THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO.266 OF 2021

(Arising from High Court Criminal Case No.93 of 2016)

KAGGWA PHILLIP::APPELLANT

VERSUS

UGANDA::RESPONDENT

(An appeal from the decision of the High Court of Uganda at Mpigi before Wilson Masalu Musene, J delivered on 25th September, 2017)

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. LADY JUSTICE HELLEN OBURA, JA

HON. LADY JUSTICE EVA. K. LUSWATA, JA

JUDGMENT OF THE COURT

This is an appeal from the decision of the High Court sitting at Mpigi in High Court Criminal Case No.93 of 2016, in which the appellant was convicted of murder contrary to sections 188 and 189 of the Penal Code Act, Cap 120, on his own plea of guilty and was sentenced to 18 years' imprisonment. The background to this case is that on the 31st of August, 2015 at Kivu LC1 Nsangi Sub-county in Wakiso District, Kaggwa Phillip, the appellant herein with malice aforethought killed Namazzi Viola. The deceased was aged 17 years and a student of senior

three. The appellant was at the time aged 23 years and in a love relationship with the deceased. On 31st August, 2015, an alarm was heard by the neighbours of the deceased. The said alarm was made by the deceased who was locked inside the house of the appellant and the appellant was strangling her. The neighbours begged the appellant to open the door but he refused and continued assaulting the deceased, he was seen cutting the deceased with a knife.

The appellant was distracted by stones thrown at the house by the neighbours and at that time, the neighbours advised the deceased to escape through the window. As the deceased attempted to escape through the window, the appellant hit her on the head using an axe and she died instantly. A post-mortem examination was carried out on the deceased which indicated the cause of death as trauma caused by blunt force. The appellant attempted to commit suicide but was rescued, arrested and later subjected to a medical examination which found him to be of normal mental status. The appellant pleaded guilty, was convicted and sentenced to 18 years' imprisonment on 25th September, 2017.

This appeal, with leave of Court, is against sentence alone. The sole ground of appeal is set out as follows;

That the learned trial Judge erred in law and fact in sentencing the appellant to 18 years' imprisonment which sentence was deemed illegal, manifestly harsh and excessive in the circumstances.

Representation

At the hearing of the appeal, Mr. Emmanuel Muwonge appeared for the appellant on state brief, while Ms. Marion Caroline Acio, Chief State Attorney represented the respondent.

Appellant's submissions

Counsel for the appellant submitted that in sentencing the appellant, the learned trial Judge did not take into consideration the mitigating factors for example the period that the appellant had spent on remand and the fact that he was a first offender. This in counsel's view was an illegality and as such the sentence of 18 years' imprisonment was illegal and manifestly excessive. He added that the learned trial Judge failed to arithmetically deduct the period that the appellant had spent on remand. He relied on ***Rwabugande Moses V Uganda, Supreme Court Criminal Appeal No.25 of 2014,*** where the Court held that in imposing an imprisonment sentence against the convict, the period spent on remand must be taken into account and must be done in an arithmetic way. He prayed that the appeal be allowed and the sentence of 18 years be set aside and substituted with a sentence in accordance with the law.

Respondent's submissions

Counsel for the respondent opposed the appeal and submitted that the learned trial Judge took into consideration all the mitigating factors presented in favour of the appellant and the sentence of 18 years was not illegal because the maximum penalty for the offence of murder is death. Counsel had an issue with

the arguments of counsel for the appellant and added that the mitigating factors listed by counsel for the appellant were exaggerated and included those that were not presented during the trial. He added that the aggravating factors outweighed the mitigating factors and in his view, the sentence of 18 years for the offence of murder was neither harsh nor excessive because it was far below the maximum sentence of death prescribed by the law. He prayed that the appeal be dismissed and the sentence of the lower Court confirmed.

Court's determination

We have considered the submissions of counsel on either side and carefully studied the Court record as well as the authorities availed to this Court.

