



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CRIMINAL CASE NO. 64 OF 2003

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**SAMSON KARUMA MWANGI ..... ACCUSED**

**R U L I N G**

Samson Karuma Mwangi (hereinafter referred to as the Accused) was arraigned before this court for the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

It was alleged that on the night of 4th and 5th May 2003 at Githambo village in Murang'a District jointly with others not before the court they murdered Martha Wanjiku Mwaura. Six witnesses have testified before this court and at the close of the prosecution case the defence counsel has urged this court to find that no prima facie case has been established against the Accused to warrant him being placed on his defence.

The evidence adduced by the prosecution was briefly as follows:

On 4th May 2003 at about 3.00 p.m. Millicent Waithaga Mwaura (P.W.2) sent her 16 year old daughter Martha Wanjiku Mwaura (hereinafter referred to as the deceased) to her other daughter Jennifer Wambui Kiigo (P.W.3). P.W.3 was staying about 1½ hours walk away. The deceased who was dressed in a yellow half petticoat, green skirt, white printed T-Shirt and a white jacket, carried her school bag, school uniforms and books as she was to spend the night at the home of P.W.3 and proceed to school the next day. The deceased also carried an umbrella as the weather had signs of rain.

The next morning the body of the deceased was found in a tea plantation at a foot path near the road just a few metres from her home. The body was naked and there was a bloody boob top stuffed in the deceased's mouth. P.W.2 and P.W.3 were called to the scene as well as police officers from Katara Police Post and Kahuro Police Station. Joyce Wambui Mugo (P.W.4) was also attracted to the scene by the crowd of people who had gathered around. The police decided to search the houses of young men within the area where the body was recovered.

In the company of P.W.2, 3 and 4 the police searched two houses unsuccessfully. In the third house which belonged to the accused P.W.2 recovered a half petticoat under the bed. P.W.2 identified the petticoat as the one the deceased had worn on the day she left home. The Accused was therefore arrested.

On 3rd June 2003 Kiruka Kennedy Karanja Mwangi (P.W.5) who is a neighbour of the Accused was in the process of trying to catch a cock which had disappeared into a bush. It was then that P.W.5 noticed a green polythene bag with some contents and an umbrella next to it inside the bush. P.W.5 alerted neighbours within the area and, the sub-chief was called. He opened the green polythene bag and

noticed that it contained ladies clothing. The police were called and P.C. Sammy Rotich (P.W.6) proceeded to the scene. P.W.2 was also called and she identified the clothing in the polythene paper bag which were a green skirt, a scarf, a white jacket, white T-shirt, a brown panty and a black pair of shoes (Exh. 2 to 7) as the clothing her daughter had been wearing when she last left home. P.W.2 also identified the umbrella (Exh. 8) as the one the deceased left home with. P.W.6 took all the recovered items and handed them over to Kahuro Police Station. The Accused was subsequently charged with this offence.

From the evidence adduced above, it is apparent that there is no evidence that has been adduced to explain what happened to the deceased between 3.00 p.m. on 4th May 2003 when she left her mother and 9.00 a.m. on 5th May 2003 when her body was recovered. The only evidence which appears to link the Accused with the deceased is the allegation that a half petticoat belonging to the deceased was recovered from the house of the Accused. First and foremost the evidence adduced was insufficient to prove this fact as there was contradiction in the prosecution evidence. P.W.6 who was said to have been present during the recovery of the half petticoat, denied that the petticoat was recovered in his presence. No other police officer was called to confirm the recovery of the petticoat. Both P.W.2 and P.W.3 claimed to have identified the half petticoat by a portion which was alleged to have been chewed by a cow, however while P.W.2 claimed the cow chewed the petticoat at her home, P.W.3 also claimed the petticoat was chewed at her home. Further the petticoat was not produced in evidence.

Secondly even assuming that the petticoat was proved to have been recovered from the house of the Accused, the recovery of the petticoat on its own may raise suspicion but would not be sufficient to establish that he Accused person caused the death of the deceased. Indeed there was no evidence adduced to prove the fact that the deceased died or what caused her death.

In the case of **Ramanlal Bhatt v/s Republic [1957] EA 332** it was stated:

*“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 made out if, at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction .....*

*. 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 or weight, sufficient to put the Accused on his defence’. A mere scintilla of evidence can never be enough .....*

*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.”*

Needless to state that in this case the evidence is so sketchy that should the Accused decide to keep quiet at this stage the court cannot convict on the evidence adduced. The evidence does not point irresistably to the Accused having committed the offence.

I find therefore that no prima facie case has been established against the Accused. He is accordingly found not guilty and is acquitted of the murder charge under section 306(1) of the Criminal Procedure code. The Accused shall therefore be set free unless otherwise lawfully held.

***Dated signed and delivered this 7th day of January 2005***

**H. M. OKWENGU**

**JUDGE**