THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT LIRA

[Coram: Richard Buteera, DCJ, Hellen Obura, JA & Remmy Kasule, Ag. JA]

CRIMINAL APPEAL NO. 57 OF 2013

GULOBA ROGERS::APPELLANT

VERSUS

UGANDA::RESPONDENT

(Arising from the Judgment of Byabakama Mugenyi, J, in High Court Criminal Case No.64 of 2012, dated 6th May 2013)

JUDGMENT OF THE COURT

Introduction

The appellant, Guloba Rogers was indicted for Aggravated Robbery contrary to **sections 285 and 286 (2)** and Murder contrary to **sections 188 and 189** of **the Penal Code Act Cap 120**. He was sentenced to 47 years' imprisonment by Byabakama Mugenyi, J, (as he then was).

Background to the appeal

It was alleged that the appellant and Wabuna Micheal and others still at large, on the 19th day of November, 2011 at Tekulo village, in Lira District, robbed one Acar Geoffrey (the deceased), of a red bajaj motorcycle Registration No. UDS 071W and immediately after the time of the said robbery caused his death.

The deceased was an office attendant at the Uganda Association of Private Vocational Institutions but also used to have a boda-boda riding business.

On the fateful day, at around 5:00pm a one Agweng Filda (PW2), the Administrator at Uganda Association of Private Vocational Institutions, called the deceased to pick her from work using the company's motorcycle. The deceased picked her up and took her

home at around 6:00pm the same day. Thereafter, the deceased requested Agweng to use the same motorcycle to pick his jacket from his home which request was granted.

The deceased left and Agweng Filda waited for him in vain. She made several calls to the deceased which went unanswered until his mobile phone went off.

The deceased's body was later found by a herdsman along a sewer line and taken to Lira Regional Referral Hospital.

On 30th December, 2012, a one Kuloba Jackson was arrested in Mbale on suspicion of being in possession of a suspected stolen motorcycle. He explained that it was one Wabuna Micheal (A2) who had given him Motorcycle Reg. No. UDS 069E for 'boda-boda' business. Wabuna's home was searched and two other motorcycles and other items were recovered. He was arrested and taken to Mbale Central Police Station. Wabuna then informed police that some of the items belonged to the appellant (Guloba Rogers, A1).

The appellant was later arrested while riding the motorcycle Reg. No. UDS 071W and detained. The said motorcycle was retained as evidence. The appellant and Wabuna Micheal were transferred to Lira Central Police Station where the motorcycle Reg. No. UDS 071W was identified as the one that the deceased rode before his death,

The post mortem report revealed that the deceased's cause of death was multiple organ failure due to damage to the brain and the cervical spinal cord. The medical examinations conducted when the suspects were arrested revealed that the accused were of sound mind.

The appellant (A1) and Wabuna Micheal (A2) were tried. The appellant was convicted on both counts and sentenced to 47 years' imprisonment whilst Wabuna Michael was acquitted.

Being aggrieved by the decision of the trial Judge, the appellant now appeals to this Court against both the conviction and sentence.

Grounds of Appeal

The appeal is based on three grounds of appeal to wit:-

1. **That the learned trial Judge erred in law and fact when he failed to adequately evaluate the evidence on record as regards identification thereby arriving at an erroneous decision which occasioned a miscarriage of justice.**
2. **That the learned trial Judge erred in law and fact when he held that the appellant's alibi had been disbelieved or discredited which occasioned a miscarriage of justice.**
3. **That the learned trial Judge erred in law and fact in sentencing the appellant to 47 years imprisonment which was excessive in the circumstances thereby occasioning a miscarriage of justice.**

Legal Representation

At the hearing, the appellant was represented by Ms. Christine Atyang on State brief while the respondent was represented by Mr. Brian George Kalinaki, Assistant Director of Public Prosecutions.

Submissions of counsel

Both counsel filed and adopted their written submissions. Counsel for the appellant argued grounds 1 and 2 together and he argued ground 3 separately. Counsel for the respondent adopted the same order as followed by counsel for the appellant.

Grounds 1 and 2

Counsel for the appellant submitted that the learned trial Judge erred in law and fact when he failed to adequately evaluate the evidence as regards identification of the appellant and disbelieved or discredited the appellant's defence of alibi.

