



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL CASE NO. 13 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH NYAGA MURIUKI.....ACCUSED

RULING

A. Introduction

1. This is a ruling on whether the accused herein has a case to answer.
2. The accused herein is charged with the murder of PETER MURIMI NJIRU contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on the 26th January 2015, at Rugusa village, Runyenjes Township within Embu County, the accused murdered the aforementioned Peter Murimi Njiru. He pleaded not-guilty to the charge.
3. The prosecution called seven (7) witnesses in support of their case which is summarised herein.

B. Prosecution Case

4. PW1 did not witness the deceased's death however she testified that the accused had told her that he had killed whoever was preventing her from marrying him and would then kill her and then commit suicide. PW2 and PW3 did not witness the deceased's death. PW4, Dr. Joseph Thuo certified the accused fit to stand trial. PW5 Dr. Phyllis Muhonja testified that the post-mortem results revealed that the deceased had died as a result of cardiopulmonary arrest from cardiac insufficiency due to cardiac tamponade from a stab wound.
5. PW6, the government chemist who received various exhibits from the police testified that since he did not have any blood samples of the deceased or accused to compare with the blood stains on the exhibits he received, he could not establish whose blood was on the exhibits.

C. Analysis of the Law

6. The issue at stake here is whether at the conclusion of the state case, the prosecution has produced sufficient evidence to establish a *prima facie* case.
7. The **Criminal Procedure Code Section 306 (1)** provides as follows:

“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.....”

8. In making a finding on a *prima facie* case one should bear in mind the cardinal principle, on the burden of proof that it is the duty of the prosecution to establish the guilt of the accused for the offence charged beyond reasonable doubt.
9. The Kenyan courts have heavily relied on the legal principles in the celebrated case of **R.T. Bhatt v Republic [1957] EA 332 – 334 &**

335 to define what constitutes a prima facie case. The legal principles which run through the case cited revolves around sufficiency of evidence capable of establishing the ingredients of the offence the accused is charge with. Secondly, a mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence. Thirdly it is evidence adduced by the prosecution such that a reasonable tribunal properly directing its mind would convict the accused in absence of any explanation when called upon to answer or put on his defence.

10. The issue at stake in the present case is whether given the evidence and the ingredients of the offence under Section 203 as read together with Section 206 of the Penal Code the accused has a case to answer or not. The relevant provision to this question falls under the provisions of **Section 306 (1) and (2) of the Criminal Procedure Code** which provides interalia that;

“when the evidence of the prosecution case is concluded the court shall consider the evidence and any arguments made by either the defence or prosecution case to determine whether a case against the accused has been made on the allegations/or charge. If the court finds that there is no evidence that the accused has committed the offence the court shall record a finding of not guilty and order for a discharge or acquittal.”

11. Upon evaluation of the evidence before me, I find that the prosecution have made up a *prima facie* case against the accused.

12. He is hereby called upon to make his defence.

12. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF JULY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for State

Ms. Nzekele for Njiru Accused

Accused present