



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO 26 OF 1998

REPUBLICAPPELLANT

VERSUS

ANTHONY KINYUA MACHARIA

GEORGE MUNENE KABIRU.....ACCUSED

R U L I N G

The accused George Munene Kabiru was jointly charged with Anthony Kinyua Macharia with the offence of murder c/s 203 as read with section 204 of the Penal Code.

The particulars of the offence alleged that on the night of 28th and 29th March, 1997 at Miguta village in Kiambu District of the Central Province the two jointly murdered Stephen Waiganjo Gitau.

The co-accused Anthony Kinyua Macharia pleaded guilty to the lesser charge of manslaughter and on conviction was placed on probation for a period of one(1 year).

The information was then substituted with a fresh one in which the present accused George Munene Kabiru was charged alone with the offence of murder. The particulars remained the same.

The state called a total of nine(9) witnesses. at the close of the Prosecution case the learned counsel for the accused made a submission under section 306 of the Criminal Procedure Code to the effect that the accused has no case to answer. The state maintained that sufficient evidence has been adduced to warrant the accused to offer a defence on the charge as laid.

I have on my part given consideration to the evidence on record and the submissions by both learned counsel.

There is no dispute that the deceased Stephen Waiganjo Gitau died as a result of a stab wound on the lower chest with injury to the heart, diaphragm and liver. This was caused by a sharp object. The post-mortem produced by the prosecution as ext. confirms this.

There is also evidence that the accused herein was together with his co-accused Anthony Kinyua Macharia from the time they were drinking in a bar at Miguta village up to the time they left together. It is also the prosecution case that when the deceased was stabbed the two were together.

The prosecution has laid a lot of emphasis on that particular association. However that is the farthest the evidence can go.

The starting point is that the co-accused in the original charge Anthony Kinyua Macharia pleaded guilty to the charge of manslaughter. The state having accepted that plea in effect discounted the aspect of not only acts reus but also mens rea on the part of the present accused George Munene Kabiru.

I say so because for the offence to be complete the two aspects must be present. The deceased died of one stab blow. The co-accused Anthony Kinyua Macharia admitted as much. This was corroborated by the post mortem report.

There is also evidence that at no time did the present accused exchange any words with the deceased. The mere fact that he was in the company of his co-accused Anthony Kinyua Macharia does not help the prosecution. A common intention cannot be derived from companionship.

Above all, the prosecution has confirmed through the investigating officer that the alleged murder weapon(s) were recovered at the instance of and with the help of Anthony Kinyua Macharia.

With respect therefore, I agree with Mrs Kimani the learned counsel for the accused that the evidence adduced so far is not sufficient to warrant the accused to make any defence. That being the case, I hereby acquit him of the offence of murder and order that he shall be released forthwith unless otherwise lawfully held.

Order accordingly

Dated and delivered at Nairobi this 14th day of October, 1999

A. MBOGHOLI MSAGHA

JUDGE