



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
Criminal Case 228 of 2003

REPUBLIC PROSECUTOR

VERSUS

PASCAL KILONZO SOJA ACCUSED

RULING

(Under Section 306 of the CPC)

The Accused is charged with an offence of murder contrary to Section 203 read with Section 204 of the Penal Code (Cap.63 Laws of Kenya) in that it is alleged that on 8th October, 2003 at Kitui Village in Nairobi he jointly with others not before the court murdered Peter Kariuki Njoroge (the deceased).

The Prosecution before closing its case called three witnesses.

The Learned Defence counsel thereupon submitted in short that the Prosecution has not led any evidence to connect the Accused with the offence with which he is charged.

The Prosecution case clearly rests on circumstantial evidence as none of the witnesses has seen the Accused committing the offence on hand.

It is trite law that when the Prosecution case rests on circumstantial evidence the same shall be absolutely watertight and does not leave any doubt as to innocence of the Accused.

In my opinion the prosecution case before me is absolutely opposite. In my opinion there is no evidence against the Accused so as to have any doubt about his guilt. The Accused can just swim through his safety and freedom.

I shall, deal with the evidence in short, before the court.

PW.1 is Lydia Wairimu Kariuki the wife of the deceased. She simply said that the deceased was looking after security of the village and the Accused person with whom he had cordial relation, used to bring names of wrongdoers to the Accused so that the latter could deal with them.

On the material day at around 6.00 a.m. she found that the deceased had not yet come back home. After some time the Accused came to her and asked whether she had seen the deceased and on finding that he had not come back he went off. Similarly one Ogotu came to inquire about return of the deceased and when she told him that the deceased had not come home since he had left, he asked her to go to a place where a man is lying dead. She found the body of her husband near Ogotu's home.

Then the Scene of Crime personnel officer P.C. Edward Muhige was called to give evidence. On arrival

at the scene he observed the scene and took eight photographs which were produced as exhibits with his report. He did not mention any blood stained stone at a distance of about 20 feet from the place where the body was lying. He did not also give any opinion as to the place where the deceased was killed.

Unlike PW.2, Inspector Shadrack Ubila the Investigation Officer of the case went to the scene and found a blood stained stone at a distance from the body and he formed an opinion that the deceased was killed at the place where the stone was found and then the body was dragged to where it was found lying which was near toilets. The stone is not produced before the court and I also do not know whether the blood stains were lifted and sent to Government Chemist for analysis. He further testified that as per his information the deceased was drinking alone at a Bar on 7th October, 2003 between 7.00 to 10.00 p.m. and three people entered the Bar. One person called '*Marefu*' sat near them and after some time the deceased went out with Marefu and two others without settling his bill for drinks. He has not been seen alive since then. He clarified that this information was received by him from a Bar man who was serving drinks that night. Once more the said person is not called to give evidence. On inquiry the Accused was traced and arrested with this offence.

This is the evidence before me wherein apart from pointing fingers there is no evidence to link the Accused with commission of this offence. There are large gaps which are not filled in to have any connection of the Accused with this offence.

Lastly but not the least the Accused's body was found early morning of 8th October, 2002 and without knowing when the Accused was killed the particulars of the charge specify that he was killed on 8th October, 2002. This is also a fatal blow to the case of the Prosecution.

Without adding any further to what I have observed hereinbefore, I do find that there is no evidence as per law linking the Accused with the offence and thus I enter finding of not guilty against him under Section 306(1) of the CPC. As a result of such finding I acquit him of the charge of murder of Peter Kariuki Njoroge as leveled against him.

The Accused be released forthwith unless otherwise as per law.

Dated and signed at Nairobi this 24th November, 2005.

K.H. RAWAL

JUDGE

24.11.05