



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MURDER NO. 27 OF 2014

REPUBLIC..... PROSECUTOR

V E R S U S

AMT 1ST ACCUSED

PBM.....2ND ACCUSED

RULING

1. The accused persons who are father and son were charged with the murder of EWR (wife of the 1st accused) contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya. They denied the charge. The prosecution called 10 witnesses in efforts to prove the charge against him. At the close of the case for the prosecution, the parties took a date for ruling on whether or not the accused has a case to answer.

2. Whether or not the accused has a case to answer

In determining this issue, the court considers the evidence tendered at the close of the prosecution case.

The evidence adduced by the prosecution witnesses can be summarized as follows:

3. PW 1 – CNB, wife of the 2nd accused. She narrated how she was sleeping with 2nd accused when they heard noises at the deceased's house. 2nd accused went to check and informed her that the 1st accused had told him to sleep as there was nothing. The next day, the body of the deceased was discovered hanging on a mango tree.

4. PW 2 – PM. He was called by 2nd accused who was crying and on reaching the home found the deceased hanging from a mango tree. He called assistant chief and he came with the 1st accused

5. PW 3 – EGM, son of the deceased. That night his father and mother were fighting and it lasted a few minutes. The following day the body of his mother as discovered hanging.

6. PW 4 – RW, father of the deceased. He was called and informed that his daughter had been hanged on a tree.

7. PW 5 – PW, the deceased's daughter. She identified the body of her mother before post mortem was conducted.

8. PW 6 – Dr. Joseph Thuo, examined the accused persons and found them fit to stand trial.

9. PW 7 – Henry Waruhi Njogu, the former assistant chief. PW 2 called him about a woman who had committed suicide. The 2nd accused then went to his house and together they went to the scene and saw the body. 2nd accused informed them that his parents had quarreled the previous night.

10. PW 8 – PC Murimi Mosapi. He was called by the OCS to visit the scene. He noted injury on her forehead and under the mango tree were a pair of shoes. He took 7 photographs and produced them as exhibits.

11. PW 9 – Dr. Kenneth Munyi. He conducted the post mortem. On examination, there was stiffness of joint, strangulation mark on the neck, deformity on the forehead - bleeding under the skin. Cause of death was severe head injury sub-dural haematoma.

12. PW 10 – Cpl Stephen Kyalo, the investigating officer. He accompanied the OCS to visit the scene. They asked the 1st accused what

happened and he stated he quarreled with the deceased at 4 a.m and she went out. 2nd accused came out and he told him it was a small quarrel. 1st accused called his wife asking what she was doing outside but she did not answer. At 6 a.m he went to scare birds from the farm and he discovered his deceased wife hanging. They observed blood clots on her forehead. Photographs of the scene were taken and the body was taken to funeral home.

13. The Law:-

The **Criminal Procedure Code Section 306** provides as follows:-

(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit recording a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence.....

14. From the evidence placed before court, the test of a prima facie case in terms expressed in **Bhatt -vs- R** case has been met by the prosecution to warrant the 1st accused person to be called upon to defend himself.

15. With regard to the 2nd accused person, no evidence has been adduced linking him to the offence.

16. The evidence tendered against him is that he went outside after he heard some noise. His father told him to go back and sleep as there was nothing. The evidence tendered is insufficient and does not establish a prima facie case against the 2nd accused. He is entitled to an acquittal. I acquit the 2nd accused under Section 306(1) of the **Criminal Procedure Code**. The 1st accused will be put on his defence and will proceed as provided under **Section 306(2)**.

Dated at Kerugoya this 12th day of February 2019.

L. W. GITARI

JUDGE