

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

Criminal Appeal 98 of 1999

CHARO KARISA THOYA

APPELLANT

V E R S U S

REPUBLIC RESPONDENT

(Being n appeal from Original Conviction and Sentence in Criminal Case no. 1764 of 1998 of Ag. Principal Magistrate's Court at Malindi – J. Matu)

J U D G M E N T

The Appellant Charo Karisa Thoya was charged in Malindi Principal Magistrate's Court in Criminal Case no. 1764 of 1998.

With two counts of Robbery with Violence Contrary to Section 296(2) of Penal Code. In the first Count, he was charged that on 18th day of October, 1998 at Watamyu Village in Watamu Location within Malindi District while armed with knives and iron bar, jointly with others not before the court robbed Michael Thoya of two golden chains, one bracelet, a wrist watch make Seiko quartz and cash Shs. 67,000/- all valued at Kshs. 100,00/- and at or immediately before or immediately after the time of such robbery wounded the said Michael Thoya.

In the second count he was charged with robbing one Peninah Wanjiru Macharia of cash Shs. 410/- on the same day and place. He was convicted on both counts and sentenced to death on each Count.

In his appeal the appellant put forward 6 amended grounds of appeal in which inter alia he pleaded to this court to allow his appeal, quash his conviction and acquit him. At the hearing he was unrepresented. He, however, offered comprehensive written submissions supported by various legal authorities and pleaded with us to consider the same along with proceedings and judgment of the lower court and allow the appeal.

Mr. Ogoti who appeared for the respondent opposed the appeal and supported both convictions and sentences. He submitted that there was ample evidence to support the convictions. He pointed out that according to the testimony on record P.W.1 and P.W.2 were walking along the beach at 4.00 a.m. on 18th October, 1998 when they were confronted by two people who robbed them of the articles described in the 2 charges. They screamed and Police Officers who were on patrol responded. The appellant run away toward the ocean. P.W.1 tried to apprehend him but was knived. He was chased by Police Officers and arrested him in ocean water upon being overpowered. He submitted that the complainant's testimony was corroborated by the prosecution witnesses including the policemen who arrested him. The golden chains, wristwatch and knife were recovered from the appellant upon his arrest. Mr. Ogoti also urged us to consider the confession statement which was made by the appellant and which was admitted in evidence after trial within trial. He then urged us to dismiss the appeal.

We have perused the record of proceedings and judgment and now proceed to pronounce our judgment.

Upon analysing the testimony of the complainants and that of prosecution witnesses we find that there was overwhelming evidence to support the convictions. The appellant was arrested immediately after the robbery and the articles stated in the charge, save cash recovered from him. The complainants did not

loose sight of the appellant who was one of the two persons who assaulted and robbed the complainants. The second assailant disappeared into the bush while the appellant was arrested in the ocean where he had attempted to flee. A knife which he used to assault the complainants with was also recovered from him. In addition the appellant confessed to the crime. We find that the judgment of the Honourable Magistrate was cogent and well founded on evidence tendered by the prosecution. There was overwhelming evidence to prove the charges. In the circumstances we find no merit in the appeal and dismiss the same.

Judgment delivered at Mombasa this 18th. Day of September, 2002.

G.A. OMWITSA

COMMISSIONER OF ASSIZE

J. KHAMINWA

COMMISSIONER OF ASSIZE