



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Case 17 of 2005

REPUBLIC PROSECUTOR

VERSUS

JOHN KIRAGU MURAGURI ACCUSED

RULING

John Kiragu Muraguri (hereinafter referred to as the Accused) is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 2nd day of March 2005 at Karunge village in Murang'a District he unlawfully murdered Benard Kihato Karugu (hereinafter referred to as the deceased).

The Prosecution has closed its case after calling a total of 15 witnesses. Mr. Muchiri who appeared for the Accused has urged this court to find that the prosecution has failed to establish a prima facie case.

From the evidence that has been adduced it is evident that on the material day, the deceased went to Coconut Bar. Several witnesses noted that he was already drunk when he entered the Bar. The deceased got into an argument with Irungu Watero (P.W.3) also referred to as "Bundu" and "Ndungu". P.W.3 left the bar after the argument whilst the deceased continued being a nuisance to other patrons in the bar. The

deceased was finally persuaded to leave the Bar by the proprietors, Sila Mwinga Maina (P.W.11) and Stephen Mwangi Kamau (P.W.12).

The prosecution evidence is rather contradictory and inconsistent as to what happened to the deceased after he left Coconut Bar. According to P.W.6, the deceased left the bar accompanied by the Accused, Samson Waweru Njogu (P.W.13) and another person whom P.W.6 did not recognize as the person went back into Coconut Bar whilst the others walked towards Abardare Building opposite Coconut Bar. There was an argument between the 3 men and P.W.6 saw the Accused hit the deceased once with his fist and the deceased fell down. P.W.6 went to ask the men what was happening and it was then they were joined by a friend of the deceased Stephen Muranga Kimani (P.W.9) who asked P.W.6 to assist in getting transport from his employer to take the deceased to hospital.

According to P.W.13 he was inside Coconut Bar when he saw the deceased being shepherded out of the bar by P.W.6 and Stephen Njeru (P.W.12). After about an hour P.W.13 left the bar. He intended to go to a shop near the bar but when he reached the stairs leading to the shop he saw that the shop was closed. He then saw the Accused who was just rising up as he had fallen on his knees. P.W.6 and another watchman Munyua (P.W.7) were just standing nearby. P.W.13 approached the Accused and asked him what had happened and Accused claimed he had tripped on the stairs. Accused got up and left saying he was going home. It was then that P.W.13 saw the deceased lying down about 12 metres away. He went where the deceased was and noticed that the deceased was very drunk and looked like he was fast asleep. P.W.13 tried to call him but the deceased did not respond. P.W.13 decided to go back to the bar.

As P.W.13 was passing P.W.6 who had all this time been standing by got hold of P.W.13 and detained him claiming it was the person P.W.13 was with who had beaten the deceased. Shortly thereafter the deceased's mother came with a group of people who wanted to beat P.W.13 but P.W.6 informed them that P.W.13 was not the one who had hit the deceased but that deceased was beaten by the Accused. A vehicle was brought. A group of people went and brought the Accused from his home and both Accused and P.W.13 were taken to Nyakianga police Station.

P.W.9's version of the events was that he was on his way home after leaving Coconut Bar when P.W.6 asked him how he could go home when his friend was just lying there. He looked and saw the deceased lying down with his things scattered around. P.W.6 claimed the deceased had been given a fist blow. P.W.9 went and called the deceased's mother. She came and confirmed that the deceased was dead. It was then that P.W.6 claimed that the deceased was beaten up by the Accused. P.W.9 denied having seen P.W.13 the first time he came out of the bar.

According to P.W.8 it was P.W.13 who informed them that it was the Accused who had beaten the deceased. This is consistent with the evidence of the deceased's mother Alice Nyambura Kirugu (P.W.10) who testified that P.W.13 pleaded with the people not to beat him saying he was going to reveal who had beaten the deceased and he identified the person as the Accused.

Since P.W.13 denied before this court having seen the Accused beat up the deceased, the only evidence implicating the Accused remains that of P.W.6. The question is, in the light of these contradictions is the evidence of P.W.6 that he saw the Accused hit the deceased believable?

Although P.W.6 claimed he saw the deceased and 3 other persons and that there was sufficient electric lights from Abardare Building and Coconut Bar, it is interesting that when the deceased's mother (P.W.10) arrived where the deceased was lying she had to illuminate a torch to see the deceased as there was no light in the area. The deceased was lying the same place where he had fallen after being beaten. If there was no light at that place then there is a doubt as to whether P.W.6 was able to see clearly exactly who gave the deceased the fist blow.

Secondly if P.W.6 had seen the Accused hit the deceased why did he allow the Accused to go away? Why detain P.W.13 who was not the culprit?

It is evident that P.W.13 pleaded with the people not to beat him up and named the Accused as the

culprit. This was testified to by P.W.8 and P.W.10. It is possible that this is what P.W.6 relied upon when he maintained that the Accused was the one who hit the deceased.

P.W.13 has however denied having seen the Accused hit the deceased. It is obvious that at the time P.W.13 named the Accused he was trying to save himself from mob justice and may therefore not have spoken the truth about what had actually happened.

Further the evidence of P.W.6 that the Accused hit the deceased one fist blow was not consistent with the cause of death as testified to by Dr. Kanyi – Gitau (P.W.1) who noted severed head injuries including fracture of the skull and bleeding over the brain.

In the light of all these contradictions and inconsistencies, the prosecution has failed to establish a prima facie case against the Accused and it would not be appropriate to put the Accused person on his defence. I do therefore acquit the Accused person of the charge under section 306(1) of the Criminal Procedure Code. The Accused will be set free unless otherwise lawfully held.

Dated signed and delivered this 3rd day of October 2006.

H. M. OKWENGU

JUDGE