



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA
CRIMINAL/MURDER CASE NUMBER 9 OF 2016

REPUBLIC PROSECUTION

VERSUS

BRIDGIT SILAKO NALIANYA Alias AUNTIE1ST ACCUSED

SUSAN WAIRIMU KARIUKI Alias MAMA GRACE.....2ND ACCUSED

STANSLOUS JUMA WANYAMA..... 3RD ACCUSED

RULING

BRIDGIT SILAKO NALIANYA alias AUNTIE, SUSAN WAIRIMU KAIRUKI alias MAMA GRACE and STANSLOUS JUMA WANYAMA are is charged jointly with the offence of Murder, contrary to section 203 as read with section 204 of the Penal Code.

The particulars of the offence are that on the 25th day of July, 2013 at Bendera Estate, within West Pokot County the three of them jointly murdered Peter Simiyu Holi.

The prosecution case is that the 1st accused person, one Bridgit Silako Nalianya alias Auntie, was dealing in illicit brew namely chang’aa. The deceased (Peter Simiyu Holi) was a drunkard and a regular customer of the 1st accused person. When 1st accused moved to a home which was a bit far from her customers she requested her former neighbour, the 2nd accused to allow her do the beer business from her home. The 2nd accused (Susan Wairimu Kairuki alias Mama Grace) allowed her. On 25th July, 2013 in the evening PW-1 and the deceased were taking beer in the home of the 2nd accused. They were taking chang’aa. Later PW-1 left the deceased and went to sleep. The 1st accused was with them. PW-7 who is a neighbour to 1st accused later left her home to visit a washroom outside. She heard revellers still deliberating in the house of PW-1.

She was accustomed to the voices of the 1st accused person and the deceased. She recognized their voices in the said home. The 1st accused asked the deceased to pay her so as to go and sleep. The deceased was in the habit of saying “aah” while drunk. PW-7 heard him say so. PW-7 went back to her house and slept till the following morning.

PW-2, on the said material night was at a place called Plaza. The 3rd accused who’s his friend joined him. The 3rd accused claimed that Holi who’s their friend (the deceased) had fallen in his home and had injuries which required that he be rushed to hospital. PW-2 got a taxi driver who could take him. The 3rd accused then left. According to PW-4, the 3rd accused went to them at 10.00pm and told them that the

deceased had fainted in his house. He needed help from a taxi driver or the police who could take deceased to hospital.

The following morning, on 26.7.2013, the deceased's body was found fully dressed lying on the road, 30 metres from his house. Police were called in. They took the body to Kapenguria Hospital Mortuary.

A postmortem was conducted by Dr. Rono on 30.7.2013. External examination revealed bruise on the scalp on the right temporal – parietal area with evidence of bleeding around bruise ante-mortem. There were 3 healed scars (ante-mortem) with scab tissue on the right leg. Age of scars was about 3 days before death.

Results of internal examination are that the lungs had collapsed bilaterally. There was blackening of both lungs pointing to possible smoking. The lungs had water of which was not normal as should have air. There was no sign of aspiration (foreign substance). There was no haemothorax found (blood in the chest). The heart chambers were okay. The tissues were as well okay. There was evidence of severe gastritis with several areas of petechial. There was bleeding of tissues and no gastric ulcers found. Other organs were normal. The head had blood trauma (bleeding below the skin). There was no skull fracture. Brain was okay as well as spinal cord.

The Doctor was of the opinion that the deceased died out of several acute hypoxemia, possibly as a result of strangulation. The police had arrested 1st and 2nd accused as suspects in the case. 3rd accused was not traced immediately, and was found on 22nd October 2013 at Kiminini where he was arrested. The three were then charged with the present offence.

In determining whether the accused persons have a case to answer or rather whether a prima facie case is established against them, I have noted that the prosecution in their evidence projected a theory on how the deceased met his death and by closure of their case ended up with just a theory. The prosecution has the onus in law of establishing their case beyond reasonable doubt. They are obliged to give facts by way of evidence and not theories.

In this case there are 3 accused persons. What is known is that on the night of 25th July, 2013 the deceased was in a house with 1st accused, 2nd accused and PW-1, taking chang'aa. From that point it is not clear of what happened to him that he got injured and died. The only clue is from what the 3rd accused had told PW-2 that the deceased had fallen in his house and had injuries which required that he be taken to hospital. 3rd accused was looking for a taxi to do so. The 3rd accused had also told PW-4 and his friends that 3rd accused had fainted in his house and needed a taxi to take him to hospital. The police did not establish where the deceased was injured and where he died at. There is no evidence that he was injured in the house of the 1st accused or that of 2nd accused where he was taking chang'aa. According to PW-7 he was a regular customer to the 1st accused person. Almost a daily customer. He was not taking chang'aa for free and PW-7 only heard the 1st accused asking the deceased for money and the deceased saying, "aah" of which was his habit while drunk. Such is not equivalent to a commotion, scuffle or strangulation identified by PW-6 as the possible cause of death of the deceased.

Though this is not the case, even if the prosecution had established that the deceased was injured in the home he was with the 1st accused, 2nd accused and PW-1, and it is as a result of the sustained injuries that he died, they would still be under obligation to state the role played by each of the accused person in causing the injuries. Mere presence at a scene of murder, or witnessing a murder, does not turn one into a culprit.

The 3rd accused was not even placed at the scene. He was held as a suspect because he went looking for help of a taxi to take the deceased to hospital. This fact, in absence of any other evidence connecting him to the said offence, should have exonerated him rather than making him a suspect. It is not logical to have the intentions to murder a person, injure him, and then rush looking for a vehicle to take him for treatment. Such does not make sense. What the 3rd accused stated to PW-2 and PW4 about how the

deceased sustained the fatal injuries is not disapproved by the available evidence. The cause of death to the deceased as carried in the post mortem report is not conclusive. It is an opinion evidence which indicates deceased died of severe acute hypoxemia possibly as a result of strangulation. The deceased had no physical injuries on the neck. PW-6 stated hypoxemia is caused by prevention of air from reaching the lungs. It can be caused by smothering or blockage of air pipe by something even a food particle and not only necessarily strangulation. This stated cause of death was not connected to any action or commission by the accused persons. The deceased had various physical injuries. Some were even as old as 3 days prior to his death. He was a drunkard and possibility of him falling now and then while drunk cannot be overruled. He could have been injured elsewhere, save for in the home of either 1st or 2nd accused persons, and killed by some other persons or person rather than the accused persons.

The accused were arrested on weak suspicion evidence, while even strong suspicion cannot form basis for placing an accused person on his or her defence. It is for the said reasons I do find that a prima facie case is not established by the prosecution against any of the three accused persons. Each of them is therefore, hereby acquitted of the offence under section 210 of the CPC.

S. M. GITHINJI

JUDGE

27.7.2016

Ruling read and signed in the open court this 27th July, 2016 in presence of Mr. Bungei the advocate for the accused persons and Mr. Thuo for the state.

COURT

Sureties are discharged.

S. M. GITHINJI

JUDGE

27.7.2016