

REPUBLIC OF KENYA
IN THE HIGH COURT KENYA
AT KERICHO

CRIMINAL CASE 34 OF 2004

REPUBLICPROSECUTOR

VERSUS

STANLEY KIPROTICIH KORIRACCUSED

RULING

Stanley Kiprotich Korir is charged with the offence of murder contrary to section 203 as read with section 204 of Penal Code. The particulars of the charge stated that on 15th day of August, 2004 at Itembe Village in Bomet District of the Rift Valley Province, he murdered Lily Langat. Evidence was tendered by seven prosecution witnesses in their bid to prove the charge of murder.

Philemona Chemngeno, (PW1) a young girl aged 15 years testified that on 15th August, 2004 she was at home with her young siblings namely Geoffrey Kiprono aged 13 years and Peugeot Chepkomoi aged 8 years. The three were sleeping when they were woken up by the accused person. It is Geoffrey who opened for the accused person. The accused person entered their house and went straight to sleep in the bedroom that belonged to their mother, who is the deceased in this case. At the time, the deceased had gone to a church meeting. The deceased arrived later, and found the accused person sleeping in her bed; she removed the cooking stick and tried to hit the accused person.

The accused person stabbed the deceased four (4) times from the back. The deceased collapsed. PW1 started screaming. Stanley Chebii Korir PW2, David Langat PW4, Kipsang Langat PW3, all responded to the distress call. They found Lily Langat lying on the ground with injuries on the back. They took the deceased to Tenwek District Hospital but she succumbed to the injuries the following day. These three witnesses did not see the assailant who attacked the deceased.

They interviewed PW1 who told them that the accused person had come to their house and she knew him as Stanley. PW3 was able to know the person PW1 was referring to as Stanley Korir. PW3 with the help of PW5 David Koech the Chief of Itembe area, made enquiries from some boys who assisted them to arrest the accused person. The accused person was popularly known by a nickname Koolar. PW5 testified that while at the church at Sachangwany, he was handed a blood stained knife which he was told the accused person used to stab the deceased.

The body of the deceased was identified for purposes of post-mortem by PW2. The post-mortem examination was conducted by Dr. Sitonic on 16th August, 2004. On external examination of the body he found deep penetrating cut wounds on upper interscapular area which was 4cm long. Another penetrating wound towards the lower right scapular angle, medial to the thoracic spine. As a result of the examination he formed the opinion that the cause of death was cardiopulmonary arrest due to massive interthoracic bleeding and lung collapse.

Dr Sitonic also carried out a physical and mental examination of the accused person and he was certified fit to stand trial. PC Jorum Kwamboka PW6 testified that on 16th August, 2004 while on duty, PW5 in the company of members of public brought the accused person to Bomet Police Station on suspicion that he had murdered the deceased herein. PW6 placed the accused person in custody and referred the chief in the crime office to record his statement. The suspected murder weapon was also recovered and taken to

crime office. The investigation officer did not testify in this matter.

The issue to determine is whether the prosecution has established the prima facie case requiring the accused person to be placed on his defence after the cross of the prosecution case. The only evidence that links the accused person with the death of the deceased was by PW1 a minor aged 15 years. The attack took place at 2 a.m. There was no source of light. PW1 testified that she had known the accused person within the last three (3) days. This evidence is not all corroborated by any other evidence. The circumstances under which the accused person was arrested are not known. No investigations were carried out. Bearing in mind the principles set out in the oft cited case of Bhatt –vs. - Republic, on what constitutes a prima facie case, the evidence before this court is not weighty enough to conclusively prove that the accused person committed the offence. The court of appeal held as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggestion that the court would 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 agree that the question whether there is a case to answer depends only on whether there is ‘some evidence, irrespective of its credibility of weight, sufficient to put accused on his defence. A mere scintilla of evidence can never be enough: or can any amount of worthless discredited evidence. It is true, as Wilson J. Said that the court is not required at that stage to decide finally whether if believed it is weightily enough to prove the case conclusively: that that determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a ‘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.”

After the evaluation of the evidence by prosecution witnesses, I find they have presented a very shoddy case. No investigations were carried out. The evidence of PW1 needed to be verified if she had identified the assailant and how, this needed to be verified by an identification parade.

Accordingly, I find no prima facie evidence against the accused person requiring him to be placed on his defence. He is hereby acquitted of the charge of murder under section 306 of the Criminal Procedure code.

Ruling read and signed this 25th day of June, 2009

M. KOOME

JUDGE