



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 34 OF 2003

REPUBLIC.....PROSECUTOR

VERSUS

1. WILLIAM LANGAT

2. ERIC KARANGAACCUSED

JUDGMENT

The two accused persons, WILLIAM LANGAT and ERIC KARANGA were charged with murder contrary to section 203 as read with Section 204 of the Penal Code.

The particulars of the charge as contained in the information filed by the Attorney General are that on the 17th September, 2000 at Kamukunji Police Station in Nairobi within Nairobi Area they murdered JOHN BOSCO KIOKO KYULE.

The prosecution case is that on the 17th September, 2000 PW1 NZAU, PW2 MUSAU KIOKO and the deceased went to Nyaga Bar to have drinks. This was about 6 p.m. At around 11 p.m. PW2 MUSAU excused himself and left the bar. PW1 NZAU and the deceased also left the bar after about 15 minutes. On the way they found PW1 MUSAU struggling with the accused 1 LANGAT. They pulled each other upto ATHUSI BAR, each alleging the other has robbed him. PW2 complained that Accused 1 had assaulted him and robbed him. He alleged that accused 1 was one of 3 men who had robbed him of Shs.2200/= while accused 1 alleged that he was attacked by a group of 3 men who had robbed him and that PW2 MUSAU was one of the men who had robbed him. At Athusi Bar they found PW 10 P.C. KURGAT who identified accused 1 as one of their colleagues and persuaded him to stop struggling with PW2 and he obliged. Accused 1 proceeded to Kamukunji Police Station to make a report about the robbery. He further stated that he had been assaulted during the robbery. He went straight away booked the report in the O.B. At the same time PW2 MUSAU also decided to go to Kamukunji Police Station to make a report that he had been robbed by a group of 3 men who included accused William Langat. PW2 had also sustained some injuries. PW1 and the deceased decided to accompany PW2 to Kamukunji Police Station to make a report. They were accompanied by PC Kurgat and PC George who were on their way to Kamukunji Police Lines. When they reached Kamukunji Police Station PW2 MUSAU accompanied PC Kurgat and PC George to the police lines to get water to clean himself while PW1 and the deceased waited at the gate at the police station. At that time accused 1 also arrived at the police station. On seeing PW1 and the deceased he claimed they were the ones who had robbed him. He pushed them into the report office where he booked them in the OB and set upon them with kicks, fists and he also used a club to assault them alleging they were the ones who had robbed him.

The attack was vicious and ruthless. This was witnessed by PW6 PC Mogaka PW11 PC Muthoka and PW15 PC Mumina who were on duty then at the report office. The 3 police officers PW6, PW11 and PW15 persuaded accused 1 to stop beating the suspects. But at that time the deceased had sustained

serious injuries and could not talk. The two suspects were placed in the cells and the matter was reported to the duty officer who ordered that they be taken to Kenyatta National Hospital for treatment. But the deceased was pronounced dead on arrival. A post mortem was carried out on the body of the deceased by Dr. Maundu PW7 who formed opinion that the cause of death was due to severe injuries all over the body caused by a blunt object.

Accused 1 WILLIAM LANGAT in his defence denied the charge and his evidence told the court that on the material date the 17th September, 2000 at about 11.30 p.m. while on his way to Kamukunji Police Lines where he resided, he was confronted by a group of 3 men who robbed him and assaulted him. He managed to run away to Athusi Bar for help while those people pursued him. At Athusi Bar he met PC Kurgat whom he knew but was not of any assistance as he looked drunk.

He decided to proceed to Kamukunji Police Station to make a report. On arrival outside the police station he met many members of the public. He managed to recognize two of them as those who had robbed him. He arrested them and pushed them into the report office where he booked them in the OB. He then left and went to the police lines where he spent the night.

He denied to have beaten the 2 suspects at the report office. But there is evidence by PW6 PW11 and PW15 who were on duty at that time and they saw accused 1 beat the deceased using a club. They witnessed when accused 1 kicked, hit and beat the deceased using a club. There is also the evidence of PW7 Dr. Maundu who performed the post mortem on the body of the deceased who formed opinion that the cause of death was due to injuries caused by blunt object.

DW2 ERIC KARANGA in his defence denied the charge in his evidence he told the court that he had gone to his rural home at Embu. On the material date he left Embu at about 5.30 p.m. and arrived in Nairobi at about 7 p.m. He proceeded to Kamukunji Police lines where he spent a night. The following day he went to Police Headquarters to settle a few things and late in the evening he went back to Kamukunji Police lines. He was asked to go and see the OCS in his office and when he reached there he was arrested.

There is no evidence at all connecting accused 2 to this office. All the prosecution witnesses denied to have seen him either at Athusi Bar where accused 1 was struggling with PW2 or at Kamukunji Police Station where the deceased was assaulted. The evidence against accused 2 is far below what is required in criminal law to warrant a conviction. All the 3 assessors returned a verdict of not guilty and I agree with them and I acquit him.

But for accused 1 there is sufficient evidence against him to warrant a conviction. But taking into account the sequence of events from Athusi Bar to Kamukunji Police Station the offence committed by accused 1 is manslaughter and not murder. All the 3 assessors returned a verdict of guilty of manslaughter against accused 1. I agree with them. I find accused 1 WILLIAM LANGAT guilty of manslaughter contrary to section 202 as read with section 205 of the penal Code and convict him accordingly.

DATED and DELIVERED at Nairobi this 31st day of March 2004.

J.L.A. OSIEMO

JUDGE

Mr. Akhwale: I have no record for accused. He may be treated as first offender.

J.L.A. OSIEMO

JUDGE

31/3/2004

Mrs. Guserwa: The accused is aged 26 years. The offence was committed under influence of alcohol. He suffered injuries on the face, head and mouth during the incident. He was arrested in 2000. He has been in remand for the last 4 years. He is suffering from T.B. He is still undergoing treatment and he has been on treatment for the last 8 months. The period he has been in remand he has suffered greatly and he is ready to reform if given a chance. I pray for leniency on his behalf. I pray for a non-custodial sentence.

J.L.A. OSIEMO

JUDGE

31/3/2004

Court:

The accused 1 William Langat was charged with murder contrary to section 204 of P.C. He was tried and convicted for a lesser charge of manslaughter. He has been in custody for the last 4 years. He contracted TB while in custody and he is undergoing treatment. He is sorry for the offence and pray for leniency. He looks remorseful. He is aged about 26 years.

I have taken into account the mitigating factors on behalf of the accused and I sentence him to 4 years imprisonment. Right of appeal within 14 days.

J.L.A. OSIEMO

JUDGE

31/3/2004

Order: The assessors to be paid their allowances.

J.L.A. OSIEMO

JUDGE

31/3/2004

Court:

They are discharged.

J.L.A. OSIEMO

JUDGE

31/3/2004