



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Chonya alias Tsuwi (Criminal Case 12 of 2019)
[2023] KEHC 21555 (KLR) (21 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 21555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL CASE 12 OF 2019
SM GITHINJI, J
JUNE 21, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

KARANI CHONYA ALIAS TSUWI ACCUSED

JUDGMENT

1. Karani Chonya alias Tsuwi is charged with the offence of Murder, contrary to section 203 as read with section 204 of the [Penal Code](#) chapter 63 Laws of Kenya.
2. The particulars of this offence are that on the 21st and 22nd day of August, 2019 at Kilonga village, Kibwabwani Sub-location, Kaloleni Sub-County within Kilifi County, the accused murdered Sidi Chonya Lewa.
3. The prosecution case is that the accused in this case is a son to the deceased. In May, 2016 the deceased raised a concern to Pw-3 where she alleged that the people around where she was married were spreading rumours that she is a witch.
4. Pw-3 advised her to go back to her parents' home and seek advice. Later on June 15, 2016 the deceased while in company of her brother reported to the area assistance chief, the Pw-5 in this case, that Katana Charo Baro had alleged that the deceased bewitched his brother. A meeting was called and the issue deliberated. Katana Charo Baro sought forgiveness and was fined 3 goats.
5. It was alleged by Pw-2 that in June, 2018 the wife of the accused herein miscarried and the accused blamed the deceased (his mother) to have bewitched the said wife for it. The deceased informed Pw-2 that the accused had assaulted her and she was advised to report to the authorities.



6. In August, 2019 the wife of the accused conceived and gave birth. She had gone to her parent's home to deliver. The deceased went to visit her there. She was not seen again alive as her body was discovered by Pw-1 on 22/8/2019 at 11.00am at Mti wa Ng'ombe.
7. The police collected the body and postmortem was conducted on 30/8/2019. Dr Mohamed Ali who filled the postmortem report found that the body had cut wounds on right axilla. A lessa was tied around the neck tightly with deep ligature mark around the neck. There were bruises on the chin. He opined the cause of death to be Asphyxiation due to ligature strangulation.
8. The accused was picked as a suspect and charged.
9. On the foregoing evidence, the court found that the accused had a case to answer and placed him on his defence (by Justice Nyakundi).
10. The accused gave sworn evidence in his defence. He stated that he lives at Kinarani, Kaloleni and is a casual worker in farms. He is married and has three children who are alive and at school. These are;- Baraka Karani aged 16 years, Mary Karani aged 10 years and Mohammed Karani aged 9 years. He was living at his brother's place who is known as Jefa Choya Tsuwi though still has another brother called Karisa Choya Tsuwi. The deceased Choya Lewa is his mother, and he was living with her. He had no problem with his mother but his brother Karisa Choya Tsuwi had, as he alleged the mother was bewitching his children.
11. On 17/8/2019 the accused saw his mother as she left to go and check on her grandchild, the child to the accused person, at Bamba.
12. On 21.8.2019 at 6.00Pm the accused went for funeral at Gakio Naomi's house as she had lost her mother. He was there till 7.10am. When he returned back home Saidi Safari told him that his mother had been killed. On 24/8/2019 he was arrested. He did not kill her.
13. Both parties filed their submissions in which the prosecution urges this court to rely on the circumstantial evidence and convict the accused, while the defence alleges the offence is not proved by the prosecution beyond reasonable doubt and the accused deserves an acquittal.
14. The ingredients for the offence of murder under section 203 of the Penal Code which states that; -
 - a. "Any person who of malice aforethought causes death of another person by unlawful act or omission is guilty of murder" are; -
 - a. The death of the deceased.
 - b. That the accused committed the unlawful act or omission which caused the deceased's death.
 - c. That the accused had malice aforethought.
15. In this case as was rightly submitted by the prosecution, there is no eye witness as to how the deceased met her death. The available evidence suggesting she may have been killed by the accused is purely circumstantial. In the case of *Abanya alias Onyanggo v Republic* Cr App No.32 of 1990 (UR) the Court held that; -
 - a. "It's settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests; -



- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.
 - ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
 - iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
16. The prosecution evidence should therefore be subjected to the foregoing test in finding out whether the accused is guilty or not.
17. The evidence of Pw-3 and Pw-5 shows that apart from the accused herein, there are other persons who had accused the deceased of being a witch. Pw-3 stated in May, 2016 the deceased had raised concerns to him that the people around where she was married were spreading rumours that she was a witch. He, together with Pw-5 then deliberated on a complaint by the deceased that Katana Charo Baro had alleged that she was a witch and had bewitched his brother. The said Katana Charo Baro sought forgiveness and was fined 3 goats. These other persons, would also have had a cause to kill the deceased. When the deceased left to go and see her grandchild, there is no evidence as to whether she got to the accused’s in-laws home where his wife had given birth or was killed while on the way to the place. There is no evidence that places the accused to the scene of the crime, or which points to the fact that he is the only one who had an opportunity to kill her.
18. In his defence he denies the offence. He says he was living with his mother and had no problem with her, but it’s his brother Karisa Choya Tsuwi who had a grudge with her.
19. The prosecution case and the defence shows that the available evidence falls short of pointing unerringly towards the guilt of the accused and raises a possibility where the offence could have been committed by someone else, save for the accused herein. In short the prosecution fails to prove the offence against the accused beyond reasonable doubt and he is accordingly acquitted of it. He is set free unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 21ST DAY OF JUNE, 2023

.....

S.M. GITHINJI

JUDGE

In the presence of; -

1. The Accused
2. Absence of Madam Aoko for the Accused (on strike)

