



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 6 OF 2016

REPUBLIC OF KENYA.....PROSECUTOR

VERSUS

CHARLES KARANJA WANJIRU.....ACCUSED

JUDGMENT

1. The Accused herein was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The Information states that on the night of 19th July 2014 at New Perennial Bar within Rungiri area, Kiambu County, he murdered **Michael Mwangi Njoroge**. He denied the charge and was represented by Mr. Muchiri.

2. The prosecution called eight witnesses. The prosecution case was that the deceased resided at Rungiri as did the Accused and other key witnesses. On 19th July 2014, **Grace Wanjiru** (PW1) a waitress at Perennial Bar Rungiri was on duty selling alcohol to customers. The deceased had come to the bar at 4.00pm and started drinking. He was seated in a back room area of the bar.

3. Other patrons at the bar included **Lucy Wanjiku** alias "**Shiku**" (PW4). At about 9.30pm the Accused entered the bar and made an order. But before he could settle down, he was invited by the deceased to join him in the backroom. He agreed. Not long afterwards, **PW4** while on the way from the washroom near the backroom, heard a loud thud. On entering the backroom, she found the Accused seated and the deceased lying on the floor, apparently having fallen. She quickly summoned PW1 having noted that the deceased was bleeding from the back of his head. The Accused told PW1 that the deceased had disturbed him with his noise, and he had pushed him off.

4. The bar operator was notified, and it appears that soon after, the Accused went home and briefed his wife one **Margaret Njeri** who proceeded to the home of the deceased and informed the deceased's wife **Veronica Kanuthu Mburu** (PW2) of the incident. PW2 mobilized the deceased's brother **Charles Njoroge Karanja** (PW3) and others to proceed to the bar. The party arrived after the deceased had been placed outside the bar. He was bleeding profusely from the head. A taxi was called and the deceased escorted to a local hospital. The deceased was however pronounced dead on arrival.

5. A report was made at Kikuyu Police Station by the relatives of the deceased who also found the Accused at the station apparently on the same mission. He was detained. On 19/07/2014, **Cpl Anunda** (PW8) a scenes of crime officer visited Perennial Bar and took photographs. The postmortem examination of the deceased's body was carried out by **Dr. Njeru** (PW7) on 23/07/2014. The cause of death was the injury to the back of the head caused by blunt object. The Accused was subsequently charged.

6. The Accused elected to make a sworn statement upon being placed on his defence. He called two witnesses. He testified that on the material date, he left work and purchased some take away drinks. But at 8.00pm he decided to go to Perennial Bar where he met the deceased, a cousin and neighbours already at the bar seated at a veranda. The deceased was drunk and rowdy. The Accused gave him some Kshs. 40.00 before proceeding to sit in a different room and started to drink.

7. Presently, the deceased first moved to the counter before approaching the Accused's table. He slapped the Accused on the back and the deceased then fell backwards. He bled on the back of the head. The Accused and a waitress took the deceased, then inert, outside the bar. On noticing he was dead, the Accused rushed home and reported to his family which in turn made a report to the family of the deceased while he proceeded to Kikuyu Police Station intending to report. When he eventually did, he was placed in the cells after a brother of the deceased claimed he had killed the deceased. His blood samples were taken and he was later charged. He claimed the deceased was disabled due to a deformity in his legs and would fall often when drunk.

8. The Accused's two witnesses were **Patrick Waweru Waiyaki** (DW1) and **Charles Githu Karanja** (DW2). The former testified that he was having drinks at Perennial Bar on the material night. The Accused and deceased were also at the bar but in a different area. He heard a thud and later when he went there saw a pool of blood and the deceased lying on the ground. He was moved outside. He claimed that the deceased had suffered a disability on his legs.

9. DW2 stated that he was the deceased's brother and cousin to the Accused. He claimed that the deceased had suffered polio as a child

hence the disability affecting his legs and was rowdy when drunk. He testified that there was no disagreement between the Accused and deceased prior to the materials date.

10. Although the court had directed that parties file closing submissions, only the DPP complied.

11. The court has now considered the evidence on record and submissions. There is no dispute that the deceased and Accused were drinking alcohol at Perennial Bar on the material night. The Accused admitted under cross-examination that he was alone with the deceased at the time the deceased allegedly fell backwards and sustained a head injury, and that before the deceased fell, he had engaged the Accused in a conversation.

