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1. “The learned trial Judge erred in law and fact when he failed to evaluate the evidence on record as a whole thereby failing to resolve glaring contradictions in the Appellant’s favour.
 2. The learned trial Judge erred in law and fact when he believed and relied on the contents of a Postmortem Report when there was no postmortem
10 conducted on any dead body.
 3. The learned trial Judge erred in law and fact when he convicted the Appellant of murder in the absence of any credible evidence to prove the alleged death of Asasira Rose.
 4. The learned trial Judge erred in law and fact when he found that the accused
15 went to Kampala on 28/7/2012 thereby wrongfully rejecting the evidence of alibi.
 5. The learned trial Judge erred in law and fact when he failed to believe the accused’s alibi and evidence in his favour.
 6. The learned trial Judge erred in law and fact to find that the evidence given
20 by PW4 and PW7 did not amount to evidence of a confession by an accused.
 7. The learned trial Judge erred in law and fact when he found that the evidence of PW6 (Mukasa) was not challenged in cross-examination.
 8. The learned trial Judge erred in law and fact when he came to a finding and held that the deceased was killed by the accused.
 - 25 9. The learned trial Judge erred in law and fact when he relied on the evidence of D/AIP Mbonekyirwe who was deliberately not called as a prosecution witness.
 10. The learned trial Judge erred in law and fact when he handed down a very harsh and excessive sentence of 30 years imprisonment to the Appellant.
 - 30 11. The learned trial Judge erred in law and fact when he relied on contradictory circumstantial evidence to convict him of murder contrary to Sections 188 and 189 of the Penal Code Act, Cap. 120.” [sic]

During the hearing, counsel for the appellant abandoned grounds **1,2,3,4,5,6,7,8,9** and
35 **11** of the appeal and sought leave of Court to appeal on sentence only. The Application was granted by the Court.

The appeal therefore proceeded with ground 10 only.

5 **Legal Representation**

At the hearing of the appeal, the appellant was represented by Ms. Tusimire Anita on state brief while the respondent was represented by Ms. Betty Ogoola, Assistant Director Public Prosecutions and Ms. Sherifa Nalwanga, Chief State Attorney.

10 Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but he attended the proceedings via video link using Zoom technology from Prison.

Both counsel filed and adopted their written submissions.

Submissions of Counsel on ground 10.

15 Counsel for the appellant submitted that the learned trial Judge erred in law and fact when he handed down a very harsh and excessive sentence of 30 years imprisonment to the appellant.

20 Counsel argued that during mitigation and alioctus, it was stated that the appellant is a sick man, a first offender, was injured during the fight, was of advanced age of 52 years, had children and dependants to take care of and was remorseful. Counsel added that there was no premeditation by the appellant to commit the said murder. Counsel thus faulted the trial Judge for not giving sufficient weight to the said mitigating factors during sentencing.

25 In light of the above stated mitigating factors, counsel submitted that the appellant deserved a lenient sentence. She relied on the case of *Livingstone Kakooza vs. Uganda, Supreme Court Criminal Appeal No.17 of 1993*, where the sentence of 18 years imprisonment for an appellant convicted of murder was reduced by Court to 10 years imprisonment.

5 Counsel prayed that due consideration be given to the mitigating factors and the said sentence be substituted with a 15 years' imprisonment term and the 5 years spent on remand be deducted.

Counsel for the respondent, on the other hand, submitted that the sentence passed by the trial Judge was neither harsh nor excessive. She argued that the learned trial Judge took
10 note of all the mitigating factors while sentencing. She submitted that Court was careful not to ignore any of the appellants mitigating factors and found it important to send out a serious signal to the public that the right to life ought to be respected by giving a deterrent sentence. Counsel relied on the case of *Bandebahe vs. Uganda, Court of Appeal Criminal Appeal No. 319 of 2014*, where the appellant was convicted of murder.
15 He was sentenced to 35 years by the trial Judge and this Court reduced the sentence to 30 years only because the trial Judge did not consider the fact that the appellant was a first offender.

Counsel further contended that the said sentence does not call for interference by this Court. See: *Kiwalabye Benard vs Uganda, Court of Appeal Criminal Appeal No.143
20 of 2001*.

Counsel prayed that Court upholds the sentence of 35 years imprisonment for not being harsh and excessive in the circumstances of this case.

Consideration by the Court

25 The duty of this Court as the first appellate Court is to reappraise the evidence and draw inferences of fact. See **Rule 30(1) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10**.

The appeal is in respect of sentence only. According to the appellant, the sentence of 35 years imprisonment was harsh and excessive.

