



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 45 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

PATIUS GICHOBI NJAGI.....1ST ACCUSED

CAESAR WACHIRA MUTHONI.....2ND ACCUSED

MARY NJERI WACHIRA.....3RD ACCUSED

RULING

1. The three accused persons namely; Patious Gichobi Njagi, Ceasar Wachira and Mary Njeri have been charged with the offence of Murder contrary to section 203 as read with section 204 Penal Code. The particulars are that the 1st, 2nd and 3rd accused on 17th day of August 2011 at Mwiki within Nairobi County jointly murdered Virginia Waithaka Thuku.

2. They denied the charge and the case proceeded to full hearing with the prosecution presenting a total of seventeen (17) witnesses before closing its case. Both counsel for the prosecution and defence submitted on the issue of no case to answer.

3. I have considered the evidence adduced by the several witnesses plus the submissions. My findings are as follows:-

(i) PW1, PW8 and PW16 are the only witnesses who made mention of the 3rd accused (A3). PW1 testified that besides the 1st accused (A1) saying he would ask his girlfriend called Njeri to drive the other vehicle, he did not see the said Njeri anywhere in this matter.

(ii) PW8 alleged that A3 paid him money for hiring a single room at Tulip Guest house. He said A3 was with A1 at the time of booking the room.

(iii) He admitted that he did not write any particulars on the receipt he issued save the word “customer”

(iv) While in court he pointed out to A1 and A3 as the man and woman who had booked a room at Tulip Guest House on 17th August 2011. He did not know these people prior to this day save for A3 whom he used to see around.

(v) The evidence on record further confirms that no identification parade was conducted for PW8 to identify the persons who had allegedly been to the Guest House that night. It follows that his identification of A1 and A3 in court amounts to dock identification which without other independent evidence is the poorest form of identification. See **Ajode v Republic [2004] eKLR**

(vi) PW16 No 66097 I.P Clement Mwangi the investigating officer in cross examination by Mr. Nyagaya for A3 stated:

“there is no witness who can place A3 at the scene of the murder or connect her with the murder. There is no other evidence that links A3 to the murder.”

(vii) PW16 relied on the evidence of PW 1 and PW8 to charge A3 but at the same time says there was nothing to connect her to the murder. The evidence of the said witnesses has no substance that would make this court to remotely link A3 to the murder.

4. My finding is that the prosecution has not established a prima facie case against A3 to make this court place her on her defence. She is hereby acquitted under section 306(1) Criminal Procedure Code and shall be released unless otherwise lawfully held under a separate warrant.

5. I however find the prosecution to have established *prima facie* case against the A1 and A2 whom I hereby place on their defence.

Orders accordingly.

Signed, dated and delivered this 22nd day of November 2018 in Open court at Nairobi

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HEDWIG I. ONG'UDI

JUDGE