

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO: HCT-OO-CR-SC-0037 OF 2002

UGANDA ::: PROSECUTOR

VERSUS

NDUGA ROBERT ::: ACCUSED

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

Accused at the bar is charged with aggravated robbery contrary to section 272 and punishable under section 273 (2) of the Penal Code. It is alleged that he and others still at large on the 14th day of April 2001 at Nalulya village in the Luwero District robbed Kamy Yoakimu of his hard cash shs.500,000/= and a radio cassette Sony and at or immediately before or immediately after the said robbery used a deadly weapon to wit a gun on the said Kamy Yoakimu.

In his evidence Yoakimu Kamyia testified that accused is from his village. On 15/3/2001 accused went to his home and told him that he was selling a battery. He had it tied on his bicycle.

The witness tested the battery and found it working. Accused said he was selling the battery at shs. 50,000/=. The witness paid shs. 20,000/= down. It was agreed that the balance of shs. 30,000/= was to be paid if the battery worked satisfactorily. After two days accused went back for his balance. The witness asked him to return shs.20,000/= since he had breached the agreement by not honouring the time and terms agreed upon. Accused invited him to his home for the refund of his money. The two left for the accused home with the battery. Reaching home accused took the battery inside his house, locked the house and said he was not refunding the money. Katabazi found them fighting and advised them to take the matters to the LCs.

Before the LC1 Chairman accused refunded the money. The following day he woke up with a painful neck. Accused had squeezed it the previous day. He went back to the LC1 chairman. With the chairman they went to see the accused. On seeing them accused ran away. He disappeared from the area. On 10/4/2001 while at home at about 8.00 p.m. the witness heard gunshots from outside. As he was

going out he saw the accused entering his house. He was with another man. There was a lantern in the sitting room burning. The light from this lamp enabled him to see the accused clearly. He was armed with a gun (small gun). The witness ran into his bedroom. The two men pulled him out of the bedroom. They said they wanted the money he had got from selling his coffee. He was taken to the shop where the money was. The shop is attached to the house. I.e. it was in one building. From the shop he handed to them shs.500,000/= He handed the money to the accused who in turn handed it to his companion. After that accused shot him in the leg. Accused then asked the wife of the witness whether with it. When they left he crawled out of the house and raised an alarm. He was later taken to Kasana hospital (clinic) I suppose) Nabasaso Annet is the wife of PW1. She testified that accused was a village mate. On 10/4/2001 while in the Kitchen preparing supper she heard gunshots. As she ran out of the kitchen is about 10 metres from the main house. Accused then ordered her to go to the main house. Accused demanded to know where her husband was. Accused was with another man she did not know. Accused was armed with a gun. (A small gun). Accused followed her to the bedroom where her husband was. He then demanded for the money from coffee sales. She directed her husband where she had put the money. In all her husband gave to the accused shs. 500,000/=. Her husband was shot in the shop. The bullet hit him in the thigh. After shooting her husband accused took off with their radio.

After they had left her husband crabbed out. He was later taken to Kasana hospital. The thugs left behind a knife. They told those who answered the alarm who their assailants were.

Lawrence Musoke is the LC1 Chairman, Accused comes from his parish. On 10/4/2001 at about 11.00 p.m. he was at his home when he heard gunshots. Later he went to the source of the gunshots. The home of PW1 he found PW1 had been shot in the thigh. He advised relatives to take Kamyia (PW1) to hospital. The following morning he went back to the home of Kamyia. In the compound he recovered 2 empty shells and a knife, which he took to Luwero Police Station.

No 22642 D.C. Emoru Richard is a police officer. In April 2001 he was attached to Luwero Police Station. On 11/4/2002 he received 2 empty shells, a knife from the LC1 chairman of Kagarama village. See exhibits P1, P2 and P3.

In his unsworn statement accused stated that on 17/4/2001 he left his home for Luwero town to buy shop wares. There he was arrested on the allegation that he had committed a robbery. Later he was charged.

This is a case that was badly investigated and badly prosecuted. The circumstances under which the accused was arrested are supply unknown. Where he was arrested in unknown. It is said people answered the alarm raised by PW1.

None of these who answered the alarm was called as a witness. The wife of the complainant claimed she told those who answered the alarm who their assailants were. Surely prosecution should and ought to have called one of those to testify on what they were told at the scene of the crime. The LC1 chairman appeared before this court. He was never asked whether any names were given of those suspected to have been responsible for the robbery and shooting of the complainant.

There is evidence of a grudge between complainant and the accused. Could it be that complainant and his wife assumed that it was accused who had

attacked them? If I have said there is no evidence of when and where the accused was arrested. Surely this canna vitiates prosecution case. Accused says he was arrested in Luwero town where he had gone to buy shop wares. This statement albeit not on oath stand un- rebottled. It is unscathed. It could possibly be true.

There is danger on relying on visual identification. It is trite that a witness may be honest but mistaken. It is said that the accused was well known to both PW1 and his wife. It is inconceivable that in the circumstances he could have left the cadoba burning thus giving the witnesses every opportunity to identify him. For these and after reasons I tend myself unable to agree with the assessors that accused was properly and currently identified. Remember it is better that a guilty man escapes the hand of police than one innocent person to suffer injustice. As a lawyer trained in a civilized legal system I hold this principle dear to my heart.

I found accused not guilty of the offence charged and acquit him. He is to be set free truth with unless held on after lawful orders.

J.B.Katutsi

JUDGE