THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBALE

CRIMINAL APPEAL NO.121 OF 2019

(Coram: Cheborion Barishaki, Christopher Gashirabake and Oscar John Kihika, JJA)

MARUNDA BENARD::APPELLANT

VERSUS

UGANDA :::RESPONDENT

(Appeal from the decision of Hon. Lady Justice Henrietta Wolayo in the High Court of Uganda at Moroto dated 29th July, 2016 in Criminal Session Case No.45 of 2015)

JUDGMENT OF THE COURT

Introduction

This is an appeal from the decision of Henrietta Wolayo, J, in High Court Criminal Session Case No. 45 of 2015 in which the Appellant was convicted on two accounts of the offenses of murder contrary to sections 188 and 189 of the Penal Code Act and aggravated robbery contrary to sections 285 and 286(2) of the same Act. He was sentenced to 37 years and 4 months' imprisonment, on each account to run concurrently.

Background

On the 25th day of March 2011, the Appellant hired the deceased, a Boda Boda rider operating from Camp swahilli in Moroto Town to take him to Lokiriama in Kenya. The Appellant was in the company of another person. The three set off together abode the deceased's motorcycle (bodaboda). When they reached Nakirolo, the appellant who was armed with a panga cut the deceased several times on the neck, chest, left jaw, and lower limbs. The deceased fell off the motorcycle onto the road in a pool of blood, where he died. The Appellant pulled the deceased off the road and in the process stained the motorcycle. The appellant escaped with the deceased's motorcycle and Nokia phone to Kenya leaving the deceased in a pool of blood. The Appellant was later arrested from Kenya for riding suspiciously. He was then forwarded to Moroto Central Police station where the deceased's mother had reported a case of disappearance of her son. The Appellant was tried, convicted, and sentenced to 37 years and 4 months' imprisonment for each count to run concurrently.

The Appellant now appeals against the sentence only having obtained leave of this Court to do so. The Sole ground of appeal is set out as follows;

> ***That the learned trial Judge erred in law and fact when he meted out a manifestly harsh and excessive sentence of 37 years and 4 months for both counts of murder and aggravated robbery and the same were to run concurrently without taking into account the mitigating factors.***

Representation

At the hearing of the appeal, Ms. Faith Luchivya appeared for the Appellant on state brief while Ms. Fatinah Nakafeero, Chief State Attorney appeared for the Respondent.

Submissions of Counsel

Counsel for the Appellant submitted that the learned trial Judge meted out a manifestly harsh and excessive sentence of 37 years and 4 months without taking into account the mitigating factors. She further submitted that in sentencing the Appellant, the learned trial Judge only stated on page 43 of the record of appeal that the accused being a young man was a mitigating factor. He relied on ***Kwalijuka V Uganda, Criminal Appeal No.532 of 2013***, where this Court held that it was prudent to consider all the mitigating factors while sentencing. He prayed that this Court reduce the sentence so that the principle of consistency in sentencing is maintained.

In reply, Counsel for the Respondent submitted that in arriving at the sentence of 37 years and 4 months imprisonment, the learned trial Judge had a comprehensive consideration of both the mitigating factors and the aggravating factors, including the Appellant's youthful age, being a first offender, and the remand period since November 2013. Further, the aggravating factors were the degree of injuries, the part of the body inflicted, how the injuries were inflicted, the degree of force used, planned and meditated killing, and the gruesome circumstances under which the offense was committed. He relied on ***Karisa Moses V Uganda, SCCA No.23 of 2016***

in which it was held that an appropriate sentence is a matter for the discretion of the sentencing Judge.

Counsel further submitted that murder attracts the maximum penalty of death under section 189 of the Penal Code Act and the 3rd schedule of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013. Counsel added that the sentence of 37 years meted out to the Appellant was neither harsh nor excessive. He relied on ***Befeho Iddi V Uganda, SCCA No.15 of 2017***, where the Supreme Court upheld a sentence of 30 years imprisonment for an Appellant who had murdered his girlfriend by stabbing. Counsel prayed that this Court uphold the sentence of 37 years and 4 months imposed on the Appellant.

