



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE (MURDER) 53 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ABEL MAINGI KARANJA.....ACCUSED

RULING

The accused Abel Maingi Karanja was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The prosecution called six witnesses in its bid to prove that the heinous crime was committed by the accused.

The burden of proof in a criminal case always rests with the prosecution to adduce sufficient evidence which would prove beyond reasonable doubt that the offence was committed by the accused – **Republic –vs- Danson Mgunya (2016) e KLR.**

Section 306(1) and (2) of the Criminal Procedure Code provides that when the evidence of the prosecution has been concluded, if the court considers that there is no evidence that the accused committed the offence after hearing of any arguments, if necessary as the Advocate of the accused and the prosecutor may tender, the court may record a finding of not guilty or call upon the accused to answer to the charge, if the court finds evidence that the accused committed the offence.

The accused person was arrested one year after commission of the alleged offence, and arraigned in court on the 22nd April 2014. The offence is alleged to have been committed on the 17th October 2012 at Passenga in Nyandarua Central District. The victim of the offence is one John Njogu Gitonga, deceased.

PW1, a brother to the deceased visited the deceased in hospital upon the information that he had been injured and taken to hospital.

His evidence was that he found four people, two known to him, at the hospital with the deceased who told him that they had found him stealing their charcoal. It was alleged that they were holding *pangas*, and that the deceased was holding a *jembe* which he used to attack them, so they cut him. It was his further evidence that the *pangas* they had, had no blood stains. He did not see the accused cut or injure the deceased.

The postmortem report prepared by Dr. James Njogu - PW5 - was produced by Dr. Patrick Kirugi on his behalf as the said Doctor had retired. His opinion was that the deceased died due to severe head injury with left temporal fracture. PW4 did not know who killed the deceased, nor did he know whether anybody was arrested for killing of the deceased.

The investigating officer PC Mwamunda testified as PW4. He was not the arresting officer, nor did he visit the scene of crime.

He could not explain to the court why it took over one year to arrest the accused, and owned up that he did not do anything to try to arrest the accused earlier.

Upon conclusion of the prosecution case, the prosecutor did not submit as required under Section 306(1) of the Criminal Procedure Code.

In his submissions, the accused's advocate filed written submissions.

His submissions are that the prosecution failed to establish a *prima facie* against the accused, as the circumstantial evidence against him was not corroborated, as none of the prosecution witnesses saw the accused commit the offence.

I have considered the entire prosecution evidence. It is not an everyday event that four men, wielding *pangas*, can be allowed into a hospital, where a person is lying injured, and who claim to have injured the person, and are not arrested, yet it was their allegation that it was the police who took the injured person (now deceased) to the hospital.

In my view, that evidence tendered by PW1 cannot be credible, more so it was his evidence that he knew them. If that were so, it should not have taken the police one year to arrest the accused.

PW4 did not explain why he could not have arrested the accused earlier than one year. He did not testify that he had absconded.

None of the prosecution witnesses identified the accused person as the perpetrator of the offence in court, yet all of them testified to have been neighbours.

As a whole there is no credible evidence linking the accused to the death of the deceased.

Pursuant to provisions of **Section 306(1)** of the **Criminal Procedure Code**, I find no evidence that the accused committed the offence he is charged with. No *prima facie* evidence has been tendered to that effect.

Accordingly I enter a finding of not guilty against the accused. He is released forthwith unless otherwise lawfully held.

It is so ordered.

Delivered, signed and dated at Nakuru this 13th Day of November 2019.

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J.N. MULWA

JUDGE