



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL CASE NO. 98 OF 1999

REPUBLIC.....APPLICANT

VERSUS

ABEL MATUNDA OMARIBA.....RESPONDENT

RULING

Abel Matunda Mariba was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was alleged in hte particulars of the charge that on the 11th day of march, 1999 at Kenya Ports Authority Staff quarters Nairobi within the Nairobi Area he murdered Andashe Imbayi.

The accused denied the offence and so the Republic had to call evidence to prove the same. At the close of the prosecution case, a total of 18 witnesses had been called. The learned counsel for hte accused then made a submission under section 306(I) of hte Criminal Procedure Code Cap.75 Laws of Kenya to the effect that the accused has no case to answer. The learned state counsel also made his reply thereto. The said submissions are the subject of this ruling.

On 11th March, 1999 the deceased and others were drinking at a bar called Jirani Bar near the Kenya Ports Authority Staff quarters off the Airport road in South C, Nairobi. Most of the patrons in this bar on that particular day were employees of Kenya Ports Authority.

The bar, according to the witnesses who testified has two sections, the inside where there is a counter and the outside or verandah.

On that particular evening the accused is said to have arrived after the deceased and others. The deceased was seated outside and occupied a table with one John Francoh Kinyanjui Pw7. When the accused came to their table he banged the table where upon the beer bottle the deceased was taking fell and broke together with the glass. Apparently, the said beer had been bought by PW1 Anne Makotsa, who, on hearing the commotion left the inside of the said bar and came out she demanded that hte accused pays for the broken beer. The accused is said to have complied. According to Pw1 Anne Makotsa, there was an exchange of words between the accused and the deceased who where about to fight. However she did not witness any fight.

Pw2 Stephen Maina Mwaniki, Pw3 David Kariuki Pw4 Clement Wauntai and Pw7 John Francoh Kinyanjui were all in the same bar. They all either saw or heard a commotion that involved both the deceased and the accused. None of these witnesses witnessed a physical confrontation that led to the accused punch or hit the deceased.

However, there is one witness who stands out in respect of this aspect. This is Pw5 Robert Maindi Ogana. This witness was categorical that he saw the accused punch the deceased after a quarrel. I shall revisit his evidence later in this ruling.

The differences between the accused and the deceased did not take long. Thereafter, Pw1 Anne Makotsa left the bar followed by the accused and later the deceased. the intervals could not be ascertained very clearly. Some patrons remained behind.

At about 11.00 p.m the same night the deceased was found lying down between blocks 17 and 18 of the K.P.A Estate. Pw2 Mwaniki, Pw3 Kariuki and Pw12 Philip Ngetich may have been hte first people to arrive at the scene where the deceased was. At the instance of Pw17 Joseph Munyao Nzioka, a supervisor in the security firm that guarded the Estate the family of the deceased was informed.

Arrangements were quickly made to take the deceased to hospital but on arrival at Nairobi Hospital he was declared dead. Police were informed and investigations commenced. Several suspects were arrested. These included the accused herein Pw1 Anne Makotsa and Joseph Munyao Nzioka Pw17. Eventually only the accused was charged with this offence.

The prosecution has proved that Andashe Imbayi is dead. Dr. Alex Onzere Kirasi Olumbe Pw18 performed a postmortem on hte body of the deceased. The cause of death was head injury due to blunt object. It is the Republic's case that the accused caused the death of the deceased.

There was a brief misunderstanding between the accused and the deceased. The evidence to that effect is overwhelming. However that disagreement perse is not enough to establish a case of this nature. If hte deceased died of a head injury who inflicted the same? Of all the witnesses who were present at the bar only pw5 Robert Maindi Ogana alleged that the accused punched the deceased. If I were to find that as the truth, corroboration would be required. I have found none.

Ther is not a single witness who witnessed the infliction of the injury on the deceased. The body of the deceased had several bruises. This appears in the postmortem report. This would be a reflection of either a struggle or a fight. The deceased was found in between two blocks in the said estate. The blocks were occupied. yet not a single person cause out to witness anything.

Further to the foregoing, Pw17 Joseph Munyao Nzioka told the court that there were 19 guards on duty on that night yet not a single quard heard or witnessed anything.

The evidence against the accused is circumstantial. His refusal to open the door to his room, his approach to the taxi driver to leave the estate at night are pointers towards that direction. However, even that evidence needed some degree of corroboration. That is lacking.

Above all, several suspects were arrested. Their release to become witnesses has not been accounted for, And so, the suspicion persists. The charge facing the accused is serious. it carries a death sentence. It is not any evidence that should call for he accused to offer evidence in defence.

I know life has been lost but with respect the evidence adduced falls far too short of establishing a prima facie case to warrant the accused to offer any defence.

On my part I find that no prima facie evidence has been established to warrant the accused defend himself against the charge of murder. Accordingly, I find him not guilty and acquit him under Section 306(1) of the Criminal Procedure Code.

He shall be set free forthwith unless otherwise lawfully held.

Order accordingly.

Dated and delivered at Nairobi this 12th day of April, 2000

A. MBOGHOLI MSAGHA

JUDGE