

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Case 60 of 2003

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY MIRIE NDUNGU.....ACCUSED

RULING

The accused person Stanley Mirie Ndungu was charged with the offence of murder contrary to Section 204 of the penal code. The particulars of the offence state that on the 9th day of February, 2002 at Nakuru District within Rift Valley Province murdered M N K. The prosecution relied on a total of four witnesses who gave evidence to support the charge against the accused person.

M N K (PW1) was living with the deceased, a young girl of about thirteen years. She testified that on 9th February 2002 at about 8.00a.m. She left the deceased in the house and went to fetch water. The deceased was washing the utensils. When PW1 returned, after about one hour, she found the main house locked with a padlock from outside. She was shocked to see blood and when she opened the door to the bedroom, she saw the deceased lying on the bed with injuries and blood oozing from the head. She started screaming.

Neighbours assembled including Joseph Gitia Gaitho (PW2). The deceased at the time was still breathing, so they rushed her to the police station where they reported the matter. They were issued with a P3 form. They took the deceased to the provincial general hospital, Nakuru where she was admitted. Unfortunately the deceased passed away in the cause of the treatment the same day.

The police led by Johnson Opele (PW4), visited the scene. They recovered a coat which members of the public said belonged to the accused person. The coat was blood stained. Even PW2 confirmed that he knew the accused person well, because they used to graze together and used to see the accused person wearing the coat. PW4 submitted the coat to the government chemist for forensic examination. An order was made by the court that the accused person should provide blood sample and saliva for forensic examination. However the prosecution did not avail the results from the Government Chemist.

Dr. Paul Gachunga (PW3) the medical officer of health attached at the Provincial General Hospital at Nakuru performed the post-mortem examination on the body of the deceased. He found that the deceased had deep cuts on the fore head that exposed the skull. There was blood flowing from the vagina and the hymen was broken and so was the cervix. He formed the opinion that the deceased was raped and the cause of death was cardiopulmonary collapse.

After the close of the prosecution counsel for the accused submitted that the prosecution failed to establish a prima facie case requiring the accused person to be placed on his defence. In the celebrated case of Bhat V R 1957 EA page 332; the Court of Appeal held that;

“(i) the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of the prosecution, the case is merely “which on full consideration might possibly be thought sufficient to sustain a conviction”.

(ii) The question whether there is a case to answer cannot depend 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”

Upon consideration of the prosecution’s evidence with tremendous respect, this is yet another sad case where the prosecution have failed to carry out investigations and merely relied on the evidence by members of public who said the blood stained coat which was found at the scene of murder belonged to the accused person. There was no explanation given why the blood samples were not taken from the accused person for forensic examination. The mere allegation that the coat that was blood stained and found at the scene of murder belonged to the accused person does not amount to a prima facie case to warrant the accused person being placed on his defence.

This was merely circumstantial evidence. No one saw the accused person at the scene and no investigations were carried out by the police to establish how the deceased met her death. This was a serious offence where the deceased was raped and murdered. The accused person was arrested at his home and according to the investigating officer he denied having committed the offence. Apart from the allegation by PW2, the coat which was recovered at the scene of murder belonged to the accused person, there was no evidence to establish that the accused person was either seen at the scene of crime or had anything to do with the death of the deceased.

In view of the above, I find that the accused person is not guilty of the offence of murder and order that he be released forthwith unless otherwise lawfully held.

It is so ordered.

Ruling read and signed on 24th day of July 2008

M. KOOME

JUDGE