



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
HCCR CASE NO. 31 OF 2001

REPUBLIC.....PROSECUTOR

VERSUS

PAUL KARIUKI KIBE.....ACCUSED

R U L I N G

Paul Kariuki Kibe was arraigned before this court having been committed by the Lower Court to face a charge of murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the Charge stated that on the night of 29th March 2000 at Thunguma Village in Nyeri District within Central Province, He murdered Lydia Muthoni Muturi.

Six witnesses have testified in proof of the prosecution case. Briefly their evidence was as follows:

Lydia Muthoni Muturi (hereinafter referred to as the deceased was living in Thunguma village with her fourteen year old son James Mugambi Muthoni (P. W. 1). The deceased and the Accused were lovers. The deceased was staying in the same plot as James Wangai Mwangi (P. W. 2) and David Nderitu Mwangi (P. W. 3). On the 29th March 2000 at about 7.00 p.m. P.W. 3 met the deceased and the Accused outside the house of the deceased both appeared drunk. P. W. 3 went into his house He then heard the deceased and Accused quarreling outside. He went out and asked them to stop the disturbance. The two then moved away.

At around 9.00 a.m. the two went to the house of P. W. 2 still quarreling. The deceased who had earlier cut some grass for P. W. 2's cows demanded her payment. P. W. 2 paid her Ksh.50/= and told her to collect the balance of Ksh.150/= the next day. The deceased and Accused then left.

P. W. 1 remained in the house alone He slept at about 9.00 p.m. He woke up at around midnight when He heard screams. He thereafter again fell asleep. The next morning P. W. 1, 2 and 3 heard screams and on coming out of their houses they saw the body of the deceased lying about 300 to 400 metres away from the house of the deceased and about 100 to 30 metres away from the house of the Accused.

A report was subsequently made at Thunguma Patrol Base to P.C. Joseph Mwiti (P. W. 4) who proceeded to the scene accompanied by other police officers. They found the body of the deceased lying half naked on a path. P. W. 4 noted that the left leg and right hand appeared swollen and the head had some bruises and there were three pieces of sticks lying next to the body.

P.W. 4 proceeded to the house of the Accused where He found the Accused asleep in the house. They woke him up and recovered a light green and white truck suit jacket which had some blood stains (Exhibit 1) and a white stripped cardigan (Exhibit 2). They also recovered the pieces of sticks from the scene (Exhibit 3) and the clothing which the deceased was wearing (Exhibit 4). All were produced in evidence.

The body was photographed by scenes of crime personnel and moved to the mortuary.

On 25th April 2000 P. W. 5 P. C. Stanley Muthui escorted the Accused to Nyeri Provincial General Hospital where Accused was examined by Dr. Kariuki a Psychiatrist. The evidence of P. W. 6 I.P. Stephen Kemboi was dispensed with when it became apparent that He had not worked with the officer from scenes of Crime who took the photographs and therefore He was not in a position to produce the photographs. At the close of the Prosecution case, Mrs Rika who appeared for the Accused urged the court to find that no prima facie case had been established to warrant the Accused person being put on his defence. She maintained that the only evidence adduced against the Accused was the fact that He was drinking with the deceased on 29th March 2000 and that there was nothing to link the Accused with the death of the deceased. There was no submission made on behalf of the prosecution.

From the opening statement which was made by learned State Counsel Mr. Obuo it was the prosecution case that the deceased died as a result of intra cranial pressure as a result of injuries and the prosecution indicated it would adduce circumstantial evidence that would inevitably point to the guilt of the Accused.

The evidence adduced by the prosecution however did not establish any cause of death as no evidence was adduced to show that a post mortem examination was carried out and what the results were.

This was crucial to show that the deceased died as a result of a willful act or omission on the part of the Accused. Moreover there was no evidence at all to show any malice aforethought on the part of the Accused. The evidence shows no more than the fact that Accused and the deceased were lovers, and that on the material day they were both drunk and kept on arguing and quarreling. This was not however unusual of their relationship.

There was evidence that a jacket belonging to the Accused was recovered from his house containing blood stains. No evidence was however adduced as to whether the blood stains were analysed and what was the result. There is therefore no nexus between the bloodstained jacket and the deceased. There is no compelling circumstantial evidence that can lead conclusively to the guilt of the Accused.

It is apparent that the prosecution case was closed prematurely as only five witnesses testified out of the seventeen witnesses listed in the committal bundle. It is clear that the police were not committed to the prosecution of this case as no efforts were made to get the witnesses despite adjournment having been granted. This seems to be a case in respect of which some invisible hand was orchestrating the outcome by ensuring the omission of vital evidence.

The court however has no option but to find no prima facie case established as the evidence adduced is not sufficient to sustain a conviction should the Accused elect at this stage to say nothing in his defence. I therefore find the Accused not guilty under Section 306 (1) of Criminal Procedure Code.

Accordingly the Accused is acquitted and shall be set free unless otherwise lawfully held.

Dated, Signed and Delivered this 15th day of January 2004.

H. M. OKWENGU

JUDGE