On identification, counsel contended that the appellant was wrongly convicted on the uncorroborated testimony of a single witness, (PW3) Odyek Benard who testified that he met the deceased at club 24/7 Kitgum stage in Lira at night, where the appellant asked

the deceased to take two people and later come back and pick him. Counsel argued that it should be questionable whether the deceased went back to pick up the appellant. According to counsel, this creates doubt as to whether the appellant interacted with the deceased as there was no explanation from the prosecution on this issue.

Counsel submitted that the trial Judge wrongly convicted the appellant when he failed to caution or warn himself on the danger of basing a conviction on the identification of the appellant by a single witness. She relied on the case of ***Abdalla Nabulere & 2 Ors vs. Uganda, Court of Appeal Criminal Appeal No. 9 of 1978.***

Counsel further submitted that the learned trial Judge misdirected himself in evaluation of evidence on the defence of alibi and failed to put the appellant at the scene of the crime. She noted that the appellant in his defense stated that he had never lived in Lira and never used to bake chapatti at Uhuru bar in Lira town as testified by PW3.

Counsel argued that the prosecution ought to have tendered more evidence to corroborate PW3's evidence by ascertaining the appellant's place of residence in Lira and getting witness testimonies from his landlord and Local Council authorities. She added that the appellant's fellow chapatti vendors, if any, in the area ought to have testified to that effect. She thus faulted the trial Judge for having discredited the appellant's alibi, while placing reliance solely on the uncorroborated evidence of PW3.

Counsel further submitted that the prosecution failed to put the appellant at the scene of crime. She averred that on the charge sheet, it is stated that the offences were committed at Tekulu Village which is located in Barogole Parish, Ojwina Division, Lira Municipality, Lira district, whereas PW3 testified that he saw the appellant at Club 24/7 which is located in Central division, Lira Municipality.

She argued that Odyek Benard's evidence in regard as to when he saw the deceased being given instructions by the appellant to take some two people then return and pick him is inconsistent and contradicts that of Agweng Filda who asked the deceased's colleagues (including PW3) at Stanbic stage Lira town, about his whereabouts and they

denied having seen him. According to counsel, the said denial cast doubt on the prosecution evidence.

Counsel further faulted the trial Judge for holding that PW3 impressed him as truthful and credible witness and for holding that the appellant had the opportunity to commit the crimes, considering he was in the company of the deceased. She argued that the above stated findings were insufficient to have placed the appellant at the scene of crime.

In conclusion counsel faulted the trial Judge for not evaluating the evidence as a whole and relied on the case of ***Bogere Moses & Anor vs. Uganda, S.C.C.A No. 01 of 1997,*** to support that argument.

She prayed that grounds 1 and 2 succeed.

On the other hand, counsel for the respondent submitted that the trial Judge not only relied on the evidence of a single identifying witness to convict the appellant but rather relied on the evidence from PW3, Odyek Benard and the surrounding circumstantial evidence as a whole.

Counsel contended that, although counsel for the appellant correctly outlined the authorities on a single identifying witness, they are not applicable in this case. According to counsel, the said authorities are in reference to eye witnesses of a crime where there is only one eye witness identifying the culprit. Counsel argued that, PW3, Odyek Benard, who, counsel for the appellant referred to as a single identifying witness, only testified about what happened before the robbery and murder took place.

Counsel submitted that PW3 testified that he was with the deceased when the appellant requested the deceased to drop off some people and later come back and pick him up. He noted that PW3 testified that he knew the appellant for about two months as a chapatti seller from whom they used to buy chapatti at Uhuru bar in Lira Town. Counsel argued that PW3 knew the appellant before and that there was no possibility of mistaken identity. He noted that PW3's testimony was not shaken during cross examination.

On counsel for the appellant's contention that the prosecution failed to put the appellant at the scene of crime, counsel for the respondent submitted that although the offences were committed in a different place from the appellant's place of business, all the circumstances pointed to the appellant's guilt. He noted that the deceased was last seen alive with the appellant on 19th November, 2011. The appellant relocated from his place of business and was arrested at Mbale Police Station riding the same motorcycle that had been ridden by the deceased before his death. Counsel further submitted that the appellant, in his defence, acknowledged being arrested with the motorcycle in question which was being ridden by the deceased and that he did not possess its log book. He added that his alibi was vitiated by the prosecution and as such, the circumstantial evidence put him at the scene of crime.

