



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 105 OF 2013

REPUBLIC.....PROSECUTION

VS

TITUS KATHURIMA.....ACCUSED

JUDGMENT

The accused Titus Kathurima was charged with offence of murder contrary to section 203 as read with section 204 of the penal code.

The particulars are that Titus Kathurima on the 9th day of December 2013 at Kirinya village Naari location, Buuri District within Meru county murdered Martin Murithi.

The prosecution called Alex Murithi – PW2 who testified that he was at the home of the accused when the deceased went to ask accused about his fertiliser at 8.00 pm and they started fighting. He said he was unable to separate them and he left them fighting. He said the fight took place in darkness. PW2 said that after deceased had inquired about his fertilizer, they both begun to talk in high tones and then started fighting each other. PW2 said the accused and deceased were friends as well as neighbours. He said he didn't see what weapons they used.

PW1 was called by Grace Nkatha to go to see the deceased whom he found near the fence along the road trying to come to his home but was unable to due to pain. He said deceased had blood soaked clothes. The deceased told PW1 that accused had beaten him. That he helped/Assisted him back to the house and his blood stained clothes changed and they went to police station. PW1 said the deceased told him accused used horn of wild animal to beat him. He said the deceased told him that accused started beating him when he went to inquire about his stolen fertilizer.

That from police station he took the deceased to Meru General Hospital where he was treated and discharged. He said the deceased told him he was not improving and the following day he took him back to hospital where he was admitted. He said Martins's mother and wife accompanied him to hospital. That on 7.12.2013 PW1's mother visited the deceased and found his condition had worsened.

That when he and Martins brother and sister-in law visited on 8.12.2013 they found he was uncouncious and he died on 9.12.2013. he went back to station and reported the death. Titus was traced at the market, apprehended and taken to Kiirua police station by members of the public together with area manager.

PW3 mobilised members of public who assited him arrest the accused herein and was escorted to police station. PW4 went to borrow cigarette from the deceased and found him lying in bed with injuries. He said the deceased told him it is the accused who beat him. He said deceased persons eye was red and also had injuries on one hand. He said he advised deceased to go to hospital as he was going to work.

That after one or two days he organized how to take the deceased to hospital and reported to police. He said the deceased was admitted but on 9.12.2013 he died. PW4 said the deceased was his brother.

PW5 Dr Njeru produced post-mortem report for autopsy on body of the deceased which was done by Dr Kihumba on 17th December 2013 in which it was established deceased died as a result of severe head injury due to blunt force trauma. It was found that there were severe bleeding in the brain.

PW6 P. C.Samuel Kemboi investigated the murder and preferred charges against accused herein. When placed on defence the accused in sworn defence said the deceased had been his friend for 8 years. He said on 30.11.2013 he and PW2 and the deceased worked at Muruguma and after being paid they went to drink. After drinking they proceeded home. That he and PW2 went to his home whereas the deceased also went to his home. That later the deceased came and alleged that he had stolen his fertilizer. That he told the deceased they had been together at work and he didn't steal but the deceased slapped him. That when the deceased slapped him again a fight ensued in the house. He said that

in the course of fighting they fell down on tables and stools in the house.

That the candle which was in the house fell. That PW2 – Alex tried to separate them but when they continued fighting he left.

That the deceased also left thereafter and went to sleep. The following day he went to work and it was after 4 days he learnt that Martin was injured and Kaimenyi the deceased person's brother told him he had been admitted in hospital.

Accused said he didn't use any weapon to assault the deceased and he had not planned to assault him. He said they had been drinking together and when the deceased slapped him he even pleaded with him to stop but he continued and he responded in self defence.

Oral submissions were made at the conclusion of defence case and defence counsel urged the court to find that accused didn't have malice aforethought when fighting with the deceased and as such all ingredients of murder have not been proved.

From the evidence on record the issue for determination is whether the prosecution has proved beyond all reasonable doubt that death of the deceased Martin Murithi was caused by the accused person and that the act of causing the death was activated by malice aforethought. PW1 and PW4 testified that the deceased told them it is accused who beat him up and inflicted injuries on him. PW2 was at accused person's home when the deceased came to ask why the accused had stolen his fertilizer and that when the accused said he didn't have fertilizer they started quarrelling and then started fighting. PW2 said the 2 fought in darkness and he didn't know who beat who, where and when he was unable to separate them he left.

It is the act of fighting between the accused and the deceased that resulted in injuries being inflicted on the deceased and those injuries led to his death. PW1, PW2 and PW4 said the accused and deceased were neighbours and friends and that on the material evening they had been working together and walked home together and it was after they parted with deceased to go home and the accused and PW2 to go to accused home that afterwards the deceased went to accused to inquire about fertilizer on suspicion accused had stolen that a fight erupted. Accused said deceased didn't believe when he said he had not stolen the fertilizer and slapped him. On 2nd slap he responded and a fight that led to injuries ensued. The deceased suffered very serious injuries but the accused cannot be said to have planned to inflict the injuries to him. They had been together in the evening and parted while in good terms.

In circumstances I do find that the accused is guilty of causing the death of the deceased – manslaughter but not murder. He is acquitted of offence of murder and convicted for offence of manslaughter under S. 215 C.P.C.

HON. A. ONG'INJO

JUDGE

JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON

THIS 8TH DAY OF NOV 2018

In the presence of:

C/A: Kinoti

Accused:-Present in person

State: Mrs Mwathi

Mrs Ntarangwi Advocate for accused.

HON. A. ONG'INJO

JUDGE

Mrs Mwathi

I don't have records for accused he may be treated as 1st offender.

Mrs Ntarangwi in Mitigation

Accused is remorseful. He is aged 36 years. He is not married. We pray that court considers circumstances of offence and give non custodial sentence.

He stayed in remand for 2 years before he was granted bail. He regrets the offence.

Order

M. 21.11.2018 for victim Impact Statement. Accused remanded in custody.

HON. A. ONG'INJO

JUDGE