



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO.28 OF 2013

REPUBLICPROSECUTOR

VERSUS

ANDREW MUYERA AMUKASAACCUSED

RULING

1. The accused herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that the accused on the 9th day of May 2013 at about 8.00p.m at Eshibinga sub location, Kisa West location in Khwisero District within Kakamega County murdered one JOASH ANUNGO AMUKASA. The accused denied the charges and a plea of not guilty entered.
2. The Prosecution called only two (2) witnesses. PW1 LUCIANA AMUKASU an elderly woman told the Court that both the accused and the deceased were her sons. On the material day she returned home from a funeral at around 7.30p.m but did not find her two sons. She prepared her food. As she sat in her house, she heard the accused shouting “mama nimeua Anungo.” This was about 8.00p.m. She left the house and went to the scene and saw the deceased body. She did not witness the incident but observed that the deceased had been cut with a panga. She also said that her two sons were drunk. The panga was recovered by the Police. She identified the accused in the dock. On cross examination she maintained that it was the accused who shouted that he had killed the deceased.
3. PW2 No.59058 P.C OMAR MOYO based at Khumusalaba Police patrol Base which is under Khwisero Police Station testified that on the 10th May 2013 at about 8.00p.m he was called by the in-charge Sgt Alex Ogutu who instructed him to go to the base where he met his colleague BONIFACE MUSYOKA. Together they went to the scene of crime and as they approached they met motorcycle operators who told them that they had met the accused who was running away and that the villagers were intent on killing him. They met the accused on the road and they arrested him. The villagers confirmed that he was the one. The two villagers were JOHN MAGANGA and ALEX ATONDO who were present. Accused was later taken to the Police Station.
4. The Prosecution closed its case after this Court refused to grant another adjournment. At this juncture, the Court is required to determine whether or not the prosecution has adduced sufficient evidence to warrant the accused person being placed on his defence. In arriving at such decision, this Court must take into account the fact that unless there is such evidence as can connect the accused to the offence for which he is charged, and also if the evidence on record is sufficient to lead to a conviction there would be no need to require the accused person to defend himself.
5. The standard of proof as to whether the Prosecution has established a prima facie case was laid down in the celebrated case of **RAMANLAL TRAMBAKLAL BHATT –VS- R [1957] E.A 332** as follows:-

(i) The onus is on the Prosecution to prove its case beyond reasonable doubt and a prima

facie case is not made out if at the close of the Prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.

(ii) The question whether there is a case to answer cannot depend only on whether there is 'some' evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence.

6. This Court has to establish whether a case has been made out against the accused 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 it is weighty enough to prove the case conclusively beyond reasonable doubt.
7. The Prosecution herein called PW1 who is the mother to the accused and the deceased herein. She was at home when accused shouted that he had killed the deceased. She saw the deceased's body the same night and confirmed the death of the deceased. She did not witness the killing. PW2 arrested the accused on the night of the incident. He too did not see the accused kill the deceased though he recovered the panga allegedly used for the killing. PW1 and PW2 properly placed the accused at the scene of crime. The two have established a prima facie case against the accused which warrants this Court to place him on his defence. He is accordingly placed on his defence as provided under Section 306 (2) of the Criminal Procedure Code.
8. In defending himself, the accused may give sworn or unsworn evidence. If he elects to give sworn evidence he may be asked questions both by the Court and the prosecution. If on the other hand he chooses to give unsworn evidence, he will not be asked any questions. Thirdly, the accused may elect to remain silent and let the Court decide the case on the evidence that is before it. In each situation the accused has a right to call witnesses.
9. I now call upon the accused to indicate to the Court how he intends to proceed with his defence.
10. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 11th day of April 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Omwenga (present) for the State

Mr. Nyikuli for Kundu (present) for the Accused

Mr. Lagat - Court Assistant