REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

(CORAM: CHUNGA, C.J., LAKHA & OWUOR, JJ.A.)

CRIMINAL APPEAL NO. 169 OF 2001

BETWEEN

TINYI RANGE MANGERA.....APPELLANT

AND

REPUBLIC.....REPUBLIC

(Appeal from a Conviction and Sentence of the High Court of

Kenya at Kisii (Wambilyanga, J.) dated 22nd October, 2001

in

H.C.CR.C. NO. 5 OF 2000)
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JUDGMENT OF THE COURT

TINYI RANGE MANGERA, the appellant above named, was convicted by the superior court (Wambilyanga, J.) on 22 October, 2001 of the offence of Murder contrary to **section 203/204 of the Penal Code** in that on 27 March, 1999 at Wangira-Bose Sub Location, Ntimaru Location in Kuria District in Nyanza Province, he killed **Gisiri Chacha Sereria**. Upon his conviction, he was sentenced to death. He now appeals to this Court.

The facts of this case are few and simple and the sole question in this appeal is whether the identity of the appellant as the assailant of the deceased was sufficiently established.

The deceased was brutally attacked on 27 March, 1999 at about 8:00 p.m. **Lucia Ali Chacha, (P.W.1.)**, the mother-in-law of the appellant and step-mother to the deceased; and **Mwita Ali Chacha, (P.W.3)** who was the son of **P.W.1**. as well as brother-in-law of the appellant and step-brother of the deceased, testified that the appellant arrived outside the kitchen o**f P.W.1**. and shouted that the appellant would either kill or would himself be killed. It is in these circumstances that they screamed for help. According to them, soon thereafter, the deceased screamed that he had been stabbed when the appellant vanished from the scene. **P.W.1.** and **P.W.2.** swore that at the time the appellant threatened to be killed or kill, he was armed with a bow and arrow. John Maenye Sabai, **P.W.2.,** not a member of the family who was also going to the wedding ceremony had heard screams of **P.W.1.** and **P.W.3.**

In this case, the trial judge and the assessors accepted the evidence of these three prosecution witnesses from which the only finding of fact was that the appellant stabbed the deceased. The guilt of the appellant on the accepted evidence is fully established to the effect that the deceased was shot with a poisonous arrow on the stomach by the appellant and died instantly.

It was urged, on behalf of the appellant, that the trial judge had failed to evaluate the evidence of the witnesses with care it deserved and did not pay attention to the statement of the appellant other than merely summarizing it. In our view, the evidence as a whole was satisfactory and the learned judge made a proper evaluation thereof with which we respectfully agree. There was sufficient light to identify the appellant who was known to the witnesses and no complaint was made with regard to identification. We are not satisfied that there was any misdirection in the judgment such as to vitiate the conviction. Nor was the summing up by the learned trial Judge shown to have been flawed in any way.

In this regard, the trial Court had the benefit of the opinion of the assessors who had given their opinions that they would find the appellant guilty of murder and, like the learned judge, we find ourselves in entire agreement with him.

Jirongo Lundu, P.W.7. had arrested the appellant who made a confession to him that he had killed his victim. It is unfortunate that his rank was not elicited during his evidence. Be that as it may, Mr. Menezes, for the appellant, submitted that the confession should be excluded as it vitiated the conviction. With respect, we do not agree. Even if the confession was excluded, there was, in our view, sufficient evidence to justify the conviction of the appellant for murder.

We are satisfied that the charge against the appellant was proved beyond reasonable doubt and it was safe to convict.

Mr. Menezes, for the appellant, finally complained that the evidence as to the cause of death was taken from a witness who was not a qualified medical officer. This is true. But here there is ample evidence to show that the cause of death testified to by such a witness was fully supported by other evidences with the result that no difficulty arises as there is other evidence which leaves no doubt in our minds that the death of the deceased was due to Excessive Interabdominal Haemorrhage.

Accordingly, and for the reasons above stated, the appeal is dismissed.

Dated and delivered at Kisumu this 15th day of March, 2002.

B. CHUNGA

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CHIEF JUSTICE

A.A. LAKHA

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR