

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT TORORO**

**HCT-04-CR-SC-279/2002**

**UGANDA.....PROSECUTIONS**

**VRS**

**RA NO.14154 PTE BWAMBALE DAVID .....ACCUSED**

**BEFORE THE HON. LADY JUSTICE FAITH MWONDHA**

**RULING**

The accused person was indicted on a charge of murder c/s 183 and 184 of the Penal Code Act. The particulars as alleged by the prosecution were that RA No.141546 Private David Bwambale on the 25<sup>th</sup> day of December 2001 at Pakamalun village, Magola in the Tororo District murdered one Chandi Godfrey.

The accused denied the charge so the prosecution had to adduce evidence to prove his guilt beyond reasonable doubt.

In this kind of charge the prosecution has to prove the following ingredients to that standard:-

1. That the deceased is actually dead.
2. That the death was unlawfully caused.
3. That there was malice aforethought.
4. That the accused participated in the act.

The prosecution brought evidence of two witnesses PW1 and PW2 who were supposed to be the principal witnesses. The defence Counsel after the close of the prosecution case submitted that

there was no case to answer for the accused since the prosecution had not established a prima facie case.

At this stage of the trial, the issue is not whether the prosecution has proved the case beyond reasonable doubt. This is done when the case of the defence has been heard. It was summarised in the Book of Glanville L Williams in his book on Criminal Law (1953) at page 695, that at this stage the duty of the Judge is to decide whether there is any reasonable evidence for the jury on which it can reasonably find that the fact is proved but not beyond reasonable doubt.

PWI throughout his testimony as recorded on Court record show that he was at all times present when the deceased was killed. He said he saw the accused in the dock shoot the deceased as the deceased was running away. Before the deceased ran away, there had been a scuffle between the deceased and accused. That the accused shot first then other soldiers who had surrounded the Trading Centre shot from their positions at random in the air. That the accused chased the deceased in a sort of corridor which was between two houses. That sometime later when he reported to the leader of the soldiers that someone was shot and died, they mounted a search. That they found the deceased in a pool of blood behind the house. He said that there was a hurricane lamp which enabled him to see that it was the accused that shot the deceased since it was night. I find the two pieces of evidence namely:

1. That they found the deceased behind the house in a pool of blood dead in a bush.
2. That it was the lamp which helped him to see the accused shoot the deceased very difficult to believe.

A hurricane lamp is such a poor lamp could he have seen the accused chasing the deceased with the help of that lamp shoot the deceased and the eventual finding of the deceased's body behind the house in a bush in a pool of blood. PWI didn't say that he also followed when he saw the accused ran after Chandi so it's obvious that he remained in one position.

This makes his identification of the accused very unbelievable. He is the same witness who said that after the accused had shot then the other soldiers started shooting at random in the air from where they were to make it even very difficult which bullet hit the deceased.

PW2 also claimed to have been an eyewitness when the accused shot the deceased. His statement had no similarity at all with that made by PW1 in Court. His version was so different that nobody could believe that the events they each testified about took place on the same night. PW2 was an outright liar who told Court on oath a different story from what he told the Police immediately after the Commission of the crime. When he was asked what was the correct story he said that both what he told Court and what he told the Police were correct. About the alleged actual shooting of the deceased, he contradicted himself so much that there is no way the accused could, have acted, the way he stated he did. At one time he said he was with the deceased before he was shot. That after the deceased had been shot at his leg, that he held him on his hand and they ran, but that he abandoned him somewhere.

Then one other time, he said he was near the accused, that he saw the accused shoot the deceased in the leg. That after the deceased had fallen down the accused went and started piercing him with the barrel of the gun. So at one time someone shot the deceased the leg and another time he saw the accused shoot the deceased and he even walked up to him.

PW1 had told Court that the deceased had been shot twice, PW2 said he was shot just on the leg. The above just show that there were a lot of inconsistencies in the prosecution case.

In the celebrated case of *Bhatt vrs R [1957] E.A 332* it was held in holding (ii) “that the question whether there is a case to answer can’t depend only on whether there is some evidence irrespective of its credibility on weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough nor can any amount of worthless evidence.”

It was further stated at page 335 that a prima facie case must mean, one when a reasonable tribunal properly directing its mind on the law and the evidence could convict if no explanation is offered by the defence.”

In the instant case the evidence of PW1 and PW2 in addition to having been discredited grossly it has a lot of inconsistencies which point to deliberate falsehoods. These are major inconsistencies, two people who were at the scene of crime the same time and day each of them claiming to be an eyewitness but coming with highly varied testimonies. Apart from probably proving ingredient

one and two the other two remaining ingredients couldn't be established. Those were major inconsistencies which couldn't be ignored.

Accordingly I find that the prosecution failed to establish a prima facie case against the accused to require him give his defence. I find him not guilty as he has no case to answer. He is therefore acquitted under S.71 (1) of the T.I.D. He is released and should be set free unless if being held on other lawful charges.

Right of Appeal explained.

**F. MWONDHA**

**JUDGE**

**7/4/2002**