

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. CRIMINAL CASE NO. 51 OF 2001

REPUBLIC PROSECUTOR

V E R S U S

SAMUEL MUIRURI MWANGI

ROBERT HUNJA NJAMBA ACCUSED

R U L I N G

After the prosecution closed its case against both the Accused persons, submissions were made on behalf of the Defence that the prosecution has failed to establish prima facie case against any of the Accused persons and thus they both should be acquitted under section 306 of the Criminal Procedure Code.

I shall deal with the case of 2nd Accused person first.

As per the evidence on record, the 2nd Accused was arrested on 14th December, 2001 on information received. The 1st Accused was arrested after him and has implicated him adversely in his statement under inquiry which was admitted in evidence after a trial within trial was held.

This, in short, is the evidence against the 2nd Accused. He has not been mentioned by any other prosecution witnesses.

I may simply repeat that it is trite law that a confession by an accused person implicating his co-accused is an accomplice evidence needing corroboration and that the need for corroboration is higher when the implication is not supported by other evidence, whether circumstantial or not. The accomplice evidence is treated as the weakest kind against the co-accused. In the present case as stated earlier there is no other evidence against the 2nd Accused involving him with the offence before the court so that it may lend some support or assurance to the confession by the 1st Accused person. The provisions of section 32 of the Evidence Act are clear and have been well defined by our courts by now.

In my view, the only evidence by way of a confession of a co-accused cannot be used against the 2nd Accused by the prosecution.

The test of prima facie case as has been defined in time tested case of Ramanlal T. Bhatt V/s R. (1957) EACA 3321 does not apply to the case against 2nd Accused.

I therefore find that the prosecution has failed to establish prima facie case against the 2nd Accused and I acquit him of the charge of murder contrary to section 203 as read with section 204 of the Penal Code.

I cannot say the aforesaid in respect of the 1st Accused and advisedly refrain from specifying the reasons for my finding. I thus order that the 1st Accused be put on his defence.

Dated and delivered at Nairobi this 9th day of July, 2003.

K. H. Rawal

Judge.

