



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 60 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

BENARD KIPKURUI LANGAT.....ACCUSED

RULING

The accused **BENARD KIPKURUI LANGAT** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

***“On the 22nd day of July 2011 at unknown time at Timbwalo village Kaptagich in Kuresoi District Nakuru County murdered SAMMY LANGAT.*”**

The accused pleaded ‘**Not Guilty**’ to the charge. His trial commenced before this court on 1/3/2016. The prosecution called four (4) witnesses in support of their case.

The brief facts of the prosecution case were that the accused had been employed by the deceased as a herdsman, and had worked for the deceased for a period of about 2-3 years. The testimony of the witnesses was that the accused lived in a house provided for him in the compound of the deceased.

PW1 PAUL LANGAT told the court that he was a village elder in Timwalo sub-location. On 4/8/2011 he was informed that a man had been found dead inside a pit. **PW1** went to the scene and together with other villagers they searched the compound of the deceased. Inside a pit they recovered the body of the deceased. The matter was reported to police who commenced investigations. The accused was later arrested and charged with the murder of his employer.

At the close of the prosecution case, this court is obliged to evaluate the evidence on record and make a determination as to whether a prima facie case has been established sufficient to warrant calling upon the accused to defend the charge.

The definition of what constitutes a prima facie case was given in the case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] EALR**, where it was held thus

***“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”.*”**

In this case the fact as well as the cause of the death of the deceased have both been proved beyond reasonable doubt. **PW1** a village elder told the court that he was present when the body of the deceased was pulled out of a pit in his compound. **PW2 DAVID ROTICH**, a brother to the deceased also witnessed the recovery of the body of his brother. Both witnesses who knew the deceased well identified him as ‘**Sammy Langat**’.

PW4 DR. TITUS NGULUNGU told the court that he conducted the autopsy on the body of the deceased. **PW4** told the court that he noted multiple fractures on the head of the deceased as well as cuts on the cervical cord. The doctor opined that the cause of death was ‘**severe head injury with blood loss and shock due to sharp force trauma to the head and neck**’. He filled and signed the post-mortem report which was produced in court as an exhibit **P exb 1**. I am therefore satisfied and find that the deceased met his death due to a brutal attack to his person.

The crucial question is whether there is sufficient evidence to prove beyond reasonable doubt that it was the accused who so attacked and killed the deceased.

There was no witness who saw the accused assault the deceased in any manner whatsoever. Indeed there was no witness who saw the accused in the company of the deceased on the material day or at all.

All the court has been told was that the accused was employed by the deceased as a herdsman and they lived in the same compound. This alone does not prove that it was accused who killed the deceased. There is no suggestion of any motive that would have led the accused to murder his employer – one whom he had served for about 3 years. There was no evidence of any disagreement between the two.

PW2 made a vague allegation that accused had sold a cow belonging to the deceased implying that the motive for the murder may have been theft. There is no evidence that any such cow was ever sold. The court was not told who purchased that cow or for how much. There is no proof that any of the deceased’s cattle were missing. This remains a mere allegation and no evidence adduced to substantiate the same.

PW1 told the court that ‘**Andrew Ruto**’ phone him and informed him that the accused had killed his employer. The said Andrew Ruto was never called to testify in this case. It is not clear if this man actually witnessed the incident.

On his part **PW2** the brother of the deceased testified that accused had phoned ‘**somebody**’ and confessed that he had killed the deceased. **PW2** goes on to state that

“Accused had phoned one Benrose to say that he had killed the deceased.....”

Firstly this ‘**Benrose**’ was not called as a witness, thus this remains hearsay evidence which is not admissible as proof of the accused’s guilt. Secondly the rules regarding admissible confessions is clearly set out in Section 25A of the Evidence Act. A statement (confession) made to a person who was not called to confirm or deny this fact can in no way suffice as admissible evidence against the accused.

PW3 was merely an arresting officer. He had no valuable evidence to offer to the court. The prosecution failed to call the investigating officer in this case in order to fill the gaps and explain the decision to charge the accused. This omission seriously prejudiced the prosecution case.

All in all this court has been served with a cold dish of rumours, hearsay and immuendo. There is no direct and/or tangible evidence to implicate the accused in the murder of the deceased.

Based on the foregoing I find that no prima facie case has been shown. The evidence adduced does not even raise any ‘**suspicion**’ against the accused. If the accused elected to keep silent in his defence the evidence on record could not support a conviction.

For the above reasons, I enter a verdict of ‘**Not Guilty**’ and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated and delivered in Nakuru this 21st day of July, 2017.

Mr Kipsana for accused

Mr. Chigiti for DPP

Maureen A. Odero

Judge