30 It is trite law that the appellate Court is not to interfere with a sentence imposed by the trial Court which has exercised its discretion on sentence unless the sentence is illegal

5 or where the appellate Court is satisfied that in the exercise of its discretion the trial
Court ignored to consider an important matter or circumstances which ought to be
considered when passing the sentence or the sentence was manifestly excessive or so
low as to amount to an injustice. See: *Livingstone Kakooza vs. Uganda, Supreme Court*
Criminal Appeal No.17 of 1993 [unreported]; *Jackson Zita vs. Uganda, Supreme*
10 *Court Criminal Appeal No.19 of 1995*; and *Kiwalabye Bernard vs. Uganda, Supreme*
Court Criminal Appeal No. 143 of 2001 [unreported].

The maximum sentence to which the appellant in this case was liable after conviction
for Murder is death. The learned trial Judge during sentencing held as follows:

- 15 • *“I have heard the submissions of the prosecution and counsel for the convict.*
- *It is not disputed that the convict is 52 years old, and suffers from multiple ailments.*
- *It is also not disputed that he is a family man with children and other relatives who depended on him for sustenance.*
- 20 • *Counsel prayed that a sentence of 7 years would be commensurate with the factors surrounding the case.*
- *Prosecution submitted that murder cases are rampant in this jurisdiction that a strong message should be sent out to the public about the sanctity of human life by passing a stiff sentence to deter others.*
- 25 • *Murder is a grave offence the maximum punishment of which is death. That is however preserved for the rarest of the rare cases.*
- *The case instant does not fall in that category. There is no evidence of premeditation faction and other factors that would lead this court to consider such a penalty.*
- 30 • *Court however notes that society looks to deter cases like this so that life is respected and not taken away as in this case.*
- *Considering the ill health of the convict, his remorsefulness exhibited in allocutus and the fact that he is capable of reform.*
- *I will sentence him to 35 years, I will deduct the 5 years spent on the remand as required by the constitution, and the convict will serve 30 years in prison.*
- 35 • *The accused can appeal against both the conviction and the sentence.” [sic]*

From the trial Judge’s reasons for sentence above, it is clear that the trial Judge carefully considered both the appellant’s aggravating and mitigating factors as well as the 5 years that the appellant spent on remand while sentencing.

5 The Supreme Court in *Criminal Appeal No.54 of 2016, Abaasa Johnson and Muhwezi Siriri vs Uganda*, upheld a sentence of 35 years imprisonment for murder as varied by the Court of Appeal. The trial Judge had sentenced the appellants to life imprisonment and the same was set aside by this Court and substituted with a sentence of 35 years imprisonment.

10 In the recent decisions of *Guloba Rogers vs Uganda, Court of Appeal Criminal Appeal No. 57 of 2013* and *Okwong Mungu Ronald vs Uganda, Court of Appeal Criminal Appeal No. 212 of 2016*, this Court considered a sentence of 35 years imprisonment appropriate for the offence of murder and the same were imposed on the appellants. The sentences in both cases were only reduced to 33 years and 32 years upon deduction of
15 the periods spent on remand by both appellants.

This Court in *Bulega Richard and Tomusange Lasto vs Uganda, Court of Appeal Criminal Appeal No. 104 of 2015*, upheld the appellant's sentences of 30 years and 42 years imprisonment for the offence of murder as the said sentences were found neither harsh nor excessive. The Justices found no reason to interfere with the said sentences.

20 In the instant case, the trial Judge took into consideration both the mitigating factors and the aggravating factors. The trial Judge used her discretion and rightly found that the appellant having murdered his wife deserved a sentence of 35 years imprisonment in the circumstances of this case. The trial Judge deducted the 5 years spent on remand which reduced the appellant's sentence to 30 years imprisonment. We find no fault in
25 the trial Judge's findings.

For the reasons above stated, we find that the sentence imposed upon the appellant by the trial Judge was not illegal nor based on wrong principles and neither was it manifestly harsh nor excessive given the circumstances of this case. We find no reason to interfere with it. The sentence was given in accordance with the law and due
30 consideration of the circumstances of the case. Ground 10 therefore fails.

5 In the result the appeal is dismissed. The appellant will continue to serve the 30 years imprisonment sentence from the date of conviction.

Dated at Kampala this 13th day of September.....2021

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RICHARD BUTEERA,
DEPUTY CHIEF JUSTICE

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CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL

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REMMY KASULE
AG. JUSTICE OF APPEAL

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29th July 2021