



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HCR CASE NO. 97 OF 2013

REPUBLIC.....PROSECUTOR

VS

TIMOTHY MPUTHIA MBAABU.....ACCUSED

RULING

The accused Timothy Mputhia Mbaabu was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.

The particulars are that Timothy Mputhia Mbaabu on the 16th November 2013 at Kinaro Market in Imenti South District within Meru County jointly with others not before court murdered Nicholas Mwirigi Kaburu.

In consideration of the evidence adduced by PW1, it is Kamwari who snatched the deceased person's phone and accused person herein told her to return it and she refused.

PW1 said she didn't see how many people were at scene of the fight which took place outside the bar. She said she locked the bar and the accused who is known as broker and Kamwari as well as deceased went near the tarmac.

PW2 P.C. John Muli testified that PW4 reported that the same people who were beating PW3, who were accused and the deceased also stabbed him.

PW4 in his testimony in court said that accused and deceased were beating PW3 who had snatched the phone from deceased as security for sexual favours. PW4 said that after the bar attendant had chased customers out of the bar due to the fight outside they found accused herein, the deceased and 2 other people beating PW3 and that the accused had a small panga which he used to cut PW3 who was on the ground. That another person used a belt to whip PW3 while the deceased stood by demanding for his phone back as he told accused and the other person to leave PW3 alone. He said he discouraged his companion Karanja from going closer to the scene of fight but when he turned to leave he was stabbed on the neck and he started running towards the main road. When he rushed to Kinoru Police post he found PW3 was already there and when she saw him she said it was accused who had stabbed PW4.

When looking for a motorbike to go to hospital he learnt that accused had also been stabbed and was lying down. His shirt was used to tie his wound and when he was going towards police station to be assisted to go to hospital he found them at scene of fight outside the bar where the young man whose phone PW3 had snatched was lying dead.

PW4 said it is not possible that accused stabbed him and he was also stabbed. He said accused and the deceased were beating PW3 – Mbilia Kamwari who had snatched deceased person's phone and he could not have turned against him. PW4 said he didn't see the person who stabbed him.

PW5, PW 3's husband said he was arrested before he could go and find out why his wife was at the police station. He said he was placed in cells for 2 days at Nkubu police station. He said he told police he didn't know where his wife went to on the night of 16.11.2013 but she was not at home. He said his wife didn't ask for permission to go to the club on the material night. He said that he learnt there was a fight at the club and his wife was involved. He said he didn't stab the deceased on the material night as he was at home. He said he didn't know if deceased had a relationship with his wife and he didn't stab the deceased and run away.

PW6 P. C. Kipkemboi took over investigations from CPL Mwitia the initial Investigating officer. PW7 Dr. Jackline Wendo produced PM Report prepared by Dr Guantai from evidence on record for the prosecution the issue for determination is whether a prima facie case has been established.

From evidence of PW1 and PW4 which is corroborative of each other the fracas and final death of the deceased herein arose because PW3 after being intimate with the deceased wanted to be paid 500/= which the deceased didn't have and she snatched his phone.

The accused intervened and told her to return the phone but she refused. The bar attendant chased them out when the fight continued and it was evidence of PW4 that accused used a panga to beat PW3 and another person whipped her with a belt.

PW3 said that PW4 came to intervene and that is when accused stabbed PW4 and she got a chance to escape but PW4 said that it was not possible that it is accused who stabbed him because accused was stabbed and the deceased whose phone they were demanding from PW3 was also stabbed and he died at the scene.

When PW3 went to report to police that she had been assaulted and she had bleeding cut wounds she was placed in the cells.

PW3's husband PW5 was also arrested and kept in cells for 2 days on suspicion he committed the offence but was later released. PW5 house from the centre where fight took place is only 1.5 KM but he said he never bothered to know where his wife was until the sister – in law told him she was at the police station. Still he didn't go there and police went for him.

I do find that the evidence adduced by prosecution witnesses is not strong enough to make this court make a finding that charge has been proved beyond all reasonable doubt. PW3 Claims it is accused who stabbed PW4 but does not say who stabbed the deceased to death. The accused and the deceased were on one side of the divide demanding for a phone from PW3 and accused could not have turned against him. There must have been someone who came in defence of PW3 who committed the offence or it is PW3 who committed the offence. Due to the uncertain evidence adduced by prosecution witnesses as to who exactly stabbed and killed the deceased this court finds no reason to place accused on defence. He is acquitted under S.210 C.P.C.

HON. A. ONG'INJO

JUDGE

4.12.2018

Before Adwera J

Kinoti – Ct Assistant

Mrs Mwathi for state

Mr Ngugi Advocate for accused

Accused present in person

RULING DELIVERED, DATED AND SIGNED IN COURT ON THIS 4TH DAY OF DECEMBER 2018.

HON. A. ONG'INJO

JUDGE