Counsel thus argued that the above facts lead to the conclusion that the appellant was responsible for the robbery and murder of the deceased. He submitted that the trial Judge based on these circumstances and relied on the doctrine of recent possession to have the appellant convicted. According to counsel, the trial Judge cited authorities in his judgment to that effect and also relied on the case of ***Izongoza William vs. Uganda, S.C.C.A No.6 of 1998.*** Counsel therefore submitted that the trial Judge analysed all the circumstances of this case and rightfully made a conclusion that the appellant was not an innocent receiver of the stolen motorcycle.

In response to counsel for the appellant's contention that the evidence of Odyek Benard was inconsistent and contradicted that of Agweng Filda, who testified that she asked the deceased's colleagues at Stanbic stage Lira town, about his whereabouts and they denied having seen him, counsel for the respondent argued that when Agweng Filda went to the stage to look for the deceased before his body was found, none of his colleagues knew whether the motorcycle had been stolen or that he had been killed. That Agweng Filda just inquired for the deceased's whereabouts for that specific day and everyone responded that they had not seen him that day. He argued that the response was not that

they had never seen him but rather, it was in reference to the day that Agweng Filda went to the stage to look for the deceased.

In conclusion, counsel prayed that grounds 1 and 2 fail.

Ground 3

Counsel for the appellant submitted that the learned trial Judge sentenced the appellant to a harsh and excessive sentence of 47 years imprisonment for the offences of aggravated robbery and murder.

Counsel relied on the case of ***Abaasa Johnson & Anor vs. Uganda S.C.C.A No.54 of 2016,*** where the Supreme Court upheld the decision of the Court of Appeal which set aside the appellants sentence of life imprisonment for murder and substituted it with a sentence of 35 years imprisonment.

According to counsel, the case of ***Abaasa Johnson & Anor*** (*supra*), is similar to the instant case, in terms of count 2 (murder) and therefore this Court should maintain consistency in sentencing and vary the appellant's sentence for being harsh and excessive.

Counsel proposed a sentence of 15 years imprisonment and relied on the cases of ***Tumwesigye vs. Uganda, C.A.C.A No.46 of 2012*** and ***Ndyomugenyi vs. Uganda, S.C.C.A No.57,*** where Court reduced sentences for murder and aggravated defilement, respectively.

She prayed that ground 3 succeeds.

On the other hand, counsel for the respondent, submitted that the sentence of 47 years for the offences of aggravated robbery and murder was not manifestly excessive, considering the fact that the said offences both carry a maximum sentence of death.

Counsel noted that the trial Judge while sentencing, took into consideration how rampant cases of boda-boda riders being killed or injured were and the need to send a signal to protect these riders.

Counsel distinguished the case of ***Abaasa Johnson & Anor*** (*supra*) from the instant case on account that in that case, there was only one count for murder while in this case, they are two counts, for aggravated robbery and murder. He argued that the injuries inflicted on the deceased and dumping his body in a sewer line all warrant the sentence that was handed to him.

Counsel prayed that this Court does not interfere with the sentence of the trial Court since it is neither illegal nor manifestly excessive.

Consideration by the Court

It is the duty of this Court to re-appraise the evidence adduced at trial and make its inferences on issues of law and fact. See **Rule 30(1) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10.**

In the case of ***Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997,*** Court while considering the duty of a first appellate Court observed and held as follows:

> ***"The first appellate Court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However there may be other circumstances quite apart from manner and demeanour, which may show whether a statement is credible or not which may warrant a Court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen."***

We have carefully studied and considered the Court record. We have also studied the submissions of counsel for all the parties and the relevant available authorities. We are

also alive to the standard of proof in criminal cases and the principle that an accused person should be convicted on the strength of the prosecution case and not on the weakness of the defence, save in a few statutory exceptions. See: ***Sekitoleko v. Uganda [1967] EA 531***. If there is any doubt created in the prosecution case, that doubt must be resolved in favour of the accused person. See: ***Woolmington v. DPP [1935] AC 462***.

We shall now proceed to apply the legal principles stated in the authorities above quoted in resolution of the appeal.

We shall resolve grounds 1 and 2 together, while ground 3 will be resolved separately.

Ground 1 and 2

It was the appellant's contention that the learned trial Judge erred in law and fact when he failed to adequately evaluate the evidence as regards identification of the appellant and disbelieved or discredited the appellant's defence of alibi.

