be proved is that the evidence on record at this point of the proceedings is such that even if the accused person were to say nothing in his defence, this court would be prepared to convict him. It has also been held that at this stage, the prosecution case might be weak or strong.

7. In light of the above principles, I am satisfied that the prosecution has established a prima facie case to warrant the accused person being put on his defence, and he is accordingly placed on his defence.

8. Whether the accused person gives sworn or unsworn evidence or whether he chooses to remain silent in his defence is his own choice. The only critical issue to note is that if the accused gives an unsworn statement, he will not be asked any questions, if on the other hand he elects to give sworn evidence, he may be asked questions both by the court and the prosecutor. If sworn or unsworn, the accused has right to call witnesses.

9. I now call upon the accused person to make an election as to how he intends to conduct his defence.

It is so ordered.

Ruling delivered, dated and signed in open court at Kakamega this 28th day of June ,2017

RUTH N. SITATI

JUDGE

In the presence of;-

Mr. Juma (present).....for State

Polycap.....Court Assistant