THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA SITTING AT GULU

Criminal Appeal No. 267 of 2017

Coram: Kakuru, Tuhaise, JJA, & Kasule, Ag. JA

Adupa Dickens ..... Appellant

Versus

Uganda..... Respondent

(An Appeal arising from the decision of Dr. Winifred Nabisinde J, in Criminal Session Case No. 63 of 2013, dated 30th June 2017 at the High Court of Uganda at Lira)

Judgment of the Court

The appellant, Adupa Dickens, was indicted for murder contrary to sections 188 and 189 of the Penal Code Act. He was arrested, tried and convicted of murder. He was sentenced to 31 years imprisonment. Dissatisfied with the court's decision, he filed this appeal on the sole ground that the learned trial judge erred in law and fact when she failed to take into account the period the appellant spent in lawful custody thereby rendering the sentence a nullity.

At the commencement of the hearing of this appeal, the appellant abandoned the above ground of appeal. With leave of this Court granted under section 132 (b) of the Trial on Indictments Act, he substituted it with the sole ground that:-

1. The learned trial judge erred in law and fact when she imposed a harsh and excessive sentence in the circumstances, thereby occasioning a gross miscarriage of justice to the appellant.

Background

The particulars of the offence were that Adupa Dickens on the 7th day of May, 2013 at Aumi Village murdered Eluny Sharon.

The brief facts of the case were that Eluny Sharon (the deceased) and the appellant were husband and wife. The two had marital disputes that led to the deceased being taken back to her parents' home. The deceased however returned to her matrimonial home to weed millet. She was shortly after that found dead on 7th May 2013. The post mortem report indicated that her body had been assaulted with a blunt object which left wounds on her body, and her body was hanged after she died. The appellant was arrested, tried and convicted of the murder of the deceased.

Representation

Mr. Ochaya Achellam, learned Counsel, appeared on state brief, for the appellant, while Mr. Patrick Omia, learned Resident Senior State Attorney, Gulu, appeared for the respondent.

Submissions for the Appellant

Mr. Achellam submitted that the appellant was sentenced to 35 years imprisonment, but the period of 3 years and 4 months he spent on remand was deducted, leaving a period of 31 years imprisonment. He submitted that the appellant faults the learned trial Judge for passing a harsh and excessive sentence against the appellant. Counsel informed this Court that the appellant has 10 children, 4 from the deceased wife and 6 from the senior wife. He contended that the more the appellant is kept away from his home, the more his children who need his care and upbringing will suffer.

Counsel referred this Court to page 81 of the record of proceedings where it is stated that the health of the appellant is

not very good because he suffers from high blood pressure which has become acute. He also submitted that the appellant realised the mistake he made, that he was remorseful and regretted his conduct. According to Counsel, the appellant, who is 40 years of age, is a person who is capable of reforming if given the opportunity to do so, and he also needs to bring up his children. He cited the authority of **Aharikundira Yusitina V Uganda, Supreme Court Criminal Appeal No. 27 of 2015** where the case of **Susan Kigula & Others V Attorney General Constitutional Appeal No. 3 of 2006** was referred to regarding the aspect of consistency in imposing sentence.

Counsel prayed that the sentence of 31 years imprisonment imposed upon the appellant be reduced and substituted with an appropriate sentence in the circumstances. He prayed for 10 years imprisonment so that the appellant is given time to go back and pick up from where he left to continue attending to his responsibilities.

Submissions for the Respondent

Mr. Omia opposed the appeal and supported the sentence meted out against the appellant by the learned trial Judge. He submitted that the learned trial Judge, while sentencing the appellant, considered a number of factors including those that the appellant's counsel enumerated, and the fact that the appellant was a first time offender. Counsel submitted that the learned trial Judge also deducted the period the appellant had spent on remand, and had considered the sentencing ranges when she imposed the 35 years imprisonment sentence against the appellant.

Counsel prayed that the sentence passed against the appellant by the learned trial Judge be not disturbed as the same was neither

harsh nor excessive. He prayed that the appeal be dismissed. He cited the cases of **Aharikundira Yusitina V Uganda, Supreme Court Criminal Appeal No. 27 of 2015**; **Bandebaho Benon V Uganda, Court of Appeal Criminal Appeal No. 319 of 2014;** and **Arinaitwe Yusuf V Uganda, Court of Appeal Criminal Appeal No. 98 of 2013** to support his submissions.

Appellant's submissions in Rejoinder

Mr. Achellam reiterated his earlier submissions and prayers.

