

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE 61 OF 2003

REPUBLIC.....PROSECUTOR

VERSUS

LUCY NJERI KAMANDE.....ACCUSED

RULING

Lucy Njeri Kamande hereinafter referred to as the Accused, is arraigned before this court 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 29th day of October, 2002 at Karinga Trading Centre in Maragua District within Central Province, jointly with others not before the court, they murdered Njuguna Gatuthu.

The prosecution have closed their case after calling 4 witnesses and it now behoves this court to determine whether the evidence that has been adduced is sufficient to establish a prima facie case against the Accused person. Simon Njihia Macharia (P.W.1) was the owner of Mukuru Bar in Karinga village. On the fateful night, both the deceased and the Accused were at the Bar at around 11.00 p.m. when a quarrel ensued between the deceased, the Accused and four of her female companions who were all drinking at the Bar. The deceased alleged that the Accused and her companions had stolen money from his jacket and hidden it in their buttocks. The Accused and her companions protested and challenged the deceased to look for the money. Other patrons at the Bar who included Peter Munyua Kariuki (P.W.2) and Zakayo Mugane Mwangi (P.W.3) protested P.W.1 therefore ordered the deceased, Accused and her companion out of the Bar.

A few minutes later P.W.2 & 3 left the Bar. They found the deceased outside fighting with one of the women who had earlier been in the Bar. The Accused and three other women were pelting the deceased with stones. P.W.2 got hold of the Accused, whilst P.W.3 slapped her. The evidence of P.W.2 & 3 differ as to what happened thereafter, P.W.2 contending that they ran away when the Accused collapsed after being slapped, whilst P.W.3 maintaining that they each went home including the deceased after they broke the fight by holding and slapping the Accused.

At about 12.30 a.m. Isaac Mugane Mirie who was working as a watchman in the area saw the Accused and three other women pelting the deceased with stones. This was outside Mukuru Bar. He tried to intervene but was unable to stop the women. They hit the deceased with stones until he fell down. The women then escaped. The deceased asked P.W.4 to assist him get to his house. P.W.4 called P.W.3 whose house was nearby. Together the two took the deceased to his house. The evidence of the two witnesses however differ as to the condition of the deceased, while P.W.3 testified that he did not notice any injury on the deceased nor did the deceased complain of being injured, P.W.4 was specific that the deceased was bleeding from the arm and that his jacket was soaked with blood. The deceased remained at his house until 3.00 p.m. the next day when he died as efforts were being made to take him to hospital.

It is instructive to note that neither the investigation officer, nor the arresting officer nor the Doctor who performed the postmortem examination were called to testify. No reason was given for the absence of the investigations officer and the arresting officer. While it was alleged that the Doctor had failed to attend court after being bonded, a warrant of arrest issued against the Doctor was not executed and once again no reason was given for this failure.

It is evident that despite the seriousness of the offence facing the Accused the police and the prosecution have displayed total lack of commitment in assisting this court to arrive at a just conclusion. The result is that the evidence adduced before this court is contradictory and inconclusive and raises more questions than answers. For instance was the deceased injured as a result of his fight with the Accused and her colleagues? If so what was the extent of the injuries noting that P.W.3 did not notice any injury on the deceased and P.W.4 only saw an injury on his arm? If the deceased jacket was soaked with blood as alleged by P.W.4 how come P.W.3 did not notice this? What was the cause of death of the deceased and how is this linked to the Accused? Can the Accused be said to be responsible for causing such death? Under these circumstances what else can this court do other than to find the Accused person not guilty of the offence and to acquit her under section 306(1) of the Criminal Procedure Code. Accordingly the Accused is hereby found not guilty. She shall forthwith be set free unless otherwise lawfully held.

Dated signed and delivered this 29th day of June 2005.

H. M. OKWENGU

JUDGE