

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 16 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

HARON JOSEPH ACHOM.....ACCUSED

RULING

[1] The accused person herein, **Haron Joseph Achom**, was arraigned before the Court on **17 February 2014**, on the Information by the Director of Public Prosecution that he had committed that offence of murder, thereby contravening the provisions of **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. It was alleged that on the **27th day of January 2014** at around 2.00 a.m. at Laini Moja Village in Nzoia Location within Kakamega County, he murdered Alice Koroma. The Accused denied that Charge and the Prosecution called evidence from a total of 5 witnesses in proof of the allegations.

[2] Pursuant to **Section 306(1)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**, it is imperative that, at the close of the Prosecution Case, a determination be made as to whether a *prima facie* case has been made out against the accused person to require him to answer. The rationale for this was aptly expressed in **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** thus:

Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is 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.”

This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case.

Nor can we agree that the question whether there is a case to answer depends 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. It is true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. 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.”

[3] Accordingly, I have given careful consideration to the evidence on record with a view of ascertaining whether it is evidence upon which the Court would be prepared to convict if no explanation is offered by the accused person. There is credible evidence that the deceased herein, **Alice Koroma**, died on the night of **27 January 2014**. Her sister **PW1** told the Court that she received the report at about 5.00 a.m. from the accused but did not believe him. Thereafter, her mother went to her house and confirmed the occurrence. She consequently proceeded to the house in which the deceased cohabited with accused as husband and wife. She found the body of the deceased lying on the bed with injuries on the neck.

[4] **PW3**, a neighbor of the accused also testified that she heard the couple fighting on the fateful night; and that the deceased was pleading with the accused for forgiveness. This was before she (**PW3**) left for hospital as she was feeling unwell that night. She later learnt that the deceased had died. **Dr. Soita PW4** who testified herein on behalf of **Dr. Odhiambo** testified that the body was found with multiple bruises, but more so on the hands in addition to a swelling on the scalp and a deep cut on the head. Internally, there was a fracture of the upper part of the skull with haematoma. Hence, the conclusion reached by **Dr. Odhiambo** was that the cause of death was cardio-respiratory failure due to the head injury.

[5] In the circumstances, there is *prima facie* proof that the injuries that led to the death of the deceased were inflicted by the accused. He is accordingly hereby placed on his defence to answer the Charge of Murder pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 29TH DAY OF JULY, 2019

OLGA SEWE

JUDGE