



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 42 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ALEX MUKWEYL.....ACCUSED

RULING

1. Alex Mukweyi (herein referred to as the accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 31st July, 2014 at Nabirima village, Kakamega North District of Kakamega County, he unlawfully murdered Zipporah Nafula (herein referred to as the deceased.)
2. The prosecution called 5 witnesses in the case- the mother to the deceased PW1, a relative to the mother of the deceased PW2, the arresting officer PW3, the officer who visited the scene PW4 and the doctor who performed the post mortem PW5.
3. The case for the prosecution is that the mother to the deceased was living with the accused as husband and wife. They had lived together for a period of 5 months. The mother to the deceased had begotten the baby (the deceased) when she married the accused. The baby was by the time of this incident aged 8 months.
4. That on the material day, the mother to the deceased left the baby at home with the accused and went to work in the shamba of a neighbour. At 11 a.m. the accused went to the shamba and informed her that the baby had died. PW1 went home. She found the baby limp. She started taking it to hospital. It died on the way. She returned home. The accused had by that time escaped.
5. The matter was reported to the police. Cpl. Kemboi PW4 visited the home. He picked the body and took it to Webuye Hospital Mortuary. A post mortem was performed on the body by a Dr. Imwayi who found it with bleeding below the membrane that covers the brain with fracture on the frontal bone. The doctor formed the opinion that the cause of death was due to severe head injury caused by blunt trauma.
6. On the 4th August, 2014, Cpl Kiboi PW3 arrested the accused from where he was hiding. He was charged with the offence. He denied the charge. During the hearing Dr. Vitembwa PW5 produced the postmortem report as exhibit, PEXh. 1.
7. At the close of the case for the prosecution the court is being called upon to rule on whether or not the prosecution has established a prima facie case to require the accused to be placed to his defence.
8. A prima facie case, it has been held, means:-

“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 – see Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332.

9. The evidence against the accused is that on the material day he was left with the baby. On the same day the baby was found to have died as a result of assault. I find that the prosecution has established a prima facie case against the accused. The accused has a case to answer and is accordingly placed to his defence.

Ruling delivered, dated and signed in open court at Kakamega this 7th day of December, 2018.

J. NJAGI.

JUDGE.

In the presence of

..... For State.

.....George for Court Assistant

Accused