It is our duty as the first appellate Court, to re-appraise all the evidence adduced at the trial and to come up with our own inferences on issues of law and fact. See ***Rule 30(1) of the Rules of this Court and Bogere Moses V Uganda, Supreme Court Criminal Appeal No.1 of 1997.***

Counsel for the appellant submitted that the sentence of 18 years' imprisonment imposed on the appellant by the learned trial Judge was illegal, harsh and manifestly excessive considering that the learned trial Judge neither took into consideration some mitigating factors nor did he arithmetically subtract the period that the appellant had spent on remand from the sentence. In reply, counsel for the respondent submitted that the sentence of 18 years' imposed on the appellant was neither harsh nor excessive considering that the learned trial Judge considered both the aggravating and mitigating factors and the former outweighed the latter.

This Court can only interfere with the sentence of the trial Court if that sentence was illegal or is based on a wrong principle or the Court has overlooked a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice. See ***Kizito Senkula V Uganda, Criminal Appeal No.24 of 2001.***

In sentencing the appellant, the learned trial Judge stated as follows;

> *"The offence of murder or even manslaughter is a serious one which entails loss of life. And as counsel for state has submitted deceased was a young girl aged 17 years. That was a great loss to the Nation. Whereas the circumstances were of a love affair gone sour, all the same convict used excessive force which was uncalled for.*
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> *A sentence of death or imprisonment for all convict's life would be appropriate. However, since convict readily pleaded guilty and is remorseful Court will be lenient. At the same time, convict had just come out of prison on a defilement case. In the circumstances, I give the convict 20 years. I subtract two years of remand. I do hereby sentence you to serve 18 years' imprisonment."*

We note that the learned trial Judge took into consideration that the appellant was remorseful and pleaded guilty hence saving Court's time. The learned trial Judge further stated that he had subtracted the two years that the appellant had spent on remand hence sentencing him to 18 years.

The appellant killed a 17-year-old girl and a student of senior three by hitting her on the head with an axe hence dying instantly. He himself tried to commit suicide but was prevented by the residents who pelted him with bricks making it impossible for him to commit suicide. The appellant is a second offender who had just been released from prison on charges of defilement. He committed a very grave offence, whose maximum penalty is death.

We therefore find that the learned Judge took into consideration the period of time that the appellant had spent on remand and the mitigating and aggravating factors before imposing the sentence.

There is a need for consistency while sentencing. In ***Emeju Juventine V Uganda, Court of Appeal Criminal Appeal No.095 of 2014***, the appellant was convicted of murder on his own plea of guilty. He had murdered his wife with an axe. The sentence of 23 years' imprisonment imposed on him was reduced by this Court to 18 years after deducting 2 years spent on remand.

In ***Anguyo Robert V Uganda, Criminal Appeal No.048 of 2009***, this Court set aside a sentence of 20 years' imprisonment and substituted it with imprisonment for 18 years where the appellant assaulted his uncle on the head using a hammer. He was convicted of murder.

In ***Arop Geoffrey Okot V Uganda, Court of Appeal Criminal Appeal No.640 of 2014***, this Court set aside a sentence of life imprisonment and substituted it with a sentence of 20 years' imprisonment. The said Court removed 2 years

which the appellant had spent on remand and sentenced him to 18 years' imprisonment.

Having taken into account both the aggravating and mitigating factors set out above and the range of sentences in cases of murder, we are of the considered view that a sentence of 18 years' imprisonment imposed on the appellant for the offence of murder was neither harsh nor excessive considering the circumstances of this case. We find no reason to interfere with the sentence and we accordingly confirm the same.

In the result, the appeal has no merit and is dismissed.

We so order

Dated at Kampala this 9th day of November 2023.

Cheborion Barishaki

JUSTICE OF APPEAL

Hellen Obura

JUSTICE OF APPEAL

Eva. K. Luswata

JUSTICE OF APPEAL