Counsel for the appellant contended that the appellant was wrongly convicted by the trial Judge on the uncorroborated testimony of a single identifying witness, PW3, Odyek Benard, without cautioning himself on the danger of basing a conviction on the identification of the appellant by a single witness. Counsel relied on the case of ***Abudalla Nabulere & 2 Ors Vs Uganda, Criminal Appeal No. 9 of 1978.*** On the other hand, counsel for the respondent argued that the trial Judge not only relied on the evidence of a single identifying witness to convict the appellant but rather relied on the evidence from PW3, Odyek Benard and the surrounding circumstantial evidence as a whole.

A reading of the judgment of the learned trial Judge shows that he not only considered the evidence from Odyek Bernard to convict the appellant but the entire circumstantial evidence on record as a whole. The evidence from the alleged "single identifying witness" Odyek Bernard, who was a friend to the deceased and knew the appellant well before the offences committed, was in reference to the events that happened when he last saw the deceased riding the said motorcycle. PW3 last saw the deceased alive in the

company of the appellant at Club 24/7 at Kitgum stage, in Lira town. This evidence was corroborated by the evidence from PW5, Khauka Masalu Swaleh, who arrested the appellant with the motorcycle in question.

The evidence from PW3 and the other pieces of surrounding circumstantial evidence, above stated, are what the trial Judge considered as a whole to convict the appellant for the offences he was charged with. It is our considered view, therefore, that there was no need for special caution noted in the case of ***Abudalla Nabulere*** *(supra)* as argued by counsel for the appellant. What the learned trial Judge was required to consider when dealing with circumstantial evidence was stated in the case of ***Katende Semakula vs. Uganda, Supreme Court Criminal Appeal No.11 of 1994,*** where the Court held:

> ***"Another requirement concerning circumstantial evidence is that it must be narrowly examined, because evidence of this kind may be fabricated to cast suspicion on another. It is, therefore, necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. See Teper v. R. (1952) A.C. 480 at 489; Simon Musoke v. R. (1958) E.A. 715 cited with approval in Yowana Serwadda v. Uganda, Crim. Appl. No. 11 of 1977 (U.C.A.) (unreported) and in Amis Dhatemwa Alia Waibi v. Uganda, Criminal Appl. No. 23 of 1977 (C.A.U) (unreported)."***

This Court in ***Ahimbisibwe Allan & Another vs. Uganda, Criminal Appeal No.15 of 2013***, reiterated the test applicable to circumstantial evidence as follows:

> ***"Simply stated, circumstantial evidence is evidence derived from the surrounding circumstances. For it to pass the test, it must present certainty to the exclusion of all reasonable doubt of the guilt of the accused person; which means, it must lead to the irresistible inference that the accused person committed the crime. The inference of guilt of the accused person should only be made, when the inculpatory facts of the case are incompatible with the***

innocence of the accused person; and are incapable of explanation upon any other reasonable hypothesis than that of guilt. Furthermore, there should be no co-existing circumstance that would either weaken or altogether destroy such inference of guilt."

It is then our duty as the first appellate Court to re-evaluate the evidence on record and determine whether the learned trial Judge considered the above principles on circumstantial evidence before convicting the appellant.

The aspects of circumstantial evidence as analysed by the learned trial Judge were as follows:

1. *"The deceased was last seen alive in the company of Guloba Roggers (A1) in Lira Town and two other people.*
2. *Wabunda Micheal (A2) disclosed the motorcycle was with A1.*
3. *A1 was arrested in possession of the deceased's motorcycle in Mbale Town."*

The trial Judge analysed the evidence of PW3, Odyek Benard which was to the effect that the deceased was last seen alive in the company of the appellant and two others in Lira Town. Odyek Bernard was a friend to the deceased and a fellow boda-boda cyclist in Lira town at Stanbic stage. PW3 testified that on 19th November 2011, he was with the deceased at Stanbic stage and at around 9pm, the deceased left and went to a boda-boda stage in front of club 90 degrees in Lira town along Soroti road. PW3 stated that he later met the deceased at Club 24/7 at Kitgum stage, Lira town. He testified that, that night the deceased was using a motorcycle registration number UDS 071W, Bajaj boxer, red in colour. PW3 further stated that, while at Club 24/7, Kitgum stage, the deceased was asked by the appellant to go and drop off some two people and then come back to pick him. PW3 added that at around 11.00pm that same night, he called the deceased to inform him that he was leaving the stage but he did not answer his phone. He, thereafter left the stage.

