



REPUBLIC OF KENYA



**Republic v Charo (Criminal Case 16 of 2014)
[2023] KEHC 2865 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 16 OF 2014**

A. ONG'INJO, J

MARCH 24, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

KAHINDI KATANA CHARO ACCUSED

JUDGMENT

1. The accused Kahindi Katana Charo is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. Particulars are that Kahindi Katana Charo on the April 25, 2014 at Kavunzoni village, Mitangani Location, Ganze District of Kilifi County murdered Katana Karisa Chengo.
3. The prosecution's case was that the accused assaulted the deceased using a blunt object following a quarrel over change which he was demanding from the deceased. That the accused bought palm wine for 90/= and the deceased was to give him change of 410/= out of 500/= he gave and that they had agreed that he would get the change the following day but due to drunkenness accused pulled a stick from the roof of deceased house and used it to hit the deceased on the head. The incident was witnessed by the deceased wife Mapenzi who called the Chief – PW 1 and reported her husband had been assaulted by the accused.
4. PW 1 – Snr Chief Joseph Changawa took the deceased to hospital after keeping the stick used to beat the deceased – Exp 1. He said the stick had 2 nails on it. PW 1 said that the deceased was referred from Kilifi County Hospital to Coast General Hospital where he died on April 27, 2014 while undergoing treatment. PW 1 arrested the accused and took him to police station and he was locked in cells after which police visited scene and PW 1 recorded his statement.
5. PW 1 said it is the father of the accused who gave Kshs 6500/= for the deceased treatment. He said the accused was not in the compound when he arrived and it is Mapenzi who gave him the weapon.



- He said the weapon does not have bloodstains and he cannot tell if it was the one used to assault the deceased. He said he got the stick on 25th and gave it to police after 2 days.
6. PW 2 Samson Kenga was called on April 25, 2014 at 2.00 am to go and take the deceased who had been injured to hospital. He said the injured man was bleeding from the front side of the head and was lying down near the road besides his house. He said he took the injured person to Bamba Hospital. He said the Chief gave him a letter to take to police.
 7. That from Bamba Hospital the injured person was taken in an ambulance to Kilifi as he returned home. That he learnt that the injured person was taken to Mombasa. That on April 27, 2014, he learnt that the man he took to hospital had died. That the Chief sent him to take the accused to police station to write a statement. PW 2 said he also wrote a statement. PW 2 said his sister is married at the accused persons home.
 8. PW 3 Charo Kahindi Charo said that the deceased was palm wine vendor within Kavunzoni village. PW 3 was at the palm wine den on April 25, 2014 at about 7pm with Samson and the accused among other patrons. PW 3 said it is Mapenzi the deceased persons wife who was selling palm wine as the deceased was in the house which is 30 metres away. That PW 3 gave the deceased 500/= which he took to the house. That while the deceased was still away PW 3 said he heard the wife crying and telling them to go and see her husband.
 9. That they found the deceased had fallen outside the house and was bleeding from the head. That when they asked the deceased if he could be taken to hospital he said there was no need and he didn't speak again. The Chief PW 1 was called and Chief called for motorcycle to take the deceased to hospital in Bamba.
 10. PW 3 said he knew the accused as they grew up together in same village. That the accused used to ferry coconut for the deceased on his motorbike and he could be paid. PW 3 said he didn't see who committed the offence as he was not at the scene. He said he was drunk and the deceased remained with his change.
 11. PW 4 Mapenzi Kazungu Charo the wife of the deceased testified that on April 25, 2014 she was at her place of business selling palm wine with her husband the deceased in Kavunzoni village. That at 10.00pm the accused paid for 2 quarters of palm wine and gave out 500/= but she didn't have change. She said she was to return Kshs 320/=. That at 11.00pm when she realized the accused and other revelers were causing commotion she decided to close the business and they proceeded home.
 12. That the accused person followed them while demanding for change and the deceased told him he would get the change the next day. That the accused removed a stick from the rood and used it to hit the deceased and he fell. She said the stick used to hit her husband had nails on both sides. Report was made to Chief PW 1 and he advised that the deceased be taken to hospital.
 13. That she took the deceased to Bamba but they were referred to Kilifi and that at Kilifi they were referred to Coast General Hospital where the deceased died while undergoing treatment. PW 4 reported at Bamba Police that her husband had died. PW 4 said she was 3 metres away from the accused when he hit the deceased and he then ran away when the deceased fell. PW 4 said there was solar security light which enabled her identify the accused who was known to her as they were neighbours. PW 4 said the deceased didn't fight with anyone.
 14. PW 5 Katoi Karisa Chengo the brother to the deceased identified the body for postmortem. He said the deceased had a hole on the head inflicted by a nail. PW 6 Charo Salama Chengo also a brother to the deceased accompanied PW 5 to Coast General Mortuary on May 2, 2014 to identify the body of the deceased for postmortem.



