

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 1 OF 2013

REPUBLIC..... PROSECUTOR

VERSUS

BONFACE SHIKOLI.....ACCUSED

RULING

1. Boniface Shikholi (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 between 11th and 12th September, 2012 at Shivakala village, Shitochi sub-location in Kakamega East District jointly with another not before court they murdered Brian Shivachi (herein referred to as the deceased)

2. The prosecution called three witnesses in the case – a minor BA (PW1), Carol Nekesa (PW2), the doctor who performed the post mortem PW3 and an uncle to the deceased PW4.

3. The prosecution evidence is that on the 8th September, 2012 Boniface PW1 and the deceased were engaged by a person called Hilary to cut some trees at the home of Hilary. That after they cut the trees the accused and another called Mutambo appeared there and started to beat the deceased with a slasher and a panga. Nekesa PW2 went there and found the two beating the deceased. After the beating, the deceased went home.

4. That on the morning of 10th September, 2012 the deceased was found dead on his bed. His uncle PW4 took the body to St. Mary’s Hospital Mortuary, Mukumu. He reported to the police. Dr. Muchana PW3 conducted a post mortem on the body. He found it with a minor bruise on the head, injury to both lungs, rupture of blood vessels, bleeding into the abdominal cavity, massive bleeding into the brain cover and swelling of the brain. He formed the opinion that the cause of death was due to injury consequent upon assault. The accused was then charged with the offence. He denied the charge. During the hearing |Dr. Muchana produced the postmortem report as exhibit, Pexh. 1.

5. The court is now being called upon to rule on whether the prosecution has established a prima facie case to require the accused to be placed to his defence.

6. 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.

7. The accused is alleged to have assaulted the deceased who died two days later. The post mortem report indicated that the deceased died at 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.

..... Court Assistant

Accused