Court's decision

We have carefully perused the Court record and considered the submissions of both Counsel and the authorities relied upon.

This being a first appellate Court, we must review and re-evaluate the evidence before the trial Court by subjecting it to fresh scrutiny, drawing inferences, and reaching our conclusion bearing in mind that this Court did not have the opportunity to hear and observe the witnesses testify as the learned trial Judge did. See ***Rule 30(1) of the Rules of this Court and Bogere Moses V Uganda, Supreme Court Criminal Appeal No.1 of 1997.***

The principles upon which an appellate Court may interfere with a sentence of the trial Judge were stated by the Supreme Court in ***Kiwalabye Bernard V Uganda, Criminal Appeal No.143 of 2001 (unreported)*** as follows:

"The appellate Court is not to interfere with the sentence imposed by a trial Court where that trial Court has exercised its discretion on sentence unless the exercise of that 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 the trial Court ignores to consider an important matter or circumstance which ought to be considered while passing sentence or where the sentence imposed is wrong in principle."

It was submitted for the Appellant that the sentence of 37 years and 4 months for the offenses of murder and aggravated robbery imposed on the Appellant was manifestly harsh and excessive and should be reduced by this Court.

While sentencing the Appellant, the learned trial Judge stated as follows;

"As submitted by the state, the deceased was a vulnerable young man who honestly believed that the accused person was a genuine passenger only to be betrayed and killed. The community impact statements show that the community seeks protection of the boda industry from criminal elements.

The family suffered the loss of their young son. That the accused is a young man is a mitigating factor. The appropriate sentence is 40 years imprisonment on each count. As the accused person has been on remand since November 2013, he is sentenced to 37 years and four months imprisonment on each count.

Sentence to run concurrently.

Right of appeal explained.

All exhibits to the returned to the family of the deceased (SIC)"

Counsel for the Appellant did not submit that the sentences imposed on the Appellant were illegal or that when sentencing, the learned trial Judge omitted to consider any mitigating factor submitted in favor of the Appellant to justify this Court to interfere with the sentences. The learned trial Judge noted that the Appellant was a young man and also noted that the Appellant had been on remand since November 2013.

We have considered the range of sentences in cases of similar nature to determine whether the sentence was harsh or excessive. In the case of ***Sekamatte Charles V Uganda, Court of Appeal Criminal Appeal No.67 of 2013***, this Court upheld a sentence of 32 years imprisonment for the offense of murder. In the case of ***Kyaterekera George William V Uganda, Court of Appeal Criminal Appeal No.0113 of 2010,*** the Appellant was convicted of murder and sentenced to 30 years' imprisonment. On appeal, this Court upheld the sentence of 30 years.

Regarding aggravated robbery, this Court in the case of **Aramanthan *Hassan and Another V Uganda, Court of Appeal Criminal Appeal No.715 of 2015 (unreported)*** maintained the sentenced to 20 years imprisonment for aggravated robbery, where the in the course of stealing the victim's motorcycle, the appellants killed the victim using an iron bar.

Given the nature of the sentences passed in previous murder and aggravated robbery cases, we find that a sentence of 37 years and 4 months imposed on the Appellant for the offenses of murder and aggravated robbery was neither harsh nor excessive.

In conclusion, and for the reasons stated above, we find no merit in this Appeal, and the same is dismissed. The sentence of 37 years and 4 months imposed on the Appellant for offenses of murder and aggravated robbery is hereby maintained. The said sentence shall run concurrently.

We so order

Dated in Mbale this ..... day of 2023

Cheborion Barishaki

JUSTICE OF APPEAL

Christopher Gashirabake

JUSTICE OF APPEAL

Oscar John Kihika

JUSTICE OF APPEAL