



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 28 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

WILFRED NJOROGE GACHIE.....ACCUSED

RULING

1. **Wilfred Njoroge Gachie** is charged with Murder contrary to Section 203 as read with Section 204 of the Penal code. The information states that on the night of 27th April 2018 at Marige Shopping Centre, Githunguri Sub-county, Kiambu County, he murdered **Samuel Njenga Macharia**. He denied the charge and was represented by Mr. Njuguna.

2. Through eight witnesses the prosecution presented the following case. The deceased herein, **Samuel Njenga Macharia** alias **Mwalimu** was a resident of Kiambururu in the material period. The area chief was at the material period **Joseph Njuguna Kago (PW1)**. On the evening of 27.4.18 the deceased was at **Madam P Pub** at Marige shopping centre having gone there at 3.00 p.m. He took some meals and beer. At 10.30 p.m. he requested a bar attendant at the pub, one **Emily Achieng (PW2)** to hail a motor cycle taxi commonly known as *boda boda* to take him home. **PW2** rang up a local operator **John Muiruri (PW4)**. Both **PW2** and **PW4** stated that by the time the latter arrived the deceased was not at the bar.

3. **PW2** said that **PW4** told her that the deceased left with alternative transport with some “men from Thuita” including one Fred. For his part, **PW4** said that it was **PW2** who informed him this when he arrived at the bar and that he subsequently took on a different customer. And while **PW4** claimed that the Accused had been at the pub on the material date, **PW2** made no such mention. Be that it may, the deceased never reached his home. On the next day **PW1** was called at dawn break to a scene close to the Marige trading centre where the body of the deceased lay in a culvert by the roadside.

4. **PW1** found other people at the scene. He testified that while at the scene, he saw the Accused approach, claiming to be in search of his phone and proceeded to collect a **ITEI** phone [**Exh 1**] that lay next to the body. That he was placed under arrest. The phone was handed over, to or retrieved by **CPL John Warui (PW7)** who had been despatched to visit the scene by his supervisor. The scene was documented by **CPL Derick Kiprono (PW 8)** before the body was removed to the mortuary. The post mortem examination was carried out by **DR. Eunice Mugweru (PW6)** on 1st May 2018. Based on her observations, she concluded that death was caused by asphyxia secondary to manual strangulation.

5. The defence and prosecution filed written submissions which I have considered. As observed by the defence, the prosecution case rested on circumstantial evidence there being no eye witness to the murder. The key piece of evidence tending to connect the Accused herein with the offence was that on the morning of 28.4.18, he attempted to collect a phone which lay by the deceased’s body and that **PW1** got him arrested. **PW1** admitted that this piece of crucial information was missing from his statement to police and that, the Accused had a bad reputation in the locality.

6. It is difficult to believe that **PW1** could have failed to record such an important piece of information in his statement to police. Or that the Accused would have been so foolhardy as to attempt to do what **PW1** claimed he did in the presence of the chief and other persons gathered at the scene of the dead body. This piece of evidence sounds incredible.

7. Based on the witnesses lined up by the prosecution, **PW2** was the last person to see the deceased alive, at the pub. While admitting that she had called **PW4** at the deceased’s request, to take the deceased home, her evidence was not direct as to the circumstances in which the deceased left the bar. She claimed that **PW4** informed her that the deceased left in the company of one “Fred” and other “men from Thuita”. Evidently, she did not witness the deceased’s departure from the bar or did not want to testify about it. As regards **PW4**, he said that **PW2** told him the deceased had used alternative transport to leave the bar. So, who was the motor cyclist called “Fred” who, according to **PW2** drove the deceased home on the material night? We do not know. I agree with submissions by the defence that the said “Fred” ought to have been treated as a person of interest to the investigations.

8. The investigating officer (**PW7**) admitted that he did not trace or question the said person. And though **PW2** stated in her evidence that

she knew one Fred and that **PW4** said the said Fred had left with the deceased, Fred remains a mystery. At the same time, **PW7's** assertion that the deceased left the bar in the company of the Accused was not confirmed through direct evidence by any persons present at the bar on the material night, including **PW2** and **PW4**. Moreover, unlike **PW4** who stated that the Accused was in the bar on the material night, **PW2** did not mention such presence in her evidence. Yet as the bar attendant, she stood a better chance of seeing the bar patrons present on that night than **PW4**, who on all accounts did not actually enter the bar on that night, or spend any time in the said premises, his expressed sole business being to collect and ferry passengers from the bar to other destinations.

9. On the evidence before the court, there were three crucial witnesses who could have shed light on the circumstances in which deceased left the bar and his companions on the material night, and ultimately what happened to him. These are **PW2**, **PW4** and the alleged Fred. It is my considered view that **PW2** and **PW4** clearly knew more than they cared to admit, about the events of the material, night. The investigating officer allowed them to get away with superficial and evasive statements which were of little use to this case.

10. The investigator did not bother to uncover the identity of the alleged Fred, the motor cyclist or the other "**Thuita men**" who allegedly accompanied the deceased as he left the bar. In short, the case was poorly investigated. The resultant evidence cannot pass muster the test set out in the quintessential case of **Ramanlal Trambaklal Bhatt v R [1957] EA 332**.

11. This court is of the view that the evidence tendered by the prosecution does not rise up to prima facie standard and therefore cannot justify placing the Accused person on his defence. In the circumstances, this court acquits the Accused person at this stage under Section 306(1) of the Criminal Procedure Code. He is to be set at liberty forthwith unless otherwise lawfully held.

DELIVERED AND SIGNED AT KIAMBU THIS 7TH DAY OF NOVEMBER, 2019

C. MEOLI

JUDGE

In the presence of:

Mr. Kasyoka for the DPP

Mr. Njehu for the Accused

Accused Present

Court Assistant - Kevin