



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 104 OF 2013

REPUBLIC.....PROSECUTOR

VS

JULIUS KITHIRIME.....ACCUSED

JUDGMENT

The accused Julius Kithirime was charged on 11th December 2013 with offence of murder contrary to Section 203 as read with section 204 of the Penal Code.

Particulars were that Julius Kithirime on the 17th day of October 2012 at Kaumone village, Akirangondu Location, Igembe, North District within Meru County murdered Francis Mwiti.

The prosecution case tendered by PW1 Wilson Mutembei PW1, Shadrack Kiile PW2, Julius Ntongandu PW5 was that the accused and 2 other people known as Musiku and Mwiti beat the deceased on 15th August 2012 at 10.00 am. Evidence was tendered that accused person herein had an axe or jembe handle which he used to hit the deceased on the head and which he fell to the ground and the other 2 kicked him.

PW1 said when he and other people heard screams and rushed to the scene the 3 assailants escaped from scene. PW2 said he was with the deceased when the accused and his 2 companion attacked the deceased and he was aware because he feared they could beat him as well as they were.

PW3 said when he found accused together with Musiku and Mwenda beating Mwiti, he wanted to intervene but they wanted to beat him.

PW5 said PW1 came to see me and assisted him to try and help the deceased. PW1 and PW5 took the deceased to Muthara Hospital from where he was later referred to Meru Teaching and Referral Hospital where he died 2 months later while undergoing treatment.

PW1, PW2 and PW5 said the suspects escaped from the village and it was later accused herein was traced and charged.

PW5 said accused claimed the deceased had stolen something from his house but didn't say what it was and didn't see the thing claimed to have been stolen.

PW1, PW2 and PW5 said the jembe stick the accused used was not recovered as he escaped with it.

PW3 the deceased's persons brother identified the body for post mortem. He said corroborated PW1's evidence that accused had told the deceased mother to warn her son as he would kill him.

PW6 Dr. Charles Njeru proceeded post-mortem report filed by Kr. Kimani who conducted autopsy on the body of the deceased established that death was caused by blood on the brain and injury to the right leg. Dr. Charles Njeru said that trauma to the deceased person's leg led to injection of soft tissue which caused cellulites.

The prosecution was not able to avail the investigating officer and they had their case closed from 31/5/2018 upto the time seeking a case to answer was determined the prosecution had not availed the investigating officer.

The accused was placed on defence based on evidence of the prosecution witness and in his sworn statement he said that on 15th August 2012 he was at home. He said the deceased was his friend and they used to stay and work with him since 2000.

He said on the material day he and the deceased picked 2kg of miraa from his farm and went to sell at Mwingine market. That after selling they started drinking and got drunk.

That when the deceased wanted 500 and he refused to give him. That on the way home the deceased said accused had wronged him in presence of other people and that he was to take accused person's money.

That the deceased held him by the shirt holder to forcefully take his money and a struggle ensued. That some one came and separated them. That the deceased wanted to hit him with a stone but he was restrained and they went their separate ways. That in the evening the deceased and his cousin Mutembei went to his house and started abusing him but he didn't come out of the house.

That the next day he went for the deceased to come so they could get to work but he didn't see him. That when he went to the deceased home he found he had left with Wilson. That in the evening when he saw them they started abusing him.

That on 17/8/2012 I heard the deceased had gone to hospital and was admitted. That on 19/8/2012 he told Wilson they should visit the deceased in hospital but Wilson said they should go on 20/8/2012. That on 20/8/2012 while he was with Wilson, Wilson made a phone call to his brother who came with Administration Police who arrested him and he was taken to Laare Police Station and charged with offence of assault. He produced charge sheet for grievous harm – Exh 1 Maua Court. He said he was released on bond and the case was mentioned upto November 2013 when he was remanded in police custody and charged with murder.

He said the deceased was his friend and workmate they never differed. Accused said in cross-examination he fought with the deceased but he tied his bear hands. He said that when deceased held him they struggled and fell and he was on top of the deceased.

He said Jeremiah separated them. He said they went to his farm and picked 2kgs of miraa from his farm.

Upon close of defence case submissions were filed.

From the evidence on record for the prosecution and defence as well as submissions it is not indispute death occurred.

What is in dispute is whether the death occurred as a result of an unlawful act or omission committed by the accused and whether the unlawful act or omission was actuated by malice after thought on the part of the accused person.

The accused person puts himself at the scene but claims that they had sold miraa and gone to drink with the deceased and that on their way home a fight ensued but they were separated and they went their different ways, whereas the accused claims that Jeremiah separated them, PW5 said when he found accused and 2 others beating the deceased while accused was armed with a jembe stick, the 3 wanted to beat him when he wanted to intervene and stop them.

PW2 said that he was with the deceased on their way to go and sell miraa they had plucked from the farm when they met the accused and 2 others.

Who attacked the deceased whereas accused hit the deceased on the head with jembe handle/stick and when he fell the 2 others kicked him.

PW1 said when he heard screams on the material day at 10.00am he rushed to scene and found the accused and 2 others beating the deceased who was on the ground and when they saw him they escaped. Indeed the post mortem results show the deceased died due to bleeding in the brain corroborated evidence of PW1, PW2 and PW5 that deceased was hit on the head.

The accused person claims that later in the evening of the material day the deceased and Mutembei went to his house and hurled insults at him. This is contrary to PW1 and PW5 evidence that from scene of assault they took the deceased to report the assault after which they took him to Muthara hospital where he was admitted but after some days was transferred to Meru Teaching Referral Hospital where he died 2 months later while still undergoing treatment.

In the submissions it is claimed that accused relied on the defence of provocation, intoxication, self defence.

The accused person claim that he was provoked and that he beat the deceased in self defence is not supported.

PW2 said they were on the way to the market about 10.00 am in company of the deceased when accused and 2 of his companion met them and attacked the deceased, PW1, PW2 and PW5 didn't say the deceased was drunk when he was attacked and the accused didn't put any such questions to them.

This court finds that the accused persons defence of intoxication, provocation and self defence cant stand in consideration of the prosecution witnesses evidence.

This court finds that the prosecution has proved beyond all reasonable doubt that accused murdered the deceased and that his action was actuated with malice because he was armed with a weapon meant to inflict serious injuries and he aimed at the accused person's head which indeed caused bleeding into the brain leading to his death.

The accused is guilty and is convicted

HON. A.ONG'INJO

JUDGE

JUDGMENT SIGNED, DELIVERED AND DATED THIS 29TH DAY OF NOVEMBER 2018.

HON. A.ONG'INJO

JUDGE

In the presence:

C/A:- Kinoti

Mr Kariuki M holding brief for Ms Nyaga for Accused.

Accused present in person

Mrs Mwathi for state.

Mrs mwathi

I don't have any records. Accused maybe treated as 1st offender.

Mr Kariuki M in Mitigation.

Accused is remorseful and regrets having committed offence. He has been in custody for over 5 years. He has reformed during period of incarceration. He has a young family man with a wife and children. He seeks leniency. He is a 1st offender. May court exercise mercy.

Order

Mention 14.1.2019 for Victim Statement.

HON. A.ONG'INJO

JUDGE