



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (
MILIMANI LAW COURTS
Criminal Case 30 of 2005

REPUBLIC.....PROSECUTOR

VERSUS

ALEX INGALA LUKAKHA.....ACCUSED

R U L I N G

The accused, ALEX INGALA LUKAKHA, is charged with the offence of murder. It is the prosecution case that the accused murdered DAVID ODHIAMBO ONGA, at Kitengela, on the night of 5th November, 2004.

By the time the prosecution closed its case, six witnesses had testified.

The accused then submitted that the evidence adduced was insufficient to warrant his being put on his defence.

He said that PW 1, TAJEU OLE LENGETE, could have been mistaken when he allegedly identified the accused. That contention is premised upon the fact that it was about 2.00a.m when PW 1 allegedly talked to the accused. Given the time of night, the accused asserted that the circumstances prevailing were not conducive for positive identification.

Secondly, the accused submitted that the prosecution failed to produce two essential witnesses. Those two are the ladies who were in the company of the deceased and the accused, on the material night.

Thirdly, the accused submitted that his friend, who accompanied him on the morning when he had gone to check on the deceased, should also have testified. His reason for so saying was that the said friend was held briefly by the police. However, the said friend was thereafter released, and yet he did not testify in this case.

The accused also submitted that the opinions of the experts who testified, were at variance. The two experts were the doctor who conducted the post mortem examination on the body of the deceased, and the Government Analyst who conducted tests on the specimens drawn from the body of the deceased.

It is the view of the accused that the findings of the doctor were incomprehensible, because he did not explain how a

person could be strangled, yet there were no external physical marks on his neck.

In any event, the accused believes that the doctor's views were influenced by the information which the police gave to him. The said information was to the effect that the deceased had spent a night with several other persons, in one room. As far as the accused was concerned, the said information was detrimental to him.

The accused also pointed out that the Government Analyst established that both the malarial drugs and the alcohol which was in the body of the deceased were in such high levels of concentration that they were fatal.

I will take into account the above-stated submissions, when determining whether or not the accused should be put to his defence.

First, there is no doubt at all that on the material night, the deceased was in the company of one man and two ladies. However, it is also on record that the said ladies left the two men after being with them for about 20 minutes.

By the time the said ladies left, the deceased was alive. Indeed, it is he who told the watchmen, PW 1, that the men did not have any reason for barring the ladies from leaving the lodging.

Secondly, on a prima facie basis, I do not find any inconsistencies between the professional opinions of the doctor and the analyst. I say so because the doctor did explain that the level of the drug and alcohol in the body of the deceased was significant, because it explained why it was easy to strangulate the deceased, given the fact that he had already been sub-dued.

And, according to the watchmen (PW 1) he saw and talked to both the accused and the deceased, on more than one occasion. First, he talked to them when they sought a room. Secondly, he talked to the accused when the lady who was with the said accused made noise, complaining that the accused had refused to use a condom. Not only did PW 1 ask the two to resolve the issue, but he also got the manager (PW 3) to talk to the accused.

It would therefore appear, on a prima facie basis, that the accused was identified positively.

Given the fact that the accused was with the deceased in one room, and that the two ladies who had been with them had left when the deceased was still alive; but the deceased passed away thereafter, through strangulation, I find that the accused has a case to answer. The prosecution has definitely established a prima facie case to warrant the accused being put to his defence. I so hold.

Dated, Signed and Delivered at Nairobi, this 12th day of May, 2010.

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FRED A. OCHIENG
JUDGE