



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL (MURDER) CASE NO. 40 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN ICHAMINYA AVUTAGA.....ACCUSED**

**RULING**

**Introduction**

1. The accused person herein is charged with murder contrary to section 203 as read with section 204 of the Penal Code wherein it is alleged that on the 7<sup>th</sup> day of March, 2011 at Kigamu Sub-location in Sabatia District within Western Province he murdered Margaret Vugutsa Ichaminya. The accused denied the allegations when he appeared for plea on 06.07.2011 before Hon Mr. Justice Luka Kimaru. The first time the accused person appeared in court was on 14.06.2011.

2. At the close of the prosecution case which involved 7 witnesses, this court was called upon to make a ruling on whether the prosecution has established a prima facie case against the accused.

**The Prosecution Case**

3. Briefly, the facts of this case are that the deceased who was a primary school teacher and the accused herein were a married couple, but their relationship was not one of the marital bliss. On the material day, the two of them quarreled and as a result, thereof, the deceased was injured. The deceased was assisted by her fellow teachers of Vuyiya Primary School and taken to Mbale Hospital. The deceased succumbed to the injuries on 05.06.2011. Thereafter the accused was arrested and arraigned before court to answer a charge of murder.

4. PW4, Joel Chamwenda, chief of North Maragoli Location testified that on 03.04.2011, the deceased went to him seeking his help to get a transfer on grounds that the accused person herein was a threat to her life due to domestic problems. That after enquiries, he confirmed that the report was true and that the accused used to beat and threaten the deceased.

5. Dr. Dickson Mchana Mwaludindi testified as PW6 and told the court that during post mortem examination, both lungs of the deceased were fixed on the chest wall at the back with white masses holding the right lung to the chest bone. The stomach was very red which was evidence of ulcers. The doctor also testified of healed fractures on the 3<sup>rd</sup> to 8<sup>th</sup> ribs on the right side and the 3<sup>rd</sup> to 6<sup>th</sup> ribs on the left. The doctor formed the opinion that the cause of death was accumulation of fluid within the lungs due to heart failure with evidence of healing on the skeletal injuries of the ribs and the skull. The post mortem report was produced as Pexhibit I.

**The Law**

6. The case of **Bhatt –vs- Rex[1957]EA 332** defined what a prima face case established is. In the body of the judgment in the above case, the Court referred to a passage from the judgment of Wilson Judge in the case of **R- Vrs – Patel & others ITLR (R ) 85** where it was said that;-

“.....all the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make his 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 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.”

**Analysis and Determination**

7. Applying the above principles to the instant case, and upon a careful consideration of all the evidence on record, I am satisfied that the prosecution has established a prima facie case against the accused person requiring him to make a defence to the charge of murder.

8. In this regard, the accused may give sworn or unsworn evidence. He has a right to call witnesses to support his defence. If he gives sworn evidence, he may be asked questions both by the court and the prosecution. The accused may, if he so wishes, also choose to remain silent and let the court decide the case against him on the evidence that is on record.

9. The accused person may now proceed to inform the court how he intends to conduct his defence.

Orders accordingly,

Ruling delivered, dated and signed in open court at Kakamega this 6<sup>th</sup> day of October 2016

**RUTH N. SITATI**

**JUDGE**

In the presence of;-

.....Mr. Jamsumbah(present).....for state

.....Mr. Kundu(present).....for the accused

.....Mr. Okoiti.....Court Assistant