



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL CASE NO. 18 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

ANN KARIMI.....ACCUSED

RULING

A. Introduction

1. This is a ruling on whether the accused herein has a case to answer and should consequently be put on their defence.
2. The accused was charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on the 4/09/2017 at Kangaru Market within Embu County murdered James Murithi Mugo. She 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. From the evidence, none of the prosecution witnesses witnessed the deceased's death. PW1 testified that on 4/09/2017 he received information that the deceased had been seriously injured after which he proceeded to the deceased's home where he found him behind his house with injuries on the neck. PW2 testified that the accused was married to the deceased but he did not witness the deceased's attack. PW3, Dr. Mose Njue Gachoki carried out the post-mortem on the deceased and concluded that the deceased died as a result of a penetrating (sharp) injury on the neck involving both the veins and the vessels therein followed by blood loss causing the lung to collapse.
5. PW4 identified the deceased's body prior to post-mortem. PW5 testified that on the material date, he arrested the accused person upon inquiries at the scene of the crime. He further testified that the accused had an injury on the left side of the head and as such the headscarf she was wearing was blood- stained. PW6, the investigations officer testified that the accused told him that she had a quarrel and fought with the deceased who was her husband, however the accused failed to disclose how she sustained the injury to her head. PW7 examined the accused and found her mentally fit to stand trial.

C. Analysis of the Law

6. I have considered the charge as well as the evidence by the witnesses of the prosecution. The issue at stake here is whether at the conclusion of the prosecution's case, the court would find that the accused have a case to answer.
7. The burden of proof of an accused guilt rests solely on the prosecution throughout the trial save where there are admissions by the accused person. Similarly, at the close of the prosecution case under Section 306 (1) of the Criminal Procedure Code the prosecution must satisfy by way of the evidence presented so far that a prima facie case exist to warrant the accused person to be called upon to answer.
8. The issue for determination 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 persons have 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.”

9. In the alternative if from the evidence of witnesses for the prosecution the court concludes that there is evidence to support the charge against the accused persons it shall invite them to tender evidence personally or call witnesses in their defence. The court is obligated to exercise discretion under section 306 (1) of the Criminal Procedure Code to determine the evidence of a prima facie case at these half-time submissions of the trial in a criminal case.

10. The legal principles to guide a trial court in making a determination on a prima facie case have clearly been stipulated in both the persuasive authorities and in the Eastern African case of R.T. Bhatt v Republic EA 332 – 334 & 335. The legal principles which run through the cases 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.

11. I have evaluated the evidence of the seven (7) prosecution witnesses and I find that it is sufficient to support the charge of murder.

12. I find that the accused has a case to answer and is hereby called upon to give his defence.

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 21ST DAY OF NOVEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms Mati for State

Mr. Okwaro for Accused

Accused present in person