Odyek Bernard further testified that it was the deceased who introduced the appellant to him and his colleagues because the appellant used to sell delicious chapatti's at Uhuru bar in Lira town. From there onwards, they all started buying chapatti's from the appellant. During cross-examination, Odyek Bernard, stated that he had known the appellant for about 2 months ever since he started buying chapatti's from him. He noted that there was a bright electric light at Club 24/7 stage which enabled him to easily recognise the appellant.

The trial Judge proceeded to consider the appellant's alibi in which he stated that he had never lived in Lira or baked chapatti at Uhuru Bar. The trial Judge noted how emphatic Odyek Bernard was in describing the circumstances of how he came to know the appellant. The trial Judge further noted that Court observed how steady and straightforward PW3 was when answering questions and how he was also consistent with his testimony. The trial Judge found Odyek Bernard as a truthful and credible witness.

The learned trial Judge further evaluated evidence from Khauka Masalu Swaleh (PW5), the Gombolola Internal Security Officer (GISO) of Mutoto Sub-county, Mbale district, who arrested the appellant with the motorcycle in question. The witness told Court that on the 29th of December 2011, he received information that a suspected notorious criminal was dismantling a new motorcycle and placing its parts on an old motorcycle. He tracked down and arrested the said suspect known as Guloba Jackson, who led PW5 to Wabuna Michael (A2). A motorcycle registration number UDU 537R Bajaj boxer, red colour was found in his house. He was asked for the documents of ownership of the motorcycle but he did not have them. Other properties like mattresses, television sets, radios and many others were recovered from Wabuna's house. Wabuna Michael was placed under arrest and escorted to Mbale Police Station.

PW5, Khauka Masalu, further told Court that while at the Police station, Wabuna Michael was asked about the motorcycle that Guloba Jackson was seen dismantling and he revealed that it was with the appellant. PW5 noted that the appellant was lured to

Mbale Police Station through his sister, the wife to Wabuna Michael, who rang him and lied to him that A2 had been arrested for defilement and needed to be bailed out. He stated that the appellant went to Mbale Police Station while riding a motorcycle registration number UDS 071W, Bajaj boxer, red in colour (the motorcycle in question). He was placed under arrest and the motorcycle was seized as an exhibit.

The trial Judge noted that Agweng Filda told Court on the 4th of January 2012 she proceeded to Mbale Police Station in the company of some police officers and identified the said motorcycle as the one that was in the deceased's possession at the time of his disappearance. The trial Judge correctly noted that the motorcycle was identified in Court by PW2, PW3 and PW4 before it was formally tendered in evidence through Khauka Masalu (PW5) and marked exhibit PE6. All the said witnesses stated they identified it by its registration number plate.

The learned trial Judge also evaluated the appellant's testimony along with that of Wabuna Micheal (A2). The appellant told Court that he used to ride motorcycle registration number UDU 537R Bajaj boxer, red colour, for about two months and then his boss, Wabuna Michael, took it away from him. He stated that on 26th December 2011, Wabuna Michael gave him another motorcycle registration number UDS 071W, Bajaj Boxer, red in colour (the motorcycle in question), to use it for boda-boda business but cautioned him to be careful while riding it. The appellant's brother-in-law, Wabuna Michael, DW2 denied all the appellant's allegations. He testified that he did not know where the appellant was living before the 19th of November 2011. He stated that on 29th December 2011, the appellant came to his home in Mbale to visit his sick niece while riding the motorcycle in question. When DW2 was arrested in connection with the case, he informed police that the appellant was the one in possession of the said motorcycle. The appellant was subsequently arrested in Mbale town.

An analysis of the circumstantial evidence above all pointed to the inference of guilt of the appellant. PW3's testimony, who was found to be a truthful and credible witness by the trial Judge, confirmed that the deceased was last seen alive in the company of the

appellant and a few hours later, the deceased's phone was unreachable. PW3 placed the appellant in Lira town despite his alibi that he had never lived or worked in Lira town. The evidence from A2, Wabuna Michael who identified the appellant as the one who was in possession of the said motorcycle and the evidence from PW5, Khauka Masalu, who arrested the appellant in possession of motorcycle registration number UDS 071W, Bajaj Boxer, red in colour, placed the appellant in recent possession of the stolen motorcycle.

