REPUBLIC OF KENYA

High Court at Kitale

Criminal Case 10 of 2010

REPUBLIC.....PROSECUTOR.

VERSUS

PETER WARUI KAMAU ALIAS BROWNY.....ACCUSED.

J U D G M E N T.

The accused, **Peter Warui Kamau alias Browny,** is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 26th January, 2010 at Mulungu trading centre Moi's Bridge Uasin Gishu West District, murdered John Kiptoo Amai.

The case for the prosecution was that on the material date the accused, the deceased and others were drinking traditional liquor (chang'aa) at the homestead of **Jane Wangare Macharia (PW1)** and in the process, the accused became unruly and disorderly. He had a knife which he was hitting against the ground and threatening to kill somebody. The knife was snatched from him. He went away screaming that he was going for another knife. He returned later with a stick and demanded the return of his knife. Jane (PW1) attempted to snatch the stick from him and in the process, the deceased who was at the back of Jane was hit with the stick. With the help of her husband, Jane managed to snatch the stick from the accused. In the meantime, the deceased left the scene while the accused insisted that he wanted his knife back. It was then that a police reservist was called to the scene. This prompted the accused to go away but at about 10.30 p.m. He re-appeared at the scene to collect his jacket and then went away.

On the following morning, the dead body of the deceased was found at a boundary of a farm belonging to the family of the deceased. The body had injuries on the head. Blood was flowing from the head.

The husband to Jane, **Kennedy Kipruto Songok (PW2)**, confirmed that he assisted his wife to have a stick snatched from the accused.

Wilson Kositany (PW3), **Emmanuel Wanyonyi Wanjala (PW4)** and **Elisha Kipkemboi Kosgei (PW5)** were among the people drinking changaa at the homestead of Jane (PW1). They all confirmed that both the accused and the deceased were among the revellers. They also confirmed that the accused became unruly and was threatening to hill somebody with a knife which was however snatched from him. A stick he later came with was also snatched from him.

They further confirmed that the body of the deceased was found on the following day with injuries on the head.

Hezron Sawe Bamai (PW6), identified the body of the deceased for postmortem purposes. The deceased was his son.

Dr. Paul Njamwe (PW7), conducted the post postmortem examination on the body of the deceased and formed the opinion that the cause of death was head injury with intracranial haemorrhage.

P.C. Patrick Odina (PW8), investigated the offence and later preferred the present charge against the accused. He said that the accused was alleged to have killed the deceased using a “rungu” (club) and a somali knife.

In his defence, the accused denied the offence and indicated that he quarrelled with Wangare (PW1) over some tools and in the process she hit him on the head with a club. He lost consciousness and fell down. He proceeded home after regaining consciousness but on the following day, he was called to the chief's office and told that he had murdered the deceased. He denied the allegation. He contended that he knew nothing about the death of the deceased.

From all the foregoing facts, it is apparent that a group of people including the deceased and the accused were at the homestead of Jane Wangare (PW1) pertaking 'changaa' and in the process, the accused became disorderly and unruly such that he had to be contained by those present at the scene. In that regard, the knife in his possession was snatched from him and so was the stick he fetched and returned with to the scene.

It was suggested that during the struggle to snatch the stick from the accused, the deceased was hit. However, there was nothing to confirm that that accidental strike occasioned fatal injury to the deceased. What was certain is that the deceased left the scene during and/or after the commotion involving the accused and on the following day he (deceased) was found dead near a farm with injury on his head. According to the investigating officer (PW8), the injuries were caused by a club and a somali knife. However, his investigations did not reveal with any certainty that the injuries were inflicted upon the deceased by the accused. There was enough evidence showing that the deceased left the scene prior to the accused but there was no evidence showing that the accused followed the deceased and inflicted injury on him using a club and a somali knife. Indeed, there was no evidence at all linking the accused to the unfortunate death of the deceased.

Consequently, in giving the benefit of doubt to the accused, this court must hold that the prosecution has failed to prove its case against the accused.

The accused is therefore found not guilty as charged and is hereby acquitted.

[Delivered and signed this 18th day of December, 2012]

J.R. KARANJA.

JUDGE.