



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL (MURDER) CASE NO.13 OF 2012

REPUBLICPROSECUTOR

VERSUS

FREDRICK OSINDO OPULI.....ACCUSED

R U L I N G

Introduction

1. The accused person herein, Fredrick Osindo Opuli is before this Court on one count of Murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on the night of 8th and 9th march 2012 at an unknown place at Namalasire village, Koyonzo sub location in Matungu district within Kakamega County jointly with another not before Court, murdered YUSUF OKOYO WESONGA. He pleaded not guilty to the charge.

2. The Prosecution called 4 witnesses and at the close of the Prosecution case Mr. Khayumbi Counsel for the accused asked the Court to determine whether, on the basis of the evidence on record, the accused person has a case to answer.

The Prosecution Case

3. The Prosecution case rests on the evidence of John Oron Masakhwe, PW1, Francis Olando, PW2 Number 61701 Police Constable Jackson Langat, PW3 and Dr. Juma Khayombe, PW4. PW1 (John) told the Court that on 09/03/2012, he left this house for the farm at bout 7.00a.m. At about 9.30a.m, two boys namely Geoffrey Anguche and Ochieng passed by his farm and informed him that someone was sleeping near the area where he was cultivating. He went to the place the boys had told him about and saw the body of his neighbour, the deceased herein. John then went and notified the deceased's brother who in turn reported the matter to the Police. John made a report of the incident to the village elder.

4. Later the deceased's body was taken to St. Mary's hospital mortuary to await Post Mortem examination which was carried out by Dr. Oluoch on 11/03/2012. The doctor's report which was produced by Dr. Khayombe as PExhibit 1 revealed that the deceased died because of a head injury secondary to trauma.

5. PW2, (Francis) stated that on 09/03/2012 while he was at his home, John informed him that the deceased who was his brother had died. He went and reported the matter to the local Administration Police. The Police later took away the body to the hospital mortuary. Francis also stated that when he saw the deceased's body, he noted some injuries on both cheeks.

6. Number 61701 Police Constable Jackson Langat told the Court that on 09/03/2012 he received instructions from his seniors to go to the crime scene which was at Namalasire village of Matungu division of Mumias district. On viewing the body of the deceased, PC Langat noticed several cut wounds on the head and also saw blood oozing from the mouth. The body was escorted to St. Mary's Mission Hospital Mumias for post mortem examination which was conducted on 11/03/2012.

7. PC Langat stated that from his investigations, the accused and the deceased were drinking changaa together at the home of Amisi Angure when a quarrel ensued between the deceased and one Indimuli. The deceased decided to go home but he was followed by the said Indimuli who had been chased away from the home by the owner of the changaa den. That was the last time the deceased was seen alive until his body was found lying on a footpath next to John's farm. The accused was subsequently arrested and charged with the present offence.

8. During cross examination, PC Langat told the Court that there was no evidence showing that the accused and the deceased quarrelled. He also testified that the deceased left the drinking den before the accused left.

Issue for Determination

9. The issue for determination is whether the evidence so far adduced by the prosecution has established a prima facie case requiring the accused to be put on his defence. In other words, is the evidence such that this Court would be prepared to convict if the accused does not say anything in his defence. Generally see **Bhatt –vs- R [1957] EA 332.**

Anaysis and Findings

10. I have carefully considered the evidence on record. I have also carefully considered the law and especially the principles set out in Bhatt's case (supra). After doing all the above, I have reached the conclusion that the Prosecution has not established a prima facie case requiring the accused person to be put on his defence. The reasons for saying so are as follows:-

In a case of murder, the Prosecution must prove the fact and cause of death. The Prosecution must also show that the death of the deceased was caused by an unlawful act or omission on the part of the accused and finally that the accused committed the unlawful act or omission with malice aforethought as defined by Section 206 of the Penal Code. From the evidence, it is clear that indeed the deceased died. It is also clear that the cause of deceased's death was severe head injury secondary to trauma. Apart from the fact and cause of death, the Prosecution has not shown how the deceased suffered the head injury and who inflicted it. The only statement made by Police Constable Langat was that the accused and the deceased were drinking together at the changaa den. Such evidence is not sufficient to confirm that it is the accused who inflicted the injury on the deceased's head. In any event, none of the witnesses who are alleged to have seen accused and deceased at the changaa den were called to testify as to that fact or the fact that the accused and the deceased left the changaa den together as suggested by Police Constable Langat.

11. The upshot of what I have said above is that the Prosecution case against the accused person cannot stand since there is no evidence connecting the accused with the injury suffered by the deceased nor is there any evidence to suggest even to the slightest degree that the accused had the necessary malice aforethought for the offence of murder. There is not even any evidence to support any other charge against the accused person.

Conclusion

12. In conclusion, I find that the accused person has no case to answer. I therefore make a finding that the accused person, Fredrick Osindo Opuli is not guilty of the murder of Yusuf Okoyo Wesonga and I acquit him accordingly under Section 306(1) of the Criminal procedure Code. Unless he is otherwise lawfully held the accused shall be released from prison custody forthwith.

13. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 1st day of January 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Omwenga (present) For State

Mr. Nyikuli (present) For Accused

Mr. Lagat - Court Assistant