A question arose as to whether the appellant was a thief or a mere receiver. In the case of ***Izongoza William vs. Uganda, Supreme Court Criminal Appeal No.6 of 1998,*** Court held:

> ***"In the case of circumstantial evidence surrounding a robbery or theft, if the prosecution adduces adequate evidence to show that the accused was found in possession of goods recently stolen or taken as a result of robbery, the accused must offer some credible explanation of how he or she came to possess the goods otherwise the evidence of recent possession would justify his/her conviction.***
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> ***In DPP v Neiser (1958) 3 WLR 757, The doctrine of recent possession was said to be merely an application of the ordinary rule relating to circumstantial evidence that the inculpatory facts against an accused person must be incompatible with the innocence and incapable of explanation upon any other reasonable hypothesis than that of guilt according to particular circumstances. It is open to a court to hold that unexplained possession of recently stolen articles is incompatible with innocence. But guilt in this context may be guilt either of stealing or of receiving articles in question. Everything must depend on the circumstances of each case. Factors such as the nature of the property stolen whether it be of a kind that readily passes from hand to hand, and the trade or occupation to which the accused person belongs can all be taken into***

account. A shopkeeper dealing in secondhand goods would naturally suggest receiving rather than stealing."

In the instant case, the trial Judge upon evaluation of the circumstantial evidence found that the appellant could not be considered an innocent receiver since he was found in recent possession of the motorcycle in question without a logbook.

The deceased and the motorcycle disappeared on the night of 19th November 2011. On 2nd January 2012, the appellant was arrested with the motorcycle registration number UDS 071W, Bajaj Boxer, red in colour and failed to provide proof of ownership of a logbook. In fact, he conceded that he did not have the motorcycle's logbook and in an attempt to explain where he got the motorcycle from, the appellant argued that Wabuna Michael (A1), his brother-in-law, is the one who gave him the said motorcycle to use it for boda-boda business. A1 denied these allegations. PW2, Agweng Filda showed Court the original log book of motorcycle registration number UDS 071W, Bajaj Boxer, red in colour. According to the Log book, the engine number is DUMBTL-70831, Chasis No.MD2DDENZTWL-21305 and in the names of Uganda Association of Private Vocational Institutions.

The trial Judge rightly found that the fact of possession of the motorcycle should be viewed alongside the evidence of Odyek Benard (PW3), who last saw the deceased alive in the company of the appellant and a few hours later, the deceased ceased to answer his phone. When that evidence is examined along with the fact that the appellant was arrested with the said motorcycle without a logbook and without a satisfactory explanation as to how he acquired it, it was right for the trial Judge to find that the appellant cannot be considered an innocent receiver but rather the thief.

Although the appellant was arrested in Mbale and claimed that he had never lived or worked in Lira, the evidence of PW3 placed him in Lira town in the company of the deceased on the 19th of November 2011, the day the deceased was last seen alive. PW3 had known the appellant for about 2 months before the incident, he bought 'delicious'

chapatti from him several times at Uhuru Bar in Lira, PW3 watched closely when the appellant was giving instructions to the deceased to drop off the unknown two people and then return to pick him. Based on the above stated facts surrounding this case, PW3, therefore, could not have mistakenly identified the appellant on the day in question. The trial Judge found Odyek Bernard as a truthful and credible witness and so does this Court. The evidence from the prosecution sufficed to prove its case, no particular number of witnesses is required for the proof of any fact. See **section 133 of the Evidence Act.**

In the circumstances, having evaluated the evidence as a whole, we agree with the learned trial Judge that the appellant was correctly identified and that the appellants alibi was discredited when he was placed in Lira town on the day the deceased disappeared. All the circumstantial evidence pointed to the guilt of the appellant. It can safely be inferred that the appellant participated or was privy to the killing of the deceased and stole his motorcycle, as found by the trial Judge.

In the result, the appeal against conviction is dismissed.

Ground 3

It was argued by the appellant that the trial Judge sentenced him to a harsh and excessive sentence of 47 years' imprisonment for the offences of aggravated robbery and murder in the circumstances of this case.

