



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

Criminal Case 60 of 2005

REPUBLIC PROSECUTOR

VERSUS

GEORGE NYORO NJOROGE ACCUSED

RULING

The Accused before this court is charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and it is alleged that on the night of 22nd and 23rd December 2004 he murdered Asumpta Wambui Gichanga.

The prosecution, in order to prove the said charge called five witnesses.

First of all I shall deal with the evidence on the death of the deceased person as it is the prime ingredient in any of the murder cases.

Dr. Jane Wasike (PW.3) who performed autopsy on the body of the deceased, apart from giving evidence on injuries found and cause of death was also asked the questions on who were the identifying witnesses and the police officer escorting the body. She read names of two relatives who are mentioned in her Post Mortem Report. She named one P.C. Isaac Ngugi PW.7 as the officer escorting the body of the deceased.

After examining the body externally and internally she formed an opinion that the cause of death was head injury and multiple bruising due to blunt force.

H.V. swabs were taken from her to rule out the allegation of rape. Similarly the blood samples and those of sperms of the Accused persons were also taken. According to PW.4 the reports from Government Chemist did not indicate anything and thus the same were not produced.

This piece of evidence is very important, if the report did not indicate the Accused that suggests that he may not be at the scene or that he may not be involved in this offence.

I shall, however, deal with the evidence of other witnesses.

PW.1 Michael Mungai recalls that he was in a Bar at about 9.00 p.m. on 23rd December 2004 and had started drinking in that Bar from 6.00 p.m. Before he was going to leave the Bar at around 9.00 to 9.30 p.m. he heard screams coming from outside the Bar. He went out and found Wambui screaming. On questioning her she told him that Nyoro (the Accused) was removing her clothes. This witness did not say

that he had seen the Accused or the deceased in the Bar. He only said he had seen the Accused earlier in the Bar and the witness. Kinuthia. He had seen the Accused earlier in the bar who had left the bar He, Kinuthia (PW.5) owner and Wambui (the deceased) left the Bar at around 9.00 p.m. to 9.30 p.m. He joined the owner in his house and Kinuthia (PW.5) was supposed to escort the deceased to her home.

Next day he heard that the deceased was found dead having been killed.

PW.2 David Mungai is husband of the deceased. According to him he left Rugiri on 21st December 2004 to go to Githunguri to pay his workers. The deceased was left behind in the house at Rugiri. On 23rd December, 2004 his sister-in-law called him at Gethage and asked him to come home. He did not and after three hours he called again and she put him to O.C.S. of Kikuyu Police Station who informed that his wife was arrested. He was drunk when he reached the Police Station and was placed in cells. He was told about her death the next day.

Lastly PW.5 Henry Kinuthia testified by giving similar version in some respect as that of PW.1. According to him the deceased and the Accused were quarrelling at the Bar on 22nd December 2004 at about 9.00 p.m. This version has not been testified by PW.1. This witness also stated that there were only six people in the bar. At about 10.00 p.m. when it was time to close the bar, he heard screams outside. He was told by the owner of the Bar to check which he did and found the deceased with her skirt half removed. She told them that the Accused wanted to remove her clothes. The Accused was not there. The owner called the deceased inside and it was arranged that they all would escort the owner to his house and from there the deceased would go on her own to her house. I cannot accept this piece of evidence coming from this witness who was to escort the deceased as per evidence of PW.1.

That neither PW.1 nor PW.5 has testified that they saw the Accused outside the Bar.

This is the evidence in nut shell. The Accused has not been seen by any of the witnesses after the scream. What has been alleged to have been told to them by the deceased can be utmost in the similar position as dying declaration. The dates are also different as per the evidence. Considering all the circumstances and evidence before me it would be entirely unsafe to rely on her alleged words and to connect the Accused to that part of evidence.

PW.1 places PW.5 as the last person to have been seen with the deceased and PW.5 does have another version. The police has not bothered to get more evidence to balance the two versions.

In short, I can safely find, which I hereby do, that there is no evidence linking the Accused with this murder. I thus enter my finding of not guilty under Section 306(1) of the C.P.C. and acquit the Accused of the charge of murder of the deceased herein as leveled against him.

I also direct that he be released forthwith unless held otherwise as per law.

Dated and Signed at Nairobi this 14th day of November, 2005.

K.H. RAWAL

JUDGE

14.11.2005