



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS
Criminal Case 7 of 2003

REPUBLICPROSECUTOR

VERSUS

JOHN MWANGANGI YOLOACCUSED

RULING

John Mwangangi Yolo, is charged with the offence of Murder Contrary to section 203 as read with Section 204 of the penal Code.

The particulars of the charge are that on 20/10/01, at Nzeesya sub location, Miambani location of Kitui district, murdered Mutisya Mweu. Accused denied the offence.

The prosecution called a total of 7 witnesses.

The prosecution case is that PW2, Daniel Muthini, PW4 Philip Tele and the deceased had been attending a fund raising at Makaani Primary School. They were near the gate of the school at about 8.00 p.m. talking. PW2 said that as they walked back to the school compound and while at the gate, the accused suddenly jumped on the deceased, the two struggled and fell to the ground. Accused did not utter a word as he attacked the deceased. The accused, John Yolo then rose up and ran off as he shouted the words that the Kiseki family to which accused belonged, should help themselves. PW2 and PW4 on lifting the deceased found that he had been stabbed on the right side of the stomach. PW2 went to call deceased's parents. They later took the deceased to a neighbour's home as they awaited for transport to take him to Kitui hospital. PW2 did not know what prompted the attack on the deceased by the accused.

PW4 Philip Tele, confirmed having been with the deceased and PW2 David when accused came running towards them as they stood at the gate of Makaani Primary School, started to beat Mutisya the deceased, both fell down and rolled on the ground. He denied that Mutisya ever hit back at accused. Accused rose and ran off as he uttered words that the house of Kiseki should defend themselves. PW4 said he was about 3 metres from the deceased when he was attacked and on approaching the deceased found that he had been stabbed on the stomach and intestines could be seen.

PW1 Benard Nzanga Ngau, a cousin of the accused, recalled that accused's father called him on 21/10/01 at about 8.00 a.m. and asked to help take accused to the police station for assaulting Mutisya – deceased. By then accused was tied up. PW1 went on to tell court that for about a year the accused had been behaving in a funny manner like a mad man and he had even burnt two people's houses. Instead of taking him to Mathare, they had opted to take him to a witchdoctor but he had not improved. He did not witness the assault or recover any weapon.

Mweu Mutua (PW3) is the father of the deceased. He was at his home on 20/10/01 at about 8.30 p.m.

when PW2 David Nzau went to call him and informed him that the deceased had been stabbed by John Yolo. He found the deceased at the gate of Makaani Primary School where he lay injured. The deceased told him that he had been injured by John Yolo. They took him to hospital where they arrived next morning. He was admitted for one day and died. He identified the body of the deceased to the Doctor who performed postmortem on 6/11/01 before PW3 took the body for burial. PW5 Paul Mwinzi Woie, an uncle to PW4, recalled that on 21/10/01, PW4 and the wife of Mutisya the deceased asked him to give them a place for the deceased who had been injured to sleep and deceased had attended Kitui hospital. PW 5 talked to deceased who came walking and deceased told PW5 that he had been stabbed by John Yolo. He left the house for them to sleep and upon returning the next day at 4.00 p.m. found that the deceased had died.

Police Constable Musyoki, PW6, testified that on 22/10/01 he received a report from Benjamin Ngao that Mutisya who had been assaulted on 20/10/01 had died in the house of Woie at Kalundu market. He accompanied him to Woie's house where he found the deceased who had a stitched wound on the stomach and he took the body to the mortuary. He found the accused at police station having been arrested by members of the public.

Police Constable Maurice Mulwa, had been at the report office on 21/10/01 when he received the deceased and his wife who reported that the deceased had been stabbed on 20/10/01. PW7 saw a stab wound on the right side of the stomach. The wound was not big but was oozing blood. Later on 24/10/01, he took accused to police Doctor for mental assessment and he was found to be mentally fit. He escorted the deceased's relatives to the mortuary on 6/11/01, who identified the body before postmortem was done. There was no recovery of the instrument used to injure the deceased. Though the deceased was injured at night, at about 8.00 p.m, there was ample evidence adduced to the effect that there was some light from the lamps which were hang on trees in the school (PW2, 3 & 4). PW2 and 4 who were with deceased, and who knew the accused well testified that they were able to see him well and that accused even spoke after he attacked the deceased and as he fled. Deceased also talked to several people PW3, and PW5 identified accused as the assailant.

So far, the motive for the attack is unknown. According to PW1 and 4 the attack was sudden and accused ran off.

According to PW2 and PW4, the accused jumped onto the deceased and they both fell. It is only after accused ran that they found deceased injured on the stomach. None of them saw accused with anything like a weapon. No weapon was recovered after that incident. Further, the Doctor who performed postmortem was never called to testify as to his findings. The nature and cause of the injury that deceased suffered is unknown. It could be a stab-wound or he may have fallen on a sharp object when accused and deceased fell during the attack. It was important that the postmortem report be produced.

PW2 gave evidence which was never followed up by the prosecution. He said that accused had been behaving strangely before this incident. He had even burnt two people's houses and they thought he was mad. There was no doctor's as report to the accused's mental status at the time of attack. With such evidence in court, it was important that the court knows what the accused's mental status was at the time of the attack. The prosecution obviously left too many gaps in its case and this is another case where the prosecution showed total laxity in having key witnesses come to testify despite the seriousness of the charge.

Without a mental assessment report and bearing in mind accused's mental status is questioned, the postmortem report to establish the cause of death, this court finds that there is not sufficient evidence adduced by the prosecution to support the charge of murder and the accused will not be called upon to defend himself. He is accordingly acquitted of the charge of murder.

R.V. WENDOH

JUDGE

Dated at Machakos this 30th day of March 2006

Read and delivered in the presence of

R.V. WENDOH

JUDGE