12. There is hardly any dispute that the deceased died as a result of an injury sustained on his head when he fell down. The post mortem report indicates that the deceased sustained a laceration measuring 6cm long and internally had haematoma in the occipital region and intracranial bleeding with clots. The injuries were caused by blunt trauma. This injury is consistent with a fall, and several witnesses including PW4 and DW1 confirm hearing a thud before seeing the deceased lying with an injury to the back of the head and bleeding profusely. This disposes of the first two ingredients of the offence of murder, namely, death of the victim and the cause thereof.

13. The court must now determine whether the Accused, of malice aforethought inflicted the said injuries on the deceased. The evidence tending to connect the Accused with unlawful action causing death is both circumstantial and direct. Of the former, the evidence of PW1, PW4 and the Accused himself indicated that prior to the thud being heard, the Accused and deceased were seated alone in the backroom of the bar. The Accused person stated that before the deceased allegedly fell on his own, he had slapped the Accused on the back, saluting him as his relative. Thus, at the moment the deceased allegedly fell, he was within close proximity of the Accused and nobody else was present.

14. Direct evidence by the prosecution concerning how the deceased fell down was supplied by PW1 who stated that, upon being summoned by PW4, she had gone to the backroom and witnessed the deceased lying on his back and bleeding on the head. The Accused himself was standing and he told PW1 that he had pushed the deceased because he had pestered him. She reiterated this statement during cross examination and asserted that the Accused had answered her query as to what had transpired by stating that: -

“The deceased made too much noise, and then I pushed him.”

15. The fact that PW4 claimed in cross-examination that she did not see PW1 speak to the Accused does not detract from PW1's evidence. To my mind, the testimony is believable. PW1 was summoned by PW4 to the scene because she was evidently in charge of the bar operations and finding only the two men in the room, it is believable that her first and most natural reaction would be to ask the Accused what had happened.

16. The Accused's defence was that the deceased merely fell on his own and injured his head because he had a deformity on his legs. This explanation defies logic. Although there is evidence that the deceased was drunk and perhaps rowdy, it is not possible that a man standing up would without being pushed fall at such force that he sustains a fatal gush on his head. Assertions that the deceased suffered disability and was therefore physically unstable were made by the defence in the eleventh hour. The deceased's wife and brother who testified as PW2 and PW3 were the best placed people to comment on the alleged disability. The defence did not put this matter to them during cross examination.

17. In any event, even the defence witnesses admitted that prior to the incident, the deceased was walking about the bar on the material date. Had his legs collapsed as suggested, the deceased would more likely have landed on his face, with his hands in front of him, and not backwards. In the natural course of things, that is what would have happened. Secondly, he would most probably have sustained mere bruises from such a fall and not a 6 cm long gush that caused severe bleeding and death within an hour. The court therefore dismisses the Accused's defence as to the manner in which the deceased was injured.

18. As he had confessed to PW1, the truth is that the Accused, perhaps irritated by the pesky and drunk relative pushed the deceased away so forcefully that he fell to his death. There is however evidence that the two men had no previous disagreements and were both probably drunk at the time of the incident.

19. The circumstances surrounding the incident appear to negative malice aforethought on the part of the Accused. Despite the unreasonable force employed to ward off the deceased's drunken disturbances, there is nothing to suggest that the Accused had formed the intention or had knowledge that his action, albeit unlawful, would result in the death of the deceased.

20. In the circumstances the court is satisfied that the prosecution evidence establishes beyond any reasonable doubt, the offence of Manslaughter contrary to section 202(1) as read with section 205 of the Penal Code. Accordingly, the court finds the Accused guilty and convicts him on the said lesser offence.

DATED AND ELECTRONICALLY SIGNED ON THIS 16TH DAY OF MARCH 2021.

C. MEOLI

JUDGE

DELIVERED AND SIGNED AT KIAMBU ON THIS 23RD DAY OF MARCH 2021.

M. KASANGO

JUDGE

In the presence of:

.....For Prosecution

.....For the Accused

Accused - Present

.....Court Assistant