



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT LODWAR

CRIMINAL CASE NO 6 OF 2018

REPUBLIC..... PROSECUTOR

VERSUS

SHADRACK LOWOYATIR LOYALA.....ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with Section 204 of the code the particulars of which were that on 30th day of October, 2017 at Kanamkemer in Turkana Central Sub county within Turkana County murdered **CECELLIA ASIBITAR ELOILOI**.

2. He pleaded not guilty to the said charges and to prove its case against him, the prosecution called and examined a total of ten (10) witnesses. At the close of the prosecution case, both the prosecution and the defence opted not to make any submission as to whether the prosecution had established prima facie case, to enable the court to place the accused on his defence.

3. At this stage of the proceeding all that the court is required to do is to establish if the prosecution has placed enough evidence to enable the court to call upon the accused to offer some explanation, put differently, whether based on the evidence on record the court will be prepared to convict the accused should he opt to remain silent.

4. This court in the case of **DAVID MWANGI GITHAMBI v REPUBLIC [2020] eKLR** had this to say:

“3. At this stage of the proceedings all that the court has to determine is whether the prosecution has established a *prima facie* case to enable the court place the accused person on his defense. *Prima facie* case has been defined in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332 as follows: -**

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court could not be prepared to convict if no defense is made, but rather hopes the defense will fill the gaps in the prosecution case, nor can we argue 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 defense.”

A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence... It may not be easy to define what is meant by 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 defense.
(Emphasis added)

4. Justice J.B. Ojwang as he then was in the case of **REPUBLIC v SAMUEL KARANJA KIRIA CR. CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on *prima facie* case: -

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . .

The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defense as too much details in the trial

court's ruling could then compromise the evidentiary quality of the defense to be mounted. (Emphasis added).

5. With the injunction by Justice J.B Ojwang in mind, to establish a case of murder, the prosecution is under both legal and evidential burden to establish the following elements of the offence:-

a. the fact and cause of death

b. that the said death was caused by an unlawful act of omission or commission on the part of the accused person and

c. that the said act was committed with malice aforethought as defined in Section 206 of the Penal Code.

6. The fact and cause of death of the deceased was not disputed throughout the trial. **PW3 ROY EKAMSIA LOKAALIE** who was with the accused person at the time when she was taken to the hospital, testified that the same was received by the personnel thereat and shortly a nurse informed them that she had died. **PW4 BENJAMIN ELEMANI** attended the post-mortem examination and identified the body together with **PW9 ANGORI TONGOL JOSEPHAT**, thereby confirming her death,

7. The cause of death was established through the evidence **PW5 DR. MELBONVENTURE AMEYO** who conducted post mortem examination on her body and confirmed that it had multiple bruises on the right shoulder, back and knees, with blood stains on both nostrils and ears, she had ribs fractures and as a result of the said examination formed an opinion that the cause of death was hemothrax and traumatic brain injury resulting in cardio pulmonary arrest.

8. It therefore follows and I find that the fact and cause of death was proved to the required standard.

9. On whether the accuse person should be called upon to offer some explanation as to what lead to the death of the deceased , I have taken into account the evidence of PW3 who put the accused and the deceased together, while she was alive and in good health , the evidence of PW1 and PW2 both who placed the motor vehicle the accused was driving at the scene where she was later on picked from, when looked at against the evidence of **PW6 WILIMINA ASHAT** and without saying much thereon, so as not to compromise the defence the accused is likely to offer, should he decide to so do., I am satisfied and hold that the prosecution has established a prima facie case to enable me put the accused on his defence which I hereby do.

10. The accused is hereby notified of his rights under Section 306 of the Criminal Procedure Code and Article 50 of the Constitution and is now called upon through the advice of his Advocate on record to choose how he would wish to defend himself and it is ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4th DAY OF MAY, 2021

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Tanui for the State

Mr. Ogola for the accused

Accused present

Court Assistant – Potishoi