



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO. 100 OF 1999

JOSHUA MUTINDA MUNYALO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused Justus Mutinda munyalo was charged with the offence of murder c/s 203 as read with section 204 of the Penal code. It was alleged in the particulars of the charge that, on the 10th day of June, 1997 at Waithaka village within Nairobi he murdered Mary Wangari Maina. He denied the charge.

The accused having denied the charge, the republic was bound to call evidence to prove the same. At the close of the prosecution case, a total of eleven witnesses had been called where upon, the learned counsel for the accused submitted that no prima facie case had been established against the accused to require him to defend himself.

The onus is always on the prosecution to prove the case beyond reasonable doubt. A prima facie case means, one on which a reasonable tribunal, properly directing its mind to the law and evidence could convict if no explanation is offered by the defence. {See Ramanlal Trambaklal Bhatt v R. 91957) E.A. 332J.}

In the instant case there is no direct evidence that has been adduced directly implicating the accused with the murder of the deceased. No witness saw him commit the offence. Except the discovery of the body of the deceased, there is no evidence as to where she was murdered and by who. The photographs of the scene and the deceased were taken but for reasons not known to the court, were never produced. The evidence that closely implicated the accused with the murder of the deceased was that of pw10 Peter Maina Nyambura. He was 9 to 10 years old when his mother disappeared. He lived with the accused, his mother (the deceased) and his brother. The accused was not his biological father.

One morning another man came to demand money from the accused who however said had no money and offered a charcoal cooker which the man refused and took a stove instead. The mother (deceased) got annoyed, took her clothes in a bucket and followed the man. The accused then followed thereafter. On the following day, the accused returned at about 6.000am. He was holding the bucket that the deceased had left with. His hands were blood stained which he washed and then went outside and burnt the clothes that belonged to the deceased. There after, the accused is said to have sold all the household goods and left together with pw10 and his brother, to his rural home in Kitui.

After about five months, the accused and the two young boys returned to Machakos where he abandoned them. Pw10 managed to return to Mweiga, the home of the deceased and subsequently a report was made. At Kabete police station. The accused was then arrested at Machakos. It was the evidence of pw10 that

when they were living in Kitui they asked the accused where their mother was and he said she had died. Most of the matters relating to whether or to the clothes of the accused were blood stained when he returned to the house the following morning were put to the witness- pw10. It emerged that he did not mention this in his statement made to the police. The witness also had no answer to the question why he never reported this to anyone including the chief.

The period which the witness, his brother and the accused were in Kitui and Machakos cannot be confirmed. He first said five months and later one year and six months. That inconsistency cannot be explained. Be that as it may, when pw10 was cross-examined by the learned counsel for the accused, it transpired that he did not like the accused at all. He said:-

“When Mutinda started living with us I knew he was not my biological father. I did not like him. I hated him. I did not like the way my mother was forcing us to live with Mutinda.”

The hatred this witness had for the accused could have led him to say anything against him. Above all, his evidence stands alone without corroboration. The conduct of the accused though suspicious is not enough to incriminate him. In view of the foregoing, I find that the Republic has not established a prima facie case to require the accused to defend himself. Accordingly he is acquitted under section 306(1) of The Criminal Procedure Code and unless he is otherwise lawfully held, he shall be released forthwith. Order accordingly.

Dated and delivered at Nairobi this 17th day of July 2002

MBOGHOLI MSAGHA

JUDGE

Ruling read in the presence of the accused, Assessors Mr. Monda holding brief for Miss Wanyama for the state and Miss Njugna for the accused.

MBOGHOLI MSAGHA

JUDGE

17/7/2002

ASSESSORS

Daniel Muchiri

Amos Ndolo