



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CRIMINAL CASE NO. 13 OF 2016

REPUBLIC.....PROSECUTOR

=VRS=

GEOFFREY OGETO ANYONA.....ACCUSED

JUDGEMENT

The accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on the night of 10th October 2014 at Tombe Shopping Centre Kioguto Sb-location in Manga Sub-county within Nyamira County the accused murdered Sebastian Momanyi Apoko.

Briefly the facts of the case are that on the material day at about 6.30pm the accused and the deceased went to a premises where Douglas Misati Onger (Pw6) was operating a pool table. They found Job Mokaya (Pw2) and Walter Mwamba Ogechi (Pw3) playing pool. Douglas Misati (Pw6), the proprietor of the pool table was present. The accused and the deceased were having an altercation and so Douglas (Pw6) ejected them from the premises. He was assisted by Job (Pw2) and Walter Mwamba (Pw3). The three witnesses testified that after about ten (10) or fifteen (15) minutes after they had ejected the two they heard wails outside and they went to the scene of the wailing they found the deceased lying on the ground. He was dead but the accused was nowhere to be seen.

Apoko Momanyi Oigwa (Pw5) the father of the deceased testified that when word reached him that his son was lying on the road he went there and found some police officers guarding the body. He stated that he realized his son was dead because the police officers would not let him move him (deceased). After a while the body was taken to Nyamira County Hospital and on 15th October 2014 Dr. Omoti (Pw4) performed a post mortem which revealed that the cause of death was cardiorespiratory arrest secondary to severe head injury with an epidural haematoma. Dr. Omoti (Pw4) testified that the deceased had a depressed skull fracture (4cm wide and 2cm deep) on the left parietal area. He stated that the brain tissue had clotted blood on the left parietal region.

This court heard that the accused was not seen in the area until 31st July 2016 when he allegedly accosted Ruth Kwamboka (Pw1), a sister of the deceased, at a Church in the area and asked her for forgiveness for killing her brother. Ruth (Pw1) testified that she raised the alarm and soon villagers went to the scene and apprehended him and handed him over to the police. He was subsequently charged with this offence.

In his defence the accused who gave evidence on oath stated that on the material day at about 7pm he went to play pool but because he was drunk he was chased away by the pool attendant Douglas Misati Onger. He testified that he was alone when he left the premises and that he went home. He denied that he was with the deceased and further denied that he killed him. He contended that he did not see the deceased even on his way home and that this charge is a fabrication and it ought to be dismissed. He told the court that he does not understand why he was arrested. While conceding that he was arrested two years after the death of the deceased he denied he had fled the area and stated that he was at home all along only that he used to leave home early to go to work. He vehemently denied that he went into hiding. He stated that he even used to go to play pool and Douglas and Walter could attest to that.

In summing up, Mr. Kaburi, Learned Counsel for the accused submitted that the prosecution did not prove its case to the standard required. He submitted that all the witnesses merely explained how they met the deceased lying on the road with injuries. He urged this court to treat the evidence of Douglas Misati (Pw6) with caution. He submitted that it was obvious that the witness knew what befell the deceased but he instead chose to lie. He contended that this witness together with Job Omete (Pw2) and Walter Ogechi (Pw3) were the ones who chased the deceased and the accused away because they were drunk. Counsel stated that they may have been the ones who assaulted the deceased after ejecting him from the premises. Counsel contended that the evidence of Pw6 was that the accused and the deceased were totally drunk and incapable of hurting each other. Counsel submitted that the accused went home after being ejected and that the deceased might have gone there much later. Counsel stated that Pw6 had a motive to assault the deceased because he was making noise in his premises unlike the accused who had no differences with the deceased. He contended that the accused was charged for an offence he did not commit and urged this court to acquit him.

On his part Prosecution Counsel Mr. Jami submitted that the accused was arrested after two years and his defence did not outweigh the evidence of the prosecution witnesses who stated that the accused and the deceased were ejected from the premises together. He urged this court to find that the accused's flight from the area reflected guilt on his part and that the prosecution has proved its case beyond reasonable doubt.

The issues for determination in this case are: -

- Whether the accused person caused the death of the deceased.
- Whether he did so by an unlawful act.
- Whether he did so of malice aforethought.

This court heard that the deceased died as a result of a severe head injury. He had a depressed skull fracture on the left parietal region which was 4cm wide and 2cm deep. His brain tissue had clotted blood on the left parietal region. His clothes did not have blood. These injuries and the cause of death are consistent with the evidence of the prosecution witnesses that the body did not appear to have any injuries as he did not have blood. The witnesses may however not have noticed the injuries since it was at night. The only person who did was the deceased's father (Pw5) who noticed that the deceased had a cut on the head. A short while before he was found on the road dead the deceased had been seen at a pool bar and although he was drunk there was nothing wrong with him. The evidence of the prosecution witnesses and the results of the post mortem leave no doubt that he was killed. I further find and hold that although there is no direct evidence linking the death of the deceased to the accused there is sufficient circumstantial evidence pointing to his guilt.

Firstly, he was the last person to be seen with the deceased. Pw2, Pw3 and Pw6 gave very consistent testimonies of the accused and the deceased going into the pool bar together and being ejected together. I believed these witnesses given that they remained very consistent and unshaken even upon rigorous cross examination by defence Counsel. Moreover, even the accused corroborated their evidence to some extent. He conceded having gone to the premises to play pool and narrated how he was ejected by Pw6 for being drunk. The only thing he refused to admit is that he had gone to the pool bar with the deceased and that they were ejected together.

The second inculpatory fact is that the accused had an altercation with the deceased. Indeed, that was the main reason they were ejected from the pool bar by its proprietor (Pw6). Nobody seems to know what caused the altercation but there is credible evidence that it is what caused the two to be ejected. That coupled with their drunkenness. The altercation most likely culminated in the accused assaulting the deceased. Motive is however not a necessary ingredient of the offence of murder.

Thirdly, there is credible evidence that the accused fled the area and did not return until after two years. Even though he claims to have been the deceased's friend he did not even stay to attend his funeral and subsequent burial and that is very telling. The court heard that he was not seen again in the area until 2 years later when he accosted the deceased's sister causing her to raise an alarm which led to his arrest a fact which he admitted in cross examination. This court did not believe his testimony that the reason people were not seeing him was because he used to leave early to go to work. It is impossible that even his own family members would have failed to see him.

The fact that he had an altercation with the deceased, the fact that they were thrown out of the pool bar together, the fact that the deceased was found dead shortly after they left and the accused was himself nowhere to be found and the fact that he fled the area immediately and stayed away after the death of the deceased are in my view inculpatory facts which cannot be explained on any other hypothesis other than that of his guilt. In his defence he admitted that he knew Pw2, Pw3 and Pw6 and stated they had not disputed with him. It is my finding therefore that they had no reason to lie against him and for that reason the submission by his Counsel that they framed him is farfetched and is not supported by evidence.

Evidence that the accused and the deceased had an altercation and the nature of the injuries sustained by the deceased establish that he acted of malice aforethought. The head injury was so severe that the deceased could not have survived. It is clear from the injury that the accused either intended to cause the death of the deceased or to cause him grievous harm. I am satisfied that the accused killed the deceased by an unlawful act and all the ingredients of murder have been proved against the accused person beyond reasonable doubt.

I find the accused guilty of murder contrary to Section 203 as read with Section 204 of the Penal Code and convict him accordingly.

Dated, signed and delivered in Nyamira this 25th day of July 2019.

E. N. MAINA

JUDGE