



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.25 OF 2010

REPUBLICPROSECUTOR

VERSUS

ZACHARIAH OENDO ISAAC.....ACCUSED

RULING

1. The accused person herein, **ZACHARIAH OENDO ISAAC** is charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.
2. The particulars of the charge are that on 13th March 2011 at Nyangeru village in Kisii Central District within Kisii County murdered **ISAAC OENDO**.
3. In deciding on whether or not an accused person has a case to answer after the close of the prosecution's case, the standard of proof to be applied is whether the prosecution has established a prima facie case against the accused to warrant his being put on his defence.
4. In the case of **Ramanlal Trambaklal Bhatt –vs- Republic (1957) E.A. 332** the standard of proof was laid down 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's case, 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.”

5. In **R –vs- Jagjivan M. Patel and others I TLR 85**, it was held;

“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 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 the 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 conviction.”

6. In the instant case, the Prosecution called a total of 4 witnesses and I only heard the evidence of PW4. I have however perused the handwritten proceedings that capture the testimony of

witnesses who had previously testified before Sitati J and Wakiaga J.

7. PW1, Dr. Oduor Cleveland was the medical officer who carried out the post mortem examination on the body of the deceased and determined the cause of death to be cardio respiratory arrest due to severe haemorrhage following a depressed skull fracture as a result of trauma with a blunt object.
8. PW2 Elizabeth Kerubo who was the key witness in this case testified that on 13th March, 2011, at about 6 p.m. while in her house cooking, she heard a scuffle outside and upon going out to check, she found the deceased lying and crying on the ground. She stated that the deceased, who was her husband, had come from a drinking spree. She stated that she did not see the person who had hit the deceased. PW2 was declared a hostile witness by the prosecution and upon being cross-examined by the state counsel on the contents of her statement to the police regarding the incident, she maintained that she did not know or see who had hit the deceased. She maintained that she did not tell the police that the accused had killed her husband.
9. PW 3 Joseph Osoro Isaac, only witnessed the post mortem examination being conducted on the body of the deceased.
10. PW4 was No. 67867 P.C. Alfred Nasio merely bonded witnesses to attend court but did not investigate the case. He also produced the stone allegedly used to kill the deceased as P. Exhibit 2.
11. Upon evaluating the evidence tendered by the 4 prosecution witnesses, I am of the view that no prima facie case has been established against the accused person herein.
12. None of the witnesses who testified mentioned the accused as having been at the scene of the crime or having participated in the said crime.
13. The only witness who was at close proximity to the scene of the crime was PW2, who happens to be the mother of the accused herein. She was categorical that she did not see the person who had hit the deceased and maintained that she did not tell the police that the accused killed the deceased.
14. Under the above circumstances, there is no evidence whatsoever linking the accused person, even remotely, to the death of the deceased.
15. Consequently, I find that no prima facie case was established against the accused. It is therefore my duty to acquit him and I do so under section 306 (1) of the Criminal Procedure Code. The accused shall be set at liberty forthwith unless he is otherwise lawfully held.

Dated, signed and delivered in open court this 4th day of May, 2016

HON. W. A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Okenye for the Accused
- Omwoyo court clerk