It is well settled law that an appellate Court will only alter a sentence imposed by the trial Court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is illegal or manifestly low or excessive in view of the circumstances of the case. See ***Livingstone Kakooza vs. Uganda, Supreme Court Criminal Appeal No.17 of 1993 [unreported]*** and ***Jackson Zita vs. Uganda, Supreme Court Criminal Appeal No.19 of 1995.***

In the instant case, the trial Judge while sentencing held as follows:

"I have carefully listened to the submissions for both sides on sentence. There is no doubt the convict has been found guilty of grave offences, each of which carry the maximum penalty of death upon conviction. There are numerous reported cases of boda-boda operators being killed or grievously injured and their motorcycles stolen by people pausing as customers or passengers. The cyclists have no way of vetting or determining the actual intentions of the would be customer. Yet these boda-bodas render an invaluable service to society by taking people to areas out of reach by vehicles. They need to be protected by sending an unmistakable strong warning to others out there that Courts will not handle such offenders with kid gloves. Although the motorcycle in this case was recovered, an innocent life was lost. The convict is pleading for leniency because of his wife and child, did he think about the deceased's family when he murdered him in such cold blood?

Well, the Court recognizes the fact that he is a first offender. At 20 years he is still quite young. A death penalty would not suit the ends of justice in my view. Nevertheless, the likes of the appellant ought to be put away for a while and serve as a warning to others. He has been on remand for one year and 5 months to date.

Considering all these factors, I hereby sentence the convict to 47 years imprisonment on Count I and the same sentence on count II. Both sentences are to run concurrently."

From the above portion, we noted that the trial Judge considered both the aggravating and mitigation factors while sentencing. The trial Judge noted that the appellant had been on remand for one year and 5 months but did not arithmetically deduct it from the said sentence. This was correctly done by the trial Judge as the law then in ***Kizito Senkula vs. Uganda, Supreme Court Criminal Appeal No.24 of 2001,*** did not necessitate a sentencing Court to apply a mathematical formula as required now after the Supreme Court decision in ***Rwabugande Moses vs. Uganda, Supreme Court***

Criminal Appeal No.25 of 2014). The trial Judge would not be bound to follow a decision that was made after its decision was delivered. See ***Bakabulindi Ali vs. Uganda, Supreme Court Criminal Appeal No.02 of 2017.***

The trial Judge, however, did not give adequate weight to the fact that the appellant was a first offender and was of a youthful age of 20 years at the time the offences were committed and therefore had room to reform. Consideration should have been given to those facts. The trial Judge imposed a sentence of 47 years imprisonment on both counts which we find to be manifestly excessive in the circumstances of this case. We therefore set it aside for that reason only and invoke **section 11 of the Judicature Act (CAP 13)** which vests this Court with powers of original jurisdiction to determine an appropriate sentence in the circumstances of this case.

The **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013,** provide for the starting point in sentencing for both murder and aggravated robbery as 35 years and the maximum as death.

This Court in ***Abaasa Johnson & another vs. Uganda, Criminal Appeal No.33 of 2010,*** set aside a sentence of life imprisonment imposed on the appellants for the offence of murder and substituted it with a sentence of 40 years imprisonment, out of which a period of 5 years spent on remand was deducted. A sentence of 35 year's imprisonment was thus left for the appellant to serve.

In the case of ***Ssemanda Christopher and Muyingo Denis vs. Uganda, Court of Appeal Criminal Appeal No. 77 of 2010***, this Court confirmed a sentence of 35 years imprisonment for the offence of murder as it did not find the sentence to be harsh and excessive.

The Supreme Court in ***Criminal Appeal No. 34 of 2017, Ojangole Peter vs. Uganda,*** confirmed a sentence of 32 years imprisonment for the offence of aggravated robbery. In that case, the appellant and another were first sentenced to suffer death by the High Court. Following the decision in the case of ***Attorney General vs. Suzan Kigula and***

417 Ors, Constitutional Appeal No.03 of 2006, the death sentence was reduced to 40 years imprisonment by the High Court in a resentencing procedure. On appeal to the Court of Appeal, the sentence was reduced to 35 years, which was further reduced to 32 years after deducting the period spent on remand. The Supreme Court found no reason to interfere with the said sentence.

We have considered all the aggravating and mitigating factors in this case and hereby sentence the appellant to 35 years on each of the counts. We deduct the 1 year and 5 months that the appellant spent on remand. The appellant will therefore serve a sentence of 33 years and 7 months' imprisonment on each of the counts. The sentence will run concurrently from 6th May, 2013 the date of conviction.

We so order.

Dated at Kampala this ..... 30th ..... day of ..... March 2021

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RICHARD BUTEERA, DCJ
JUSTICE OF APPEAL

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HELLEN OBURA
JUSTICE OF APPEAL

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REMMY KASULE
AG. JUSTICE OF APPEAL