

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 8 OF 2014

REPUBLIC.....PROSECUTION

VERSUS

HML.....ACCUSED

JUDGMENT

1. HML is charged with murder contrary to section 203 of the Penal Code, Cap 63, Laws of Kenya, as read with section 204 of the Penal Code. The particulars of the offence allege that on 10th day of February 2014 at [Particulars Withheld] Village, Lunyu Sub-Location of Ivihiga Location within Kakamega East District of Kakamega County, he murdered PL, hereinafter referred to as the deceased. He pleaded not guilty to the charge on 18th February 2014. The hearing of the prosecution's case commenced on 1st February 2016, when one witness testified.

2. The witness was AAS, national identity card [...], who testified as PW1. He stated that he was asleep at his house on 12th February 2014, when he heard someone knocking at the door outside. It was the accused, who he described as a cousin. He opened the door for him, and he got into the house. He lit a lamp, and the accused told him that his child had died. He then escorted the accused to his home, 500 metres away. On arrival they found many neighbours had gathered. He opened the door which he had locked, and they all got in. He noted that the child had been placed on a sofa seat, and covered with clothes. He uncovered him. The child had black marks on his legs and head. It appeared from the legs that he had been beaten from the knees down towards the feet. After he saw the marks, he telephoned the local Assistant Chief, who came to the scene. He arrested the accused and they escorted him to Mukhuye Police Station. The accused was interrogated and transferred to the Kakamega Police Station. He stated he did not know who killed the child. He said the child was 12 to 13 years old, and lived with the deceased, after his wife died. He stated that what he told the court related to the events of 12th February 2014, and not 10th February 2014. He stated that the accused had come to his home at 4.00 AM. He stated that he informed the police that the child's legs were swollen.

3. No other witnesses testified thereafter. The matter came up for hearing several times, and was adjourned at the behest of the prosecution for various reasons. Three last adjournments were granted, before the state eventually indicated that it was closing its case on 12th March 2020.

4. At this stage I am required in law to decide whether to put the accused person on his defence or not. In other words I am required to determine whether a *prima facie* case has been made out to warrant putting the accused on his defence. What amounts to a *prima facie* case was stated in *Ramanlal Trambakal Bhatt vs. R* (1957) EA 332, as one in which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation was offered by the defence.

5. The elements of the offence of murder, as defined in section 203 of the Penal Code, are the fact of death, the cause of the death, the role of the accused person in the cause of the death and the fact that the death is caused by the accused with malice aforethought. From the material before me, there is *prima facie* proof that the deceased in fact died. His lifeless remains were seen by PW1. PW1 was the sole witness. He said that he did not know what happened to the deceased. No evidence was adduced as to the role the accused might have played in the causation of the death of the deceased. There is, therefore, no material before me that would suggest that the accused was linked to the death of the deceased in any way.

6. The standard of proof in criminal cases is put at beyond reasonable doubt. The prosecution was required to establish beyond any shadow of a doubt, in this case, that the death of the deceased herein, arose directly from an act or omission on the part of the accused. It would only be after that is established that the accused can be called upon to give an account. As the prosecution has not established any connection between the accused and the death of the deceased, I do not have before me material upon which I can convict the accused were he not to offer any explanation. I am not satisfied that a *prima facie* exists to warrant the accused being put on his defence.

7. That being the case, I shall accordingly find the accused, HML, not guilty of the murder of PL, contrary to section 203 of the Penal Code, and I hereby acquit him, under section 306(1) of the Criminal Procedure Code, Cap 175, Laws of Kenya. He shall be set free unless he is otherwise lawfully held.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 9TH DAY OF APRIL, 2020

W MUSYOKA

JUDGE