REPUBLIC OF KENYA

IN THG HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.13 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PETER KIPLANGAT RUTO.....ACCUSED

RULING

1. The accused has been 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 22nd day of May 2017 at Tergat Village Bureti Sub-County within Kericho County, the accused murdered Irene Cherono.

2. The prosecution called 8 witnesses. Its case is that the accused and the deceased were married and living together. On 20th May 2017, at about midnight, the accused had a disagreement with the deceased. He assaulted her with a panga and she sustained several injuries on her head, hands and legs. During the assault, the deceased screamed attracting neighbours who included the accused's brother. By the time neighbours got to the scene, the accused had fled and the deceased was found lying in a pool of blood. The deceased was rushed to Litein Mission Hospital where she succumbed to the injuries. A post mortem conducted on the deceased established that she died due to severe haemorrhage wounds.

3. According to the prosecution, after his arrest, the accused revealed the murder weapon, the panga which he had used to attack the deceased.

4. After the close of the prosecution case, Mr. Ayodo for the prosecution submitted that it had established a prima facie case against the accused. That it was clear from the record that at the close of the prosecution case, the prosecution had brought out the motive and the *actus reus* was brought to light. He urged the court to place the accused on his defence.

5. In reply, Mr. Sang for the accused submitted that a *prima facie* case has not been established by the prosecution, and the burden of proof had not been discharged. It was his submission that the prosecution has to prove 3 cardinal ingredients in line with section 203 of the Penal Code. It had to prove the death of the deceased and the cause thereof; the *actus reus*, that the death of the deceased was as a result or direct consequence of an unlawful act or ommission on the part of the accused; and the *mens rea*, that the act was committed with malice aforethought. He conceded that the evidence of Dr. Langat had established the death of the deceased.

6. However, with respect to the *actus reus*, his submission was that none of the witnesses had testified seeing the accused commit the unlawful act. As there had been no eye witnesses, the defence would have to rely on forensic evidence in order to reconstitute the events that led to the murder of the deceased.

7. However, the investigating team had failed to involve scenes of crime personnel who are very well equipped and trained for such crimes; they had not secured the scene of crime, thus leading to its contamination; and they had not taken the panga alleged to be the murder weapon to the Government Chemist for analysis. It was also his contention that there was contradictory evidence on the recovery of the panga. He urged the court to find that the prosecution has failed to make out a *prima facie* case against the accused and acquit the accused as provided under section 306 (1) of the Criminal Procedure Code.

8. In his submissions in reply, Mr. Ayodo argued that though there was no eye witness, the record indicated that the accused was the last person who was with the deceased as they were cohabiting as husband and wife. Further, he had ran away to an unknown place after the deceased was injured. His conduct was the reason why he should be placed on his defence, as it is the conduct of a guilty person. The panga was recovered two days after the incident, and was therefore already contaminated.

9. I have considered the prosecution evidence on record and submissions of the state and the defence. At this stage in the proceedings, the only issue I need to address my mind to is whether or not the prosecution has established a *prima facie* case against the accused. In

Ramanlal Trambaklal Bhatt vs R [1957] E.A 332 at 334 and 335, the court stated as follows with respect to what amounts to a prima facie case:

> ***"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."***

10. In **R vs Jagjiwan M. Patel and Others (1) T.L.R. (R) 85**, the court stated:

> ***"…..all the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make his defence. It may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a border line case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction."***

11. Having considered the evidence of the prosecution witnesses in this matter, and bearing in mind the exposition of what amounts to a prima *facie case* in the two cases set out above, I am satisfied that the the prosecution has established a prima facie case against the accused to warrant placing him on his defence.

12. I therefore place the accused on his defence in accordance with section 306 of the Criminal Procedure Code. I also inform him of his right under section 306 (2) of the Criminal Procedure Code to inform this court whether he intends to give a sworn or unsworn statement in his defence, and whether he intends to call any witnesses.

Dated Delivered and Signed at Kericho this 11th day of October 2018

MUMBI NGUGI

JUDGE