

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
HOLDEN AT TORORO  
CRIMINAL SESSION CASE NO. 240/92\_

UGANDA.....PROSECUTION

VERSUS

RAYMOND OCHOM

STEPHEN OKWALINGA..... ACCUSED

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

RULING

This ruling is in respect of a submission of no case to answer made on behalf of the accused by their counsel Mr. Mudangha. The two accused persons are Raymond Ochom and Stephen Okwalinga both of them are jointly indicted for two offences of aggravated robbery and one of murder contrary to sections 272, 273(2) and 183 of the Penal Code Act respectively. Originally the two accused persons were indicted with two other people No. RA 85217 CPI John Atwala and Sam Etomet who are reported dead.

The evidence against the two accused persons is contained in the testimony of Harriet Akiring (PW2) the wife of Al. It is also to be found in the evidence of Detective station Sgt. Alighat and that of Edward Etot Atikatyang. After calling the evidence of those 3 witnesses prosecution closed its case and Mr. Mudangha submitted that the accused had no case to answer.

The principle upon which this court proceeds to uphold or reject a submission of no case to answer are well settled and the authorities in that connection are not few, they include the leading case of: Bhatt v R (1957) EA 332. In the instant case the case for prosecution hinges on the evidence of 3 witnesses mentioned above in particular the confession which Al is alleged to have made to Mr. Edward Etot Atikatyang looking at the evidence generally there is nothing that can be said conclusively establishes a prime facie case against any of the two accused persons for any of the three offences. There is evidence of PW3 that a gun and certain articles were found in the house of Al but there is no evidence to connect the gun and

the other articles with any of the three offences committed. In his statement which was tendered by the prosecution as exhibit P7 A1 said he was taken to join the robbers by force and even and even when the robbery was being committed he was not allowed to take part in the robbery because the robbers told him he was not used to that sort of thing. PW3 testified that when the things were recovered at the home of A1 he A1 told them those things were not his but belonged to somebody else. PW2 said the same thing that the gun which was found at her husband's home did not belong to her husband but belonged to somebody who had buried it there because he was going to the village. The presence of the gun in A1's house has been satisfactorily explained away. As regards to the briefcase and other articles none of the complainants in counts 1 and 2 testified in court to prove that those articles were actually robbed from them.

As for Stephen Okwalinga (A3) the only piece of evidence tending to implicate him in this case is the mention of his name by A1 in his statement. In my view A1's statement did not amount to a confession, apart from that there is nothing to connect him (A3) with any of the 3 offences.

In all these circumstances I am of the view that if the two accused persons decided to say nothing the court would not proceed to convict any of them for any of the offences on the available evidence. It follows that prosecution evidence has fallen below the require standard to establish a prime facie case for any of the two accused persons to answer in respect of any of the three counts. I accordingly find the accused persons Raymond Ochom (A1) and Stephen Okwalinga (A3) not guilty and I do acquit them in respect of all the three counts under section 71(1) of the T.I.D.

C.M. KATO

JUDGE

21/7/1994