

5 **THE REPUBLIC OF UGANDA**

IN THE COURT OF APPEAL OF UGANDA AT MBALE

(Coram: B Cheborion, JA, C. Gashirabake, JA, O. Kihika, JA.)

CRIMINAL APPEAL NO. 0215 OF 2020

(Arising from Criminal Session No. HCT-00-CR-CS-177/2013)

10 BETWEEN

ZIRABA MOHAMMED.....APPELLANT

AND

UGANDA..... RESPONDENT

15 *(Appeal from the Judgment of the High Court of Uganda Holden at Soroti, by Batema N.D.A, J. delivered on 13th April 2018)*

JUDGMENT OF COURT

Introduction

20 1.] The appellant was charged with 5 counts of Aggravated Robbery contrary to sections 285 and 286(2) of the Penal Code Act. The appellant was convicted and sentenced to 20 years’ imprisonment to run concurrently on counts 1 and

2. The trial Judge deducted the 5 years spent on remand and ordered that the appellant serve a sentence of 15 years. The appellant was acquitted on counts 3,4 and 5.

25 2.] The appellant being aggrieved with the decision of the High Court lodged an appeal in this court. The appeal is premised on two grounds set out in the Memorandum of Appeal as follows;

- 30 1. *That the learned trial Judge erred in law and fact when he held that the prosecution had proved the ingredient of participation of the Appellant in the robbery.*

5 2. *The learned trial Judge erred in law and fact when he sentenced
the appellants to 20 years' imprisonment to run concurrently which
sentence is harsh and excessive in the circumstances*

Representation

10 3.] At the hearing of the appeal, the appellant was represented by Mr. Allan
Mooli. The respondent was represented by Mr. Simon Ssemalemba, Chief
State Attorney.

Ground one

15 **That the learned trial Judge erred in law and fact when he held that the
prosecution had proved the ingredients of participation of the appellant in the
robbery.**

Submissions for the appellant

20 4.] It was submitted for the appellant that the prosecution bears the burden to
prove beyond reasonable doubt that there was the theft of the property
belonging to the victim, the theft was accompanied by the use of violence or
threat of use of violence, possession of a deadly weapon during the theft and
participation of the accused person as the ingredients of aggravated robbery.

25 5.] It was conceded by counsel for the appellant that the trial Judge properly
evaluated the facts that there was the theft of property belonging to the victim,
that theft was accompanied by the use of violence or threat of violence, and
possession of a deadly weapon during the theft. The contention however was
that the trial Judge did not properly evaluate the evidence regarding the
participation of the appellant beyond reasonable doubt.

6.] Counsel submitted that the prosecution case was hinged on one single
identifying witness PW1, Kitimbo Stephen who is the victim in counts 1 and



5 2. It was submitted that PW1 testified that in April 2013, he and other
businessmen left Soroti at 7:00 p.m., and they reached the scene of the
robbery at 1:00 a.m. between Kachumbala and Nakaloke, because the road
was under construction. PW1 further testified that the appellant and others
jumped out of the bush with pangas and stopped them. The appellant and the
10 others ordered PW1 and the other businessmen to come out of the motor
vehicle. The assailants told them to lie down and they tied them with ropes.
PW1 further testified that they took him with the other occupants of the Motor
Vehicle Fuso Fighter Lorry UAQ 948L, down the swamp and tied them on
trees. PW1 told the Court that the appellant was putting on an army uniform.
15 Additionally, PW1, testified that the assailants were harsh and that one of
them took his Shs. 65,000. He further testified that they took off with their
motor vehicle. Thereafter the driver was able to untie himself and rescue
them. The vehicle was intercepted by Police at Iganga where PW1 met the
appellant. PW 1 testified that he identified the appellant that night since there
20 was moonlight. That at 7:00 a.m. he met the accused person under arrest at
Iganga Police and that he was putting on a T. shirt and not an army uniform.

7.] It was submitted that this court should be cautious while considering the
evidence of a single witness. Counsel relied on **Abudala Nabulere & 2
Others vs. Uganda, CACA No.9 of 1978**, and **Walakira Abas, Sgt. Kizito
Joseph and Munakanira John vs. Uganda, SCCA, No.25 of 2002**.
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8.] Counsel further submitted that in the instant appeal, it is clear that the only
identifying witness is PW1 who is the victim of the robbery. PW2 Inspector
of Police Eradu Julius testified that he met the truck already impounded at
Nakalama. One of the occupants jumped off and ran away. The appellant
30 remained sitting in the truck and he was arrested. It was further submitted that
PW2 testified that the appellant said there were four in the robbery. The

