



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
CRIMINAL CASE NO.31 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY JUMA MWANGA ALIAS JOHN.....ACCUSED

RULING

GEOFFREY JUMA MWANGA alias **JOHN** hereinafter referred as the accused was jointly charged with another not before court for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge supporting the offence are that on the 16th day of June 2015 at Birika Township within Isinya Sub-County of Kajiado County they murdered Christopher Sitonik Ontet.

The accused pleaded not guilty to the charge. He was represented at the trial by Mr. Itaya advocate while the prosecution was led by Mr. Akula, the senior prosecution counsel.

Under section 203 of the Penal Code the prosecution is required to prove the following ingredients:

- 1. The death of the deceased.**
- 2. That the death of the deceased was unlawful.**
- 3. That the accused person in committing the murder had malice aforethought.**
- 4. That the accused in court participated in the commission of the offence.**

PROSECUTION CASE:

The prosecution called thirteen (13) witnesses in support of the charge which in summary constituted the following:

PW3 ISAAC CHEMUKU gave evidence that on 16/6/2015 he had gone to a bar located within Birika Township to have some drinks where he stayed up to about 9.30pm. PW3 further stated that while in the bar he learnt from the owner that one of the customers had done something wrong which precipitated them being chased out of the bar. According to PW3 on arrival at home shortly he was followed by his roommate one Victor who appeared restless. The said Victor offered to sell his mobile phone to PW3 but the same could not go through as he did not have the money. PW3 further stated that they both retired to bed and on waking up his roommate Victor was missing and a bag owned by PW3 containing his clothes and personal effects was also missing. It was PW3 testimony that during the time of drinking he was also in company of the accused before court.

PW4 LILIAN ACHIENG who on the 16/6/2015 worked at a bar in Birika where the incident is alleged to have occurred testified that she had accompanied the wife of the accused to go and search for his whereabouts. According to PW4 the accused left the bar and agreed to accompany them to escort a neighbour's wife to the hospital. In about thirty minutes the accused and another by the name Victor came to the plot. The friend to the accused was in a panic and restless mood and was wearing a red T-shirt which PW4 identified before court.

PW5 PROTUS WAFULA told this court that on 16/6/2015 one of his workers came to the farm and informed him that someone known to him has been stabbed in a bar with a knife. The evidence by PW5 touched on the aspect that was working with some of the people suspected to have participated or were present when the alleged murder of the deceased took place.

PW6 ISAIHA MUDANYA testified that the accused was one of his tenants at Birika centre. That on 16/6/2015 he had opened the gate for the accused who came into the plot at about 1.00pm.

PW7 APC ABEDNEGO MWEMA gave evidence on arrest of one Victor Okumu who is not before court.

PW8 SGT CHEROTICH testified to the effect that on 16/6/2015 in company of other police officers they visited a murder scene at Birika centre. The body of the deceased was moved from the scene and later taken to Kapendo District Mortuary. PW8 further stated that the following day they revisited the scene where they noticed some blood stained marks leading to a plot in house No. 8. According to PW8 it was in this house they arrested the accused person who is alleged to have been in company with another by the name Victor but not present at this trial.

PW1 JOSHUA PARANTAI a brother to the deceased gave evidence on how he was called by the police to identify the body at the mortuary to PW11 Kaggai who performed the postmortem.

In the testimony of PW11 the deceased body on being examined had sustained multiple injuries to the respiratory system, cardiovascular system, the digestive system and head. PW11 further confirmed to the court that the postmortem revealed that all the injuries were of cut wounds which were penetrating in nature. PW11 in her testimony opined the cause of death to be head injury secondary to multiple stab wounds.

PW12 LUCY WAITHERA a government analyst gave evidence on the forensic report involving the blood sample of the deceased, a T-shirt indicated as of the accused. The analyses according to PW12 gave negative results to the request made to determine the presence and origin of the blood stains in the exhibit being a T-shirt.

PW13 PC Francis Karisa the investigating officer testified that the statements recorded revealed that the accused and others were drinking in a bar at Birika on 16/6/2015. According to PW13 in the course of drinking a difference arose where the accused and the deceased fought resulting in the fatal injuries sustained by the deceased.

At the close of the prosecution case Mr. Itaya submitted that the accused person has not been positively identified as being involved in the murder of the deceased. It was further argued by the learned counsel that the case for the prosecution against the accused is purely circumstantial. Learned counsel contended that the test and principles set in Abanga alias Onyango v Republic Cr. No. 32 of 1990 has not been met by the prosecution.

I have considered the evidence and the submissions made by Mr. Itaya the learned counsel for the accused. It is not in dispute that the case for the prosecution is entirely on circumstantial evidence. As reiterated by the learned counsel in a case based on circumstantial evidence it is trite that the circumstances from which a conclusion of guilt is drawn should be fully proved and the circumstances must be conclusive and point to the participation of the accused. It is also a legal principle that the proved circumstances by the prosecution must be consistent only with the hypothesis of the guilt of the accused

and totally in consistent with his innocence.

The issue to be determined at this stage is whether the accused person has a case to answer or can be called upon to state his defence. It is trite law that a prima facie case is established when the evidence adduced is such that a reasonable tribunal properly directing its mind on the law and evidence would convict the accused person if no evidence or explanation was set up by the defence. See the case of ***R.T. Bhatt v Republic [1957] EA 332***. In this case the court further held interalia ***“that a prima facie case could not be established by a mere scintilla of evidence or by any amount of worthless discredited prosecution evidence.”***

In this case I have evaluated the evidence by the thirteen (13) witnesses at the close of the prosecution case. The evidence reveals that the deceased person was alive and drinking with other patrons in a bar at Birika centre. The deceased was assaulted on or about 9.30pm where he sustained personal injuries. The deceased was rushed to the hospital where he succumbed to death before he could be seen by any medical doctor. The death of the deceased has therefore been proved the death of the deceased was as a result of injuries inflicted by a third party. There is evidence from PW11 Dr. Kaggai who carried out the postmortem. The nature of injuries and the weapon used to inflict injuries. One can draw an inference of unlawful death and that of malice aforethought however I do recognize at this stage that what is required of the court is to make a finding that essential ingredients of the offence have been proved. For reasons advanced herein I am satisfied that a prima facie case has been made out to warrant the accused person to be placed on his defence under section 306 (2) of the CPC.

Dated, signed and delivered in open court at Kajiado on 10th day of February, 2017.

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R. NYAKUNDI

JUDGE

Representation:

Accused person

Mr. Itaya for the accused

Mr. Akula for the Director of Public Prosecutions

Mr. Mateli Court Assistant