



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL MURDER CASE NO. 8 OF 2017

REPUBLIC.....APPLICANT

V E R S U S

HARRISON KINYUA MAGU.....RESPONDENT

RULING

The accused person is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya. It is alleged that on 12/6/18 at Kiarukungu village within Kirinyaga County, the accused unlawfully murdered Margaret Kanini Njoroge. He denied the charge. The prosecution called 6 witnesses in efforts to prove the charge against him. At the close of the case for the prosecution, submissions were made on whether or not the accused has a case to answer. This is therefore a ruling to determine whether the accused has a case to answer.

Whether or not the accused has a case to answer

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.....

The test of prima facie case has been settled in the case of Bhatt –v- R (1957)E. A 332. This was quoted with approval in the case of Republic v Benson Ochieng Oyungi [2016] eKLR.

The Court held;

A definition as to what amounts to a prima facie case was given in the case of Bhatt –vs- R [1957] EA 332. In that case the Court of Appeal expressed itself on this issue:

“Remembering that the legal onus is always on the Prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to suggesting that the Court would not be prepared to convict if no defence is made but rather hopes the defence will fill the gaps in the Prosecution case. Nor can we agree 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 defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true as Wilson J said that the Court is not required at that stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively: That determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “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 defence.”

At this stage of the proceedings the standards applicable on whether a prima facie case has been made out is lower than the standard on beyond reasonable doubt which applies at the conclusion of the full trial after the accused person has been heard. The strength of the evidence establishing a prima facie case must be the sort of evidence upon whose strength the Court could convict if the defence says nothing to rebut such evidence.

Analysis of the Evidence:

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

PW 1 – Dr. Joseph Thuo, determined that the accused was fit to stand trial.

PW 2 – Simon Muriithi Njoroge, he was the deceased's brother and got a call from the village elder Margaret Wangui that his sister had been beaten by her lover and was unconscious. Later he was informed she had died.

PW 3 – Joseph Kefa Githaka, he heard screams and saw the accused trying to lift the deceased. Since they were both drunk, they would both fall down and the accused would step on the deceased.

PW 4 – Michael Kiangangi Githanje, he identified the body of his sister.

PW 5 – PC Thomas Kianguyi, the investigating officer, the village in charge informed him she had arrested the accused at the scene. The accused informed him he was disciplining the deceased for squandering Kshs.1,000/=.

PW 6 – Dr. Douglas Njau, he prepared the post-mortem report.

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 accused person to be called upon to defend himself.

Dated at Kerugoya this 20th day of September 2018.

Read out in open Court, Accused – Present, P/C M/s Muthoni, C/A Naomi this 20/9/2018.

L. W. GITARI

JUDGE