

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0015 OF 2015

UGANDA **PROSECUTOR**
VERSUS
MALAJA KANIZIO **ACCUSED**

Before Hon. Justice Stephen Mubiru

RULING

The accused in this case is indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that the accused on the night of 15th August 2014 at Mitia village in Arua District murdered one Odria Siginia. The accused pleaded not guilty to the indictment. In a bid to prove the indictment against the accused, the prosecution adduced P.F 24 which was admitted at the preliminary hearing, called one additional witness and closed its case.

At the close of the prosecution case, section 73 of *The Trial on Indictments Act*, requires this court to determine whether or not the evidence adduced has established a *prima facie* case against the accused. It is only if a *prima facie* case has been made out against the accused that he should be put to his defence (see section 73 (2) of *The Trial on Indictments Act*). Where at the close of the prosecution case a *prima facie* case has not been made out, the accused would be entitled to an acquittal (See *Wabiro alias Musa v R [1960] E.A. 184 and Kadiri Kyanju and Others v Uganda [1974] HCB 215*).

A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence (See *Rananlal T. Bhatt v R. [1957] EA 332*). The evidence adduced at this stage, should be sufficient to require the accused to offer an explanation, lest he runs the risk of being convicted. It is the reason why in that case it was decided by the Eastern Africa Court of Appeal that a *prima facie* case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited prosecution evidence.

The prosecution though at this stage is not required to have proved the case beyond reasonable doubt since such a determination can only be made after hearing both the prosecution and the defence.

There are mainly two considerations justifying a finding that there is no *prima facie* case made out as stated in the Practice Note of Lord Parker which was published and reported in [1962] *ALL E.R 448* and also applied in *Uganda v Alfred Ateu* [1974] *HCB 179*, as follows:-

- a) When there has been no evidence to prove an essential ingredient in the alleged offence, or
- b) When the evidence adduced by prosecution has been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it.

It was the submission of the learned counsel for the accused on state brief, Mr. Onencan Ronald that the prosecution had failed to establish a *prima facie* case against the accused since they had not led evidence to establish the cause of death. Without proof that this was a homicide, there was no evidence led regarding two material ingredients while cross-examination had revealed that the evidence implicating the accused was based on mere suspicion. In response, the learned State Attorney, Mr. Emmanuel Pirimba conceded that there was no evidence to prove the cause of death of the deceased.

At this stage, I have to determine whether the prosecution has led sufficient evidence capable of proving each of the ingredients of the offence of murder, if the accused chose not to say anything in his defence, and whether such evidence has not been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it. For the accused to be required to defend himself, the prosecution must have led evidence of such a quality or standard on each of the following essential ingredients;

1. That death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

Regarding the required proof of death of a human being, the fact of death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the

deceased and attended the burial or saw the dead body. Although there is no post mortem report, the testimony of P.W.2 Eriko Charles, a grandson of the deceased who saw the body and attended the funeral is sufficient as proof at this stage that Odria Siginia is dead.

As to whether that death was as a result of an unlawful act, it is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law. In the instant case, there is no direct evidence explaining the circumstances in which the deceased died. P.W.2 Eriko Charles suspected that her death involved foul play on the basis of his observation that the neck was swollen and was too flexible. The quality of this evidence is inadequate and incapable of ruling out natural or accidental death. No reasonable tribunal could on basis of that evidence draw the inference that Odria Siginia's death was a homicide. It is unfortunate that the body of the deceased was interred before the conduct of an autopsy. For that reason, the prosecution has failed to lead credible evidence capable of explaining the cause of death as having been unlawful.

As to whether this death was actuated by malice aforethought, malice aforethought is defined by section 191 of the *Penal Code Act* as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether anyone intended to cause the death of the deceased or knew that death would result from their act. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used (in this case none was recovered) and the manner it was applied (fatal injury only suspected by lay observation) and the part of the body of the victim that was targeted (the neck suspected). The ferocity can be determined from the impact (suspected strangulation). In the circumstances, malice aforethought could only be inferred if there was evidence of an unlawful cause of death. Since the evidence led so far is incapable of ruling out natural or accidental death, no reasonable tribunal could in the circumstances conclude that Odria Siginia's death was caused with malice aforethought. For that reason, the prosecution has failed to lead credible evidence capable of supporting such a finding.

Lastly, as to whether there is sufficient evidence to implicate the accused as having caused Odria Siginia's death, unlawfully and with malice aforethought, this required the production of credible direct or circumstantial evidence placing the accused at the scene of the crime as the perpetrator of the offence. In this, the prosecution relies entirely on circumstantial evidence.

P.W.2 suspects accused only because he used to reside with the deceased, he was not at home when she was discovered dead but he met him coming from the direction of Congo that morning as the witness went to inform other relatives about the death which had occurred, the accused did not sit with other mourners at the burial but was seen instead at the precincts of the compound harvesting bitter berries for sale. This in my view is not circumstantial evidence of the quality that irresistibly points to the guilt of the accused. It is also equally consistent with the behaviour of an ill mannered person. No reasonable tribunal could on the basis of that evidence conclude that the accused caused Odria Siginia's death. For that reason, the prosecution has failed to lead credible evidence capable of supporting such a finding.

Having evaluated the evidence, I have formed the opinion that if the accused chose to remain silent, this court would not have evidence sufficient to hold him responsible for the death of the deceased. I therefore find that no prima facie case has been made out requiring the accused to be put on his defence. I accordingly, find the accused not guilty and hereby acquit him of the offence of Murder c/s 188 and 189 of the *Penal Code Act*. He should be set free forthwith unless he is lawfully held on other charges.

Dated at Arua this 8th day of February, 2017.

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Stephen Mubiru
Judge.