



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI

CIVIL DIVISION

CRIMINAL CASE NO.200 OF 2003

REPUBLIC

RESPONDENTS

- VS -

MARY WANJIRU NJUGUNA

GEOFFREY MUCHOKI NYAMBURA

APPLICANTS

RULING

Both accused are charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code.

The particulars of the offence are that on the 3rd day of May, 2002 at Kikuyu Township in Kiambu District of the central province murdered Mukuria Ngunyi.

The prosecution called 4 witnesses in support of the state case.

PW1 Winnie Nyambura, Nyambura, is a Land lady housed the deceased as well as the first accused. She had problems with rent payment. Bishop Wambua was desirous of starting a church at the said plot. To this end they agreed to meet at the said plot for sight seeing.

When Nyambura opened the house where first accused and deceased used to stay, she was turned back by a foul smell emanating thereof. She decided to close the door. She only managed to see the foot of a human being.

In company of Bishop Wambua, Nyambura went to report the incident at Kikuyu Police Station. The following day, May, 10th 2002 Nyambura accompanied the police to the scene where she identified the body as belonging to the tenant by the name Mukuria whom she had rented the house to.

A close look at the body revealed injury to the head. The body was already in a decomposing stage. Nyambura cited no tenant on that day. She remembered that Mukuria [deceased] had come to her house and complained that Wanjiku used to go to Dagoretti and on such occasions came drunk in the company of a Masaaiman. Mukuria pleaded to be re-allocated the third room in which case Mukuria would surrender his previous room to first accused and her new found love – second accused. This arrangement was implemented by the land-lady.

Nyambura later came to Nairobi to locate the deceased son in order to arrange deceased's funeral. She identified first accused as Wanjiku, the wife of deceased. She confirmed that on the day the body was recovered the room occupied by the first accused had only a bed. All the other items were missing.

PW2 Peter Bundi, Bundi, is a son to the deceased. He received a telephone call from Kikuyu Police Station to the effect that the body of his father was lying in the mortuary. At the mortuary he identified the body. On 11th May, 2002 he [Bundi] she went to Kikuyu where he met PW1 the landlady to his deceased father. Together Bundi and the landlady went to the room hitherto occupied by the deceased and confirmed that all household property were intact. Bundi got to know from PW1 of the intimate relationship between first accused and the second accused. He came to learn that the second accused was working at Dagoretti market in a slaughter-house. Bundi passed this vital information to a Police Officer by the name Mwanza at Kikuyu Police Station who later arrested both accused.

Bundi attended post-mortem on 17th May, 2002 at the City Mortuary after which he was handed over the deceased's body for burial.

PW3, No. 66333 P.C. Kenneth Mugo, Mugo received information that a murder suspect had been spotted at Dagoretti Market. He accompanied the reportee who identified the house where the suspects were staying. Mugo identified himself to the suspect, arrested and booked her at Kikuyu Police Station with the offence of murder. The accused was equally apprehended and charged with murder jointly with first accused.

The prosecution sought for several adjournments to call the doctor who undertook post-mortem with a view to producing the post-mortem report in vain. The prosecution then closed its case.

At the close of the prosecution case, Mr. Athuok for the accused submitted that a prima-facie case had not been established warranting the accused being put on their defence. Of profound significance the learned counsel pointed out that there was no evidence of cause of death.

Mr Bwofoli for the prosecution submitted that both accused killed the deceased. That malice afterthought and mens-rea coincided in point of time. There was discomfort between deceased on the one hand and the first and second accused on the other hand. That was the motive for the killing. The body had injury on the head and there was evidence of blood clot. That though no doctor was called to prove the fact of death the court should put the accused persons on their defence.

In my judgment, there was bad blood between the first and second accused in the one hand and the deceased on the other hand. When the deceased met his death, the two accused were living together in the next room. When the body was discovered the house occupied by the two accused had been vacated. The first and second accused had left the plot without informing PW1, the landlady. There is good circumstantial evidence that the two accused had knowledge of the circumstances under which the deceased met his death. There is lacuna in the chain of circumstantial evidence in the absence of evidence of the cause of death.

Section 306 (1) of the Criminal Procedure Code provides:-

“306 (1) when the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused or any of several accused committed the offence, after hearing, if necessary any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty”.

Section 306 (supra) is the equivalent of section 210 in trials before subordinate courts.

Section 210 of the Criminal Procedure Code provides

“ If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put

forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.

What amounts to a prima facie case under the equivalent of the provision of section 210 was considered by the court of Appeal in Ramanlal Bhatt - vs – R (1957) EA 332 thus:

“It is true that the court is not required at this stage to decide finally whether the evidence is worthy of credit, or whether if believed is weighty enough to prove conclusively, that final determination can only be properly made when the case for defence has been heard. It may not be easy to define what is meant by prima-facie case but it must mean one which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation was offered by the defence.”

Applying these principles to the current case, it is my judgment that there is no available direct evidence that the accused persons killed the deceased. There is rather circumstantial evidence, that there was bad blood between the deceased on the one hand and the two accused on the other hand arising out of the love triangle. That both occupied neighboring rooms. That chain of circumstantial evidence snaps by reason of absence of cause of death. Without a post-mortem report establishing what caused death, this court finds that cause of death has not been established by expert evidence as required by law.

Accordingly I record a finding of “NOT GUILTY” in respect of the both accused. They are set free unless lawfully held for some other lawful reason.

DATED at NAIROBI this 13th day of July, 2005.

N. R.O. OMBIJA,

JUDGE