



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Criminal Appeal 100 of 2006

PRISCILLA WANJIRU CHANGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of manslaughter contrary to Section 202 Penal Code. She was convicted and sentenced to five years imprisonment. She has filed nine grounds of appeal as set out in her petition of Appeal.

The case for prosecution is that on 10/10/2004 the deceased Faith Wakuthii Njue was taking beer at the house of one Muriithi with other customers. Later that day at about 4.00 p.m, the deceased and the accused and PW1 proceeded to Turgen Bar to take more beer but they were chased away. That was the evidence of PW1 who proved unco-operative when giving evidence and was committed to jail by Trial Magistrate. Further evidence was by PW5 Teresio Muriithi who said that on that date he was with Kabiru, deceased and the appellant at his home drinking beer until 1.00 a.m. Then he told the persons to leave his house. Soon after, he heard screams outside his house. He got out and about 10 metres from his door he saw deceased lying down. The accused was there and Kabiru was screaming. He had a torch. He was told by Kabiru that Appellant (Wanjiru) had stabbed the deceased with a knife. PW5 said he saw deceased lying on her stomach and was bleeding from the back and she had a stab wound. Appellant started running away. He (PW5) run after her but the accused was too fast. He (PW5) further testified that Kabiru was with the two ladies (Appellant and deceased). The deceased was a girlfriend of Kabiru. Afterwards the matter was reported to Assistant Chief. It was on 11/10/2004 that the matter was reported to Wanguru Police Station where PW7 P.C Hussein Salat received the report. He and others traveled to the scene and found a dead body, outside, with a stab wound on the back. Also they found the appellant already arrested. The murder weapon was not found. After photographs of the body were taken the deceased body was transferred to Embu Mortuary where on 23/10/2004 post mortem examination was done by PW2 Dr. Godfrey, Njuki, Njiru who gave evidence and produced Post Mortem report as exhibit 1. In his opinion the cause of death was cardiopulmonary arrest due to haemothorax to stab wound on chest. Out of the 8 witnesses called by prosecution only PW1 and accused were present outside with the deceased Kabiru told PW5 that it was accused who stabbed deceased. The incident was at night. The unsworn statement of the Appellant was a mere denial. However she admitted that on the day she was at the home of Muriithi (PW5) where she was drinking beer but left at 5 p.m.

Considering the grounds of appeal the appellant raises issue of identification saying that the circumstances of her arrested were questionable leading to possibilities of mistaken identify. The evidence is that the parties were known to one another and the appellant was arrested from her house where she was sleeping there is no indication of her identity being mistaken. PW5 who ran after her into

the bush knew her very well.

On the issue of evidence of single witness the Trial Magistrate warned himself and quoted authorities in support of his relying on evidence of one single witness. There was also the circumstances that PW5 testified that the three appellants, Kabiru and deceased were the only ones in his drinking place at that time and that the three left the place together. Ground numbered 4 is ambiguous. The investigators must have taken statements of witnesses. It became clear that the deceased was stabbed. It is clearly indicated in the photographs exhibited. I have perused the record and I would not say there was no proper investigation. The appellant was the only person with opportunity and motive to commit the offence.

On ground 5 thereof the evidence was that at the close of the drinking place only the owner PW5, and the three persons deceased, appellant and PW1 were present and that there were no other person when the incident occurred. The prosecution did not therefore fail to call any witnesses as there were none.

On ground 6 the unsworn statement of the appellant was a denial. The appellant admitted being at the drinking place on that day. This information cannot be said to water down the prosecution evidence which was sworn and tested by cross-examination. In the circumstances, I have considered the lengthy submissions made by the appellant and the authorities she quoted.

Muiruri Njoroge –Vs Republic Court of Appeal decision Criminal Appeal 115 of 1982 (this authority was not produced). It is true that court does not act on mere ascertains without proof. In this case all parties were drinking together and knew each other it was not a case of ascertions. The other case is **Mburu Mbugua –Vs –Republic 1980** regarding the conviction on evidence of single witness. In this case the trial Magistrate did warn himself on this issue appropriately. In Okoro Maitanyi –Vs Republic (156) 23 EAA 493 where the failure by prosecution to all a witness would invite the inference that the evidence was against its case in this case the prosecution witness became hostile to the prosecution and therefore that authority is not relevant. Against **Woonington –Vs- DPP 1935** there is no doubt in this case that the appellant did commit the offence and I do find that the evidence of prosecution was firm and clear. All evidence pointed to the appellant as the offender. She was seen doing the Act and was present with the deceased at the material time.

I have re evaluated the evidence as recorded,- the deceased was found 10 metres from the door of PW5. It is the evidence that Kabiru was a neighbour of PW5 therefore the body was found on the compound of Muriithi. “I took Kabiru and proceeded to report to the Assistant Chief. We met an AP Nthiga. He accompanied us to my home, we found Wakuthii having died”. It is clear the Trial Magistrate must have slipped recording this sentence in his Judgment.

It is my finding that the prosecution evidence did prove the case against appellant beyond reasonable doubt and I find no reason to interfere with conviction. On the issue of sentence the offence of manslaughter is punishable with life imprisonment. I do not find five years imprisonment harsh or excessive and I do not see any reason to interfere with sentence. The appeal is dismissed.

Dated this 22nd January, 2008.

J. N. KHAMINWA

JUDGE

22/1/2008

Khaminwa – Judge

Appellant – Present in person

Mr. Kimathi for Republic

Judgment read in open court.

J. N. KHAMINWA

JUDGE