Resolution of the appeal

We have addressed our minds to the adduced evidence, the submissions of counsel for both sides, the authorities cited, and the law applicable to the circumstances of this case.

This is a first appeal. This court, as a first appellate court, has a duty to re-evaluate the evidence and come to its own conclusion as required under rule 30 (1) of the Judicature (Court of Appeal Rules) Directions. It will however be mindful of the fact that unlike the trial court, it had no opportunity to observe the demeanour of the witnesses as they testified. See: **Pandya V R [1957] EA 336; Henry Kifamunte V Uganda, Supreme Court Criminal Appeal No.10/1997;** and **Bogere Moses V Uganda, Supreme Court Criminal Appeal No. 1 of 1997.**

This appeal is against sentence alone. The law is now well settled as to when an appellate court can properly interfere with sentence passed by a trial judge. In **Kiwalabye Bernard V Uganda, Supreme Court Criminal Appeal No. 143 of 2001**, the Supreme Court stated the principle that 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 it 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 circumstance which ought to be considered while passing the sentence, or where the sentence imposed is wrong in principle. Also see: **Livingstone Kakooza V Uganda, Supreme Court Criminal Appeal No. 17 of 1993**, which cited with approval the case of **Ogalo s/o Owoura v R [1954] 21 EACA 270**.

The appellant in this appeal was convicted of murder which carries a maximum sentence of death. He killed his wife, and mother to his 4 children. After that, he tried to disguise his heinous act by making it look like a suicide.

The record shows that the learned trial Judge took into account the mitigating factors and the aggravating factors, as well as the fact that the appellant was a first time offender. Counsel for the appellant argued that, considering the appellant's age at the time he committed the offence, he should have been given a chance to reform with a lenient sentence.

The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, set out a starting point of 35 years imprisonment for the offence of murder when sentencing. The maximum penalty for murder is death. In addition, there is a necessity for courts to maintain consistency and uniformity in sentencing.

During the hearing of this appeal, the appellant's counsel submitted that the appellant be given a sentence of 10 years imprisonment; while the respondent's counsel maintained that the sentence imposed by the learned trial Judge should be upheld.

In **Aharikundira Yusitina V Uganda, Supreme Court Criminal Appeal No. 27 of 2015**, the appellant who had been convicted of murder of her husband was sentenced to death by the trial court.

On appeal, this Court upheld the sentence of death. Dissatisfied with the sentence, she appealed against the legality of the sentence to the Supreme Court which reduced the sentence to 30 years imprisonment.

In **Bandebaho Benon V Uganda, Court of Appeal Criminal Appeal No. 319 of 2014** the appellant was convicted of murder and was sentenced to 35 years imprisonment. The victim was his wife. This Court found that the sentence of 35 years imprisonment for murder is not manifestly harsh. However, it reduced the sentence to 30 years imprisonment because the trial court had not considered the fact that the appellant was a first time offender.

In **Arinaitwe Yusuf V Uganda, Court of Appeal Criminal Appeal No. 98 of 2013**, the appellant murdered his wife and pleaded guilty to the offense. He was sentenced to 25 years imprisonment. The sentence was upheld by this Court. However, in the instant case, the distinction is that the accused never pleaded guilty.

In **Befeho Iddi V Uganda, Court of Appeal Criminal Appeal No. 264 of 2009**, the appellant was convicted of murder and sentenced to life imprisonment. This Court set aside the sentence of life imprisonment and substituted it with a term of 30 years imprisonment.

In **Ssemanda Christopher & Another V Uganda, Court of Appeal Criminal Appeal No. 77 of 2010,** the appellants were convicted for murder. They were sentenced to 35 years imprisonment by the trial court. This Court upheld the sentence of 35 years imprisonment upon each of the appellants.

In this appeal however, we have already noted that the appellant was a first time offender, which factor was considered by the

learned trial Judge. The learned trial Judge also deducted the 4 years the appellant had been on remand, leaving the appellant to serve 31 years imprisonment, from the date of conviction.

Therefore, in our considered opinion, the 35 years imprisonment imposed against the appellant was not manifestly harsh or excessive in the circumstances of the case. We find no reason to interfere with the sentence of the learned trial Judge.

We therefore dismiss this appeal. The sentence of 31 years imprisonment imposed against the appellant running from the date of his conviction, of 30th June 2017, is upheld.

Dated at Gulu this .....15th day of ..... Jan .....2020.

.....

Kenneth Kakuru

Justice of Appeal

.....

Percy Night Tuhaise

Justice of Appeal

.....

Remmy Kasule

Ag. Justice of Appeal