15. PW 7 Dr Abdul Aziz Mohamed produced postmortem report prepared by Dr Otieno who performed postmortem on the body of the deceased on May 2, 2014. Dr Otieno was of the opinion that death was caused by head injury secondary to blunt force trauma inflicted with a blunt object.
16. PW 8 SP David Khisa testified that a report of assault was made at Bamba Police Station on April 25, 2014 but when victim died on April 27, 2014 the accused was placed in cells, scene was visited and weapon recovered. PW 8 said the accused was drunk and that is why he pulled a stick from the roof to the deceased house and used it to hit the deceased on the head.
17. PW 8 said the father to the accused even paid Kshs.6000/= to be used for medical expenses when the deceased was referred to Coast General Hospital but unfortunately he died before he could be taken to theatre.
18. When placed on his defence the accused gave sworn statement and said the deceased used to sell to them alcohol. He said he went to the deceased's palm wine den on April 25, 2014 in the evening and he drank wine upto 11.00pm when he decided to go home. That he left his brother at the Mangwe. He said while on his way he was told there was a quarrel at the Mangwe. That he went back and asked his brother what had happened. He said there were many people and that there was a commotion. That when his brother refused to go home, he left him at the Mangwe. That on April 27, 2014 the brother & Son to Chief went and told him that he was required at the police station and he boarded their motorbike and went to Bamba police station where he was interrogated and he said he was not aware of what happened. The Accused said he was totally drunk on April 25, 2014 and didn't know how the deceased met his death. He said he didn't hit the deceased on the head.

Analysis and determination

19. From the above evidence on record for the prosecution and defence, the issues for determination are whether the prosecution have proved:
 - a. Fact of the death
 - b. Cause of death
 - c. Whether the cause of death was committed by the accused
 - d. Whether the cause of death was actuated with malice aforethought
20. From the evidence on record for the prosecution and the defence, it is not in dispute that Katana Karisa Chengo died. PW 1 Joseph Changawa, PW 2 Samson Kenga and the deceased wife PW 4 as well as the Accused confirmed that the deceased died and Dr Otieno in Exhibit No 1 was of the opinion that the cause of death of the deceased was head injury following blunt force trauma. There was extensive skull fracture on the parietal and occipital region with depressed fragment on the left parietal region and subdural hematoma. The injuries were not accidental and the wife of the deceased said it was the accused who pulled a stick with nails on both sides from the roof of their house and used it to hit the deceased on the head.
21. It is admitted by the accused that he was among the revelers at the Mangwe (palm wine den) including PW 2 and the accused persons brother but they were not implicated as having inflicted injuries on the deceased. The accused said he was too drunk and didn't know how the deceased was injured and he cannot say he was not the one who injured him when PW 4 said that he followed them to the house and assaulted the deceased over change which they had earlier agreed would be collected the following day. When the deceased was taken to hospital the accused persons father footed some medical bill according to PW 1 & PW 8.



22. There is no reason given why the accused person father would volunteer to pay the deceased person's medical bill if it was not true that the accused assaulted and injured the deceased.
23. There is no evidence that the accused had differed with the deceased and the conclusion that this court can make is that the offence was not premeditated the accused person was under the influence of alcohol when he committed the offence and malice aforethought cannot be said to have been established.
24. This court therefore finds that the accused person is guilty of manslaughter rather than murder. He is therefore guilty and is convicted accordingly for the offence of manslaughter.

Dated, signed and delivered in Open Court this 24 day of March 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Mr. Ngiri – Counsel for State

Mr. Ochieng Advocate for Accused

Accused – Present in person

Hon. Lady Justice A. Ong'injo

Judge

Mr. Ngiri

We don't have records. Accused may be treated as 1st Offender.

Mr. Ochieng Advocate

I pray that Victim Impact Statement be availed before and mitigate on behalf of the accused.

Order

Accused remanded in custody at Shimo La Tewa GK Prison awaiting Victim Impact Statement on 13/04/2023 before Justice Mutai.

Hon. Lady Justice A. Ong'injo

Judge

