

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT

MBARARA

CRIMINAL APPEAL NO. 0132/2010

AHIMBISIBWE SOLOMON.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE BYABAKAMA MUGENYI SIMON, JA HON.

MR. JUSTICE ALFONSE C. OWINY-DOLLO, JA

(Appeal against the sentence of the High Court at Bushenyi before his Lordship Hon. Justice Lawrence Gidudu dated 7th July 2010)

JUDGMENT OF THE COURT

The appellant was convicted, on his own plea, of manslaughter contrary to sections 187 and 190 of the Penal Code Act by the High Court sitting at Bushenyi on 7th July 2010. He was sentenced to 16 years imprisonment. With leave of this Court, he has appealed against sentence only.

The facts of the case are fairly straightforward. The deceased was the appellant's stepmother. On the 14th of October 2006, at about 8pm, the appellant went to the deceased's home and accused her of practicing witchcraft. They had a fight whereupon the appellant picked a panga

and cut off the deceased's head and right arm. She died instantly. The appellant handed himself over to police and confessed to the offence. He was subsequently charged with murder contrary to sections 188 and 189 of the Penal Code Act. At the trial, the appellant intimated his willingness to plead guilty to the lesser offence of manslaughter. The indictment was duly amended to which the appellant pleaded guilty, was convicted and sentenced to 16 years imprisonment.

Dissatisfied with the sentence, the appellant appealed to this Court on the following sole ground:

- 1. The learned trial judge erred in law and fact to impose a sentence of 16 years imprisonment which was harsh and excessive under the particular facts of the case.**

Ms Matovu Suwayah appeared for the appellant on state brief and Ms Adrine Asingwire, Principal State Attorney, appeared for the respondent.

Counsel for the appellant submitted that the sentence of 16 years was harsh and manifestly excessive under the circumstances of the case.

In the middle of her submissions, Counsel sought leave to withdraw the appeal under rule 70 (1) of the Rules of this Court, on instructions of the appellant so that he serves the remaining sentence. We declined to grant leave and ordered the matter be heard owing to the peculiar circumstances of this case. Court brought it to Counsel's attention that given the manner the deceased was killed, Court was inclined to consider whether the sentence of 16 years was on the lower side requiring enhancement by this Court.

Counsel submitted that there was no need for enhancement of sentence by this court, and that the sentence passed was appropriate according to the circumstances of the case. She argued that the appellant does not deserve a maximum sentence because he pleaded guilty; he was only 21 years of age, had reported himself to police and was a student who deserves to go back and complete his studies. Counsel cited the case of **AINOBUSHOBOZI VENENCIO VS UGANDA, Court of Appeal Criminal Appeal No. 242/2014**, where, the court reduced a sentence of 18 years to 12 years on a conviction for manslaughter.

It was contended by counsel for the appellant that the 16 years sentence was appropriate in the circumstances of this case.

Counsel for the respondent opposed the appeal and prayed Court to enhance the sentence.

She referred to rule 32(1) of the Rules of this Court which states that;

“On any appeal the Court may so far as its jurisdiction permits, confirm, reverse or vary the decision of the High Court or remit the proceedings to the High Court with such directions as may be appropriate, or order a new trial, and make any necessary, incidental or consequential orders, including orders as to costs.”

Counsel submitted that this Court has the powers to reverse or vary the decision of the High Court, and she prayed Court to enhance the sentence. She contended that the offence with which the appellant was convicted attracts a maximum sentence of life imprisonment.

She submitted that the Court did not put into consideration the circumstances under which this offence was committed; in that the appellant found the deceased at her home, he was armed with a panga, he suspected the deceased was practicing witchcraft, attacked her and used excessive force to cut off the head plus the right hand.

She argued that the sentence of 16 years imprisonment was so lenient and inappropriate in the circumstances of this case and did not meet the ends of justice.

Court Resolution

We have carefully listened to the submissions of both counsel and we have also perused the Court record and the authorities cited to us. This Court, as a first appellate Court, has a duty to re-appraise the evidence and make its own inferences in all issues of law and fact.

See: Rule 30(1) of the Rules of this Court, KIFAMUNTE HENRY Vs UGANDA, Supreme Court Criminal Appeal No. 10 of 1997 and BOGERE MOSES Vs UGANDA, Supreme Court Criminal Appeal No. 1 of 1997.

This Court may only interfere with a sentence imposed by the High Court in limited circumstances set out by the Supreme Court in **KIWALABYE BERNARD Vs UGANDA, Criminal Appeal No. 143 of 2001** as follows;

“The appellate court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that its results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought

to be considered which passing the sentence or where the sentence imposed is wrong in principle”

This court therefore has the power to interfere with sentence as it was stated in the case of **Kiwalabye** (supra). Section 132(1) (e) of the TIA provides that;

“The Court of Appeal may in the case of an appeal against sentence alone, confirm or vary the sentence”

Before passing sentencing in the instant case, the learned trial Judge stated as follows;

“The convict is a first offender who has been on remand for 3 years and 8 months. He appears remorseful and has from day one admitted his crime, however cruel it was considered the manner in which it was executed, these are factors in which I consider. However, death occurred in the most brutal manner. The force used to sever off the head shows how wild the convict had behaved. The maximum sentence for crimes of this nature is imprisonment for life. But considering the age of the convict, I shall and do hereby consider a prison term of 16 years as appropriate. I sentence convict to 16 years for manslaughter”

The trial judge exercised his discretion in passing the sentence, by taking into account the fact that the killing was committed in a gruesome manner and was mindful that the maximum sentence was life imprisonment.

We note that the appellant killed his step mother in a vicious and brutal manner. He used a panga to sever off the deceased’s head and right arm on suspicion that she was bewitching him. The attack occurred at her home and the force used must have been excessive and the panga so sharp as to completely sever the head and right arm. The post mortem report reveals the deceased also sustained cut wounds on the left cheek as well as deep cuts on the left arm with fracture of the radius bone in the middle.

However, there were mitigating factors which were in the appellant’s favour. He was young only 21 years at the time he committed the offence. The appellant was a first offender who had promptly surrendered to the police, confessing to the crime. He had been on remand for 3 years and 8 months prior to the conviction. This was a single loss of life that was not coupled with any other offence and was not related to ritual sacrifice. The appellant readily pleaded guilty to the offence of manslaughter, a plea the trial Judge accepted.

Considering the circumstances of the case, we are inclined to reduce the sentence from 16 years to thirteen years imprisonment. The sentence is to run from 7th July 2010 the day the appellant was convicted by the High Court.

We so order

Dated at Mbarara this 7th day of December 2016

HON. KENNETH KAKURU

JUSTICE OF APPEAL

HON. BYABAKAMA MUGENYI SIMON

JUSTICE OF APPEAL

HON. ALFONSE C OWINY –DOLLO

JUSTICE OF APPEAL

