

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Criminal Case 11 of 2002

REPUBLIC

PROSECUTOR

V E R S U S

DAVID OKUSIMBA ODONGO

ACCUSED

R U L I N G

The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge are that on *“the 1st day of June, 2001 at Ingotse village, Shikunga sub-location, Marenyo Location, in Butere/Mumias District, within Western Province the accused murdered HELLEN AMBANI”*

The prosecution called a total of 5 witnesses before closing its case. Pursuant to section 306(1) of the Criminal Procedure Code, Cap 75, the court is enjoined to make a finding at the close of the prosecution case whether a prima facie case has been made out to warrant the accused being put on his defence. Does the evidence adduced by the prosecution show that the accused committed the offence. For there to be a prima facie case against the accused, it must be shown that the evidence has established that murder was committed and that the accused is connected with it.

The deceased was the wife of the accused. Nobody saw the accused kill the deceased, although the accused was charged with the murder. The evidence led by the prosecution was circumstantial.

The body of the deceased was found lying on a bed in the house of the accused where the latter lived with the deceased. There was a rope around her neck and cuts on her hands, neck, and other parts of the body. There was a lot of blood.

When the accused came home on 3.6.2001, his conduct was bizarre. He did not talk to any one when talked to. He kept mum. He was in a drunken state, and was wet although it had not rained. The normal reaction of an innocent husband who finds his wife murdered in circumstances such as these, would have been, after overcoming shock, to take the initiative to find out who had killed his wife. The conduct of the accused was not consistent with the behaviour of an innocent person who had nothing to do with his wife’s death, although, on the face of it, there was no direct evidence to connect him with the murder.

True, it was not shown that the T-shirt collected by the police from the house belonged to the accused. It had blood stains of group “O” which was that of the deceased. So too was the sword found in the house. The mother of the deceased, Rose Amukwe, PW3, did not know the accused. She saw him in court for the first time. It seemed the relationship between the deceased and the accused was that the popularly know “come we stay” one. There is ample evidence that the deceased was murdered. She had lived with the accused who had the opportunity and whose conduct was not compatible with innocence.

The circumstantial evidence was cogent enough to warrant the court to draw the inference of guilt on the part of the accused. I cannot but put the accused on his defence. I hereby do so.

Dated at Kakamega this 13th day of May 2005

G. B. M. KARIUKI

J U D G E