



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
HIGH COURT CRIMINAL CASE NO. 4 OF 2003

REPUBLIC PROSECUTOR

VERSUS

MARY NYAMBURA MWANGI ACCUSED

R U L I N G

Mary Nyambura Mwangi (hereinafter referred to as the Accused) is arraigned before this court charged with murder contrary to section 203 as read with section 204 of the Penal Code. The information laid before the court alleged that on the 25th day of December 2002 at Maragua township, she murdered Joyce Njeri Muiruri (hereinafter referred to as the deceased).

The prosecution have now closed their case after calling 7 witnesses. Briefly the evidence adduced by the witnesses was as follows:

On 25th December 2002, Norman Njoroge Ndugire (P.W.1), the deceased, Beatrice Wambui Ngugi (P.W.3) and one Githere were all drinking at Thayo Bar where Alice Nyambura Mugo (P.W.2) and Eunice Muthoni Mwangi (P.W.5) were both working as Barmaids manning the front and rear counters respectively. P.W.1, P.W.3, the deceased and Githere were all seated at the rear side of the Bar being served by P.W.5. P.W.1 and the deceased were seated on a table which was joined to another where P.W.3 and Githere were seated. The deceased asked P.W.1 to buy him a drink and P.W.1 challenged her that he would buy her 5 bottles of beer but only pay if she finishes drinking all of it. P.W.1 ordered for 6 beers which were delivered to their table.

While the four were still drinking P.W.1 fell asleep. It was at this stage that Accused and another entered the Bar and went straight to where P.W.1 (who is her husband) was sitting with the deceased. P.W.1 and his colleagues were just startled by beer bottles falling down and breaking. On waking up P.W.1 saw Accused next to him. P.W.3 ran away, whilst P.W.2 who was at the front counter ran to the back side to see what was happening.

P.W.5 who was at the rear counter saw the deceased running first towards the toilets, and then towards the front entrance. She noticed that there was blood on her back and also her blouse.

P.W.2 and P.W.5 followed the deceased outside and found she had fallen down just about 4 metres away from the bar. At this stage John Ngai Mwangire (P.W.4) who was a watchman at Thayo Bar entered the bar. He found a bloodstained knife lying down on the ground just about two metres away from where P.W.1 was standing holding a woman.

P.C. Paul Mwaniki Irungu (P.W.7) a police officer attached to Maragua police station was passing near Thayo Bar when he was attracted by the crowd gathered outside the Bar. He moved near and saw the deceased lying on the ground with blood oozing from her chest. He questioned the deceased and she identified herself as Joyce Njeri and claimed to have been stabbed by Mary Nyambura whilst drinking

with Norman Njoroge alias G.K. The deceased was carried to Maragua police station where she collapsed whilst her report was being recorded. She was thereafter rushed to Maragua District Hospital where she died shortly thereafter.

Meanwhile P.W.7 in the company of P.C. Kilemi went back to Thayo Bar where they found P.W.4 who handed over the knife he had recovered. P.W.4 also pointed out Accused who was still seated with P.W.1 in the Bar. Accused was arrested and taken to Maragua police station.

On 3rd January 2003 Benson Irungu Muiruri (P.W.6) a brother to the deceased identified the body of the deceased to a Doctor who performed a postmortem examination.

The Doctor was not however called to testify and the results of the postmortem examination were not therefore made known to court.

P.W.7 also claimed a blood sample of the deceased taken during the postmortem examination and the knife handed over to him by P.W.4 together with the clothing the deceased was wearing were forwarded to the government analyst for examination but again the Government analyst was not called to testify with the result that the report of such examination if indeed it was done was not made known to this court.

Needless to state that the prosecution case was closed prematurely omitting evidence which was very crucial. The court gave the prosecution a lot of indulgence to enable them assemble and bring all their witnesses, but this was not to be.

Although the information before this court stated the offence to have been committed on 25th December 2002 and all the witnesses were led to testify on that date, it is clear from the committal bundle which fortunately is part of this court's record that the offence was committed on 25th December 2001 and Accused arrested on that date. She was first arraigned before the lower court on 17th January 2002. Had the prosecutor looked at the statements of all the witnesses, copies of which are in the committal bundle, and no doubt in his file he would have noted this glaring inconsistency.

The consequences of the omissions to call the pathologist and the Government analyst is that the prosecution case has been seriously weakened. There is no evidence that the deceased died or if she died what caused her death. In a charge of murder this is a critical factor, and ought to have been the first thing the prosecution ought to have proved.

Moreover the evidence adduced by the witnesses called to testify was not sufficient to establish a prima facie case against the Accused as none of the witnesses actually saw Accused stab the deceased.

P.W.7 who was seated at the table with the deceased claimed he was asleep and was only woken up by the breaking bottles and did not even see the deceased when he woke up. He cannot therefore tell what happened.

P.W.2 was manning the front bar and only ran to the back upon hearing the commotion. P.W.3 who was also with deceased in the rear part of the bar claimed she saw two women pass and go to where P.W.1 and deceased were seated, she was next startled by breaking glasses and she ran away, only to come back and see the deceased running bleeding and P.W.1 holding the Accused's hands. P.W.3 did not therefore see Accused strike the deceased. She did not even identify the two women she saw going to the table where the deceased was.

Although P.W.4 purported to have seen two women enter the bar shortly before the commotion, he never actually saw what happened. Although he found a knife near where P.W.1 and Accused were seated, he never saw Accused handle the knife. He merely assumed that that was the knife used in the assault, but there was no evidence to confirm this.

Had the report of the Government analyst been availed it would perhaps have lent credence to P.W.4's evidence. Sadly however there was no such evidence. Similarly P.W.5 also only heard bottles breaking

and saw the deceased running. Although she maintained under cross-examination that it was the Accused who stabbed the deceased, this was not supported by her evidence in chief.

There is the evidence of P.W.7 that the deceased told him that she had been stabbed by “Mary Nyambura”, however although P.W.7 admits that there were many people crowding the deceased, no other witness was called to confirm that the deceased did indeed make such a statement. Moreover there is no evidence to confirm that the person referred to by the deceased as “Mary Nyambura” was indeed the Accused. Given the circumstances in which the events took place as testified to by other witnesses, the surprise and confusion it was desirable that adequate corroboration of the statement made by the deceased be provided. However none was forth coming.

The upshot of the above is that no prima facie case has been made out against the Accused person. Accordingly I find her not guilty of the charge and acquit her of the same under section 306(1) of the Criminal Procedure Code.

Dated, signed and delivered this 3 rd day of February 2005

H. M. OKWENGU

JUDGE