



IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 57 OF 2009

REPUBLIC..... STATE COUNSEL

VERSUS

ANTHONY WASIUKHU WENANI..... ACCUSED PERSON

JUDGMENT

1. The Accused person was charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal code. The particulars of which said that on 8th November 2009 at Labura village in Nyeri North District within Central Province murdered SAMUEL KINGARA GATHII.
2. At the end of the prosecution case Justice Sergon considered the evidence of the nine prosecution witnesses and found that the accused had a case to answer and consequently placed him in his defence.
3. In his defence the accused gave unsworn statement in which he stated that he was employed as a farm hand and on the material day left for drinking mission with the deceased and as they were going home the deceased said that they should collect his wife and go home with her. As they waited for the wife of the deceased the accused ordered for another drink for Kshs.100/- and when the wife of the deceased came she produced Kshs.1000/- and stated that the Kshs.100/- for the accused be deducted therefrom.
4. It was further his testimony that the wife of the deceased ordered that they should not be given more drink and that when they reached home a fight ensued between them causing the accused to push the deceased thereby hitting his head on the door frame.
5. At this stage this court is calling upon to find whether the prosecution had proved its case against the accused beyond reasonable doubt. It was PW 1 JOHN MWANGI MATHENGE's evidence that the deceased was an employee of his sister as a farm worker together with accused and that at the end of the month of October 2009 the deceased failed to report to work. He stated that it was normal for the deceased to fail to report to work for one – two days upon payment. Upon inquiry he was told by one of workers that the deceased and the accused had fought on Sunday at 8.00p.m.
6. Upon inquiry they broke into the bed room of the accused where under the bed they found the body of the deceased and that upon calling the accused he told him that the deceased and a neighbour had made his wife desert him. Under cross examination he stated that no eye witness came forward to state that the deceased and the accused had fought. He further stated that it is only the accused person who was living in the compound while the deceased lived with his grand parents.
7. PW 2 STELLA WANGECHI MWANIKI the wife of the deceased testified that on 8th November 2009 the deceased told her that they would be visiting her parents at 2.00p.m. He told her that he was going to visit the deceased but did not get anybody at the compound. When they were coming back they saw the accused and the deceased together when he asked

- for Kshs.100/- which he had taken from the accused and she paid Kshs.1000/- and told the owner to keep change. She left the deceased and the accused together. That night the deceased did not come home.
8. That when she demanded to check the house of the accused he refused to open and told them that the accused had been called by some person to visit a place called Babito. On 11th November 2009 when she reported to work the accused was missing and when he came back he told them that he had gone to search for the deceased only for his body to be found on 15th November 2009 in the accused's room.
 9. PW 4 testified that on 17th November 2009 the accused called her and demanded Kshs.2000/- he had loaned her. When the body was found the accused told her that he was hiding in the bush and that he had finished the deceased. PW 6 K. Nyange then OCS Mweiga police station on 19/11/2009 recorded statement under inquiry from the deceased and recovered a jembe, panga, spade and crowbar which he suspected were used for digging the grave.
 10. PW 7 John Gitonga Kimunge testified that the deceased and the accused on the material day came back at night and made a lot of noise while PW 9 Dr. Alice Wambui produced the postmortem report confirming that the deceased had a skull fracture on the left parietal region and deep wound on the left side of chest associated with his fracture.

SUBMISSIONS

11. On behalf of the state it was submitted that the accused was heard accusing the deceased that he was among the people who made his wife go away. It was submitted that in his defence the accused admitted having committed the offence but that it was accidental.
12. It was submitted that the conduct of the accused after the offence painted a different picture in that he buried the deceased under his bed with a view of concealing the body and that the prosecution was able to prove the case against the accused beyond any reasonable doubt.
13. On behalf of the accused it was submitted that no eye witness saw how the quarrel or misunderstanding between the accused and the deceased started. It was submitted that it was the accused evidence that it is the deceased who attacked him first and that whatever happened was as a result of panic.
14. It was submitted that the wife of the deceased did not mention any reason why the accused would have wanted to kill the deceased and that the charge should have been reduced to manslaughter.
15. It is clear that the prosecution case herein depended mainly on circumstantial evidence and as was stated in the case of SIMON MWOKE V R [1958] E.A. 715.

“In a case of depending exclusively upon circumstantial evidence, the court must before deciding upon a conviction find that the inculpatory facts are incompatible with the innocence of the accused an incapable of explanation upon any other reasonable hypothesis than that of guilt.”

16. In this case the accused was the last person to have been seen with the accused whose body was found under his bed in his bedroom. He was heard saying that the deceased was among those who caused his wife to leave him and therefore had motive of killing the deceased.
17. The nature of the injuries sustained by the deceased as per the evidence of PW 9 displaced the accused person's evidence as to what happened on the material day leading to the death of the accused. Further the conduct of the accused from the date of the alleged death to the date of arrest as submitted by the state clearly showed a guilty mind and not panic as submitted by the accused having taken into account the evidence of PW 3.
18. I therefore find that the prosecution proved its case against the accused person beyond reasonable doubt and therefore find the accused guilty as charged and convict him under section 322 of the Criminal Procedure Code.

Dated and delivered in Nyeri this 27th day of June 2014.

J. WAKIAGA

JUDGE

Court: The judgment read in open court. The accused is convicted of the offence of murder.

J. WAKIAGA

JUDGE

27/6/2014