



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
HCCRC NO. 29 OF 2015
(CORAM: J.A. MAKAU – J.)

REPUBLIC.....PROSECUTION

VS

KENNEDY OTIENO MIEN.....1ST ACCUSED
 ISAAC OTIENO OCHERE (NINJA).....2ND ACCUSED
 JULIUS ODUOR OGOLA.....3RD ACCUSED
 ISIAH OGOL ODERA.....4TH ACCUSED

RULING

1. The accused **KENNEDY OTIENO MIEN, ISAAC OTIENO OCHERE (NINJA), JULIUS ODUOR OGOLA** and **ISIAH OGOL ODERA** are charged with an offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge are that on the 7th day of February 2014 at Memba sub-location, Rarieda sub-county within Siaya County, murdered one **PHILIP ADOYO OKEYO**.

2. In criminal cases the burden of proof lies with the prosecution and never shifts and a *prima facie* case is made if at the close of the prosecution case, the evidence is one which on full consideration might possibly in absence of explanation to the contrary be sufficient to sustain a conviction.

3. In the case of **R V Jagjiven M. Patel and Others I TLR 85** the Learned Judge stated thus:-

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a 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 conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion.”

4. In the instant case I heard nine (9) prosecution witnesses thus PW1-PW9. PW1, Erick Ochieng Okello got information regarding the assault of the deceased and rushed to the scene at the gate of Jaramogi Oginga Odinga University where there was a big crowd and found his brother the deceased who had been

beaten, sitted down and he was bleeding. He witnessed Omondi alias *Puriber* and Julius Oduor, the 3rd accused assaulting the deceased using stones and sticks; *Ninja*, also known as Ochieng Ochiek; the 1st accused Kennedy Otieno assaulting the deceased and taking him to Kamito. PW6, Collins Onyango Okello proceeded to the scene of the incident on 7/2/2017 and found a big crowd and was able to identify some people including Oduor, the 3rd accused; Kennedy, the 1st accused; Ninja the 2nd accused and Isaiah, the 4th accused. He stated the 2nd accused had a rungu which he was using to beat the deceased while the 1st and the 3rd accused were stoning the deceased. That they carried the deceased to Kalandini. PW8 placed all the accused persons at the scene of incident at Jaramogi Oginga University and stated the role each played and stated that the 4th accused is the one who paid him to take the deceased to the place where he was assaulted and finally killed. From the evidence of the prosecution witnesses PW1, PW2, PW3 and PW5, the doctor, there is no dispute, the deceased herein died and there is no dispute that the cause of death was due to most likely spleen laceration and intracranial bleeding.

5. I have very carefully considered the evidence adduced by the nine (9) prosecution witnesses and specifically the evidence of PW1, PW6 and PW8 who placed all the four accused persons at the scene of murder and gave detailed explanation on the role played by each of the accused person as well as the evidence of PW7, the doctor who confirmed the death of the deceased and the cause of the death as well as the evidence of the other prosecution witnesses. I have considered the provisions of **Section 306(2), of the Criminal Procedure Code**, as well as submissions by both defence counsel on no case to answer and response thereto by the State Counsel. **I have after consideration of the prosecution case been satisfied that the prosecution has established a *prima facie* case against the 1st, the 2nd, the 3rd and the 4th accused persons to warrant each one of them being put on his defence. The 1st, the 2nd, the 3rd and the 4th accused are accordingly placed on their defence.**

DATED AND SIGNED AT SIAYA THIS 2ND DAY OF MARCH 2017.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 2ND DAY OF MARCH 2017.

In the presence of:

M/S Odumba: for State

Mr. Adoyo: for 1st, 2nd and 3rd accused persons

Mr. Odongo: for 4th accused

A1 - Present

A2 - Present

A3 - Present

A4 - Present

Court Assistants:

1. George Ngayo

2. Patience B. Ochieng

3. Sarah Ooro

J.A. MAKAU

JUDGE