

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MBARARA**

**HCT-05-CR-SC-0215-2002**

**UGANDA ::::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**BYABAGAMBI RWAKIRENZI**

**MUGUMYA ELIAS ALIAS MARIYA**

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**::::::: ACCUSED**

**BEFORE: HON. MR. JUSTICE P.K. MUGAMBA:**

**JUDGEMENT:**

The charge against Byabagambi Rwakireenzi is of aggravated robbery, contrary to sections 272 and 273 (2) of the Penal Code Act.

The prosecution called six witnesses in support of the charge to the effect that on the night of 10<sup>th</sup> April 2001 at Nkanga village in Bushenyi

District accused and another still at large robbed Rutanyomwa Boaz of shs.120,000/= and that in the course of that robbery they used a panga and a hoe, which are deadly weapons, against the said Rutanyomwa. The witnesses called were Jolly Rutanyomwa (PW1), Katondogyira Ephraim (PW2), Boaz Rutanyomwa (PW3), Fabiamo Kakuba (PW4), P.C. Ziire (PW5) and Bananuka Remegius as (PW6).

The accused set up a defence of alibi when he made his sworn statement. He called as his witness his wife Justina Turyasingwa who supported accused's claim that at the time material to this case accused was at home in his residence.

It is incumbent upon the prosecution to prove its case against the accused beyond reasonable doubt. See **Okethi Okale & others vs Uganda (1965) EA 555**. In that respect the following ingredients must be proved in a case of aggravated robbery:

- (a) That there was theft of some property;

- (b) That there was violence;
- (c) That there was use or threatened use of a deadly weapon; and
- (d) That accused participated in the robbery.

Both PW1 and PW2 testified to the effect that the thugs that attacked them in their house on the material night stole shs.120,000/= from their house. This evidence has not been disputed by the defence. I find that the prosecution has proved this ingredient of theft beyond reasonable doubt.

The second ingredient is whether violence was used on the occasion. PW1 testified that the thugs tied up PW3 and herself and that they beat them up using a stick and a pang - using that broad side of the blade which is not keen to slap them with it. This testimony was supported by that of PW3. Exhibit P.II contains evidence of injury inflicted on PW3. This evidence is not contested. This court has held that where the complainant was held by force and slapped and the violence was used to obtain money such violence was sufficient to support the charge of

robbery. See Kenan Owori and Stephen Olwowo vs Uganda (1975) HCB 223. I am satisfied to prosecution has in this case proved that there was violence in the occasion.

The third ingredient is whether there was use or threatened use of a deadly weapon. According to PW1 and PW3 the intruders had a hoe and a panga in addition to a stick. The intruders applied a panga on the couple. They did not use it for cutting them but for slapping them into it in manner already described. The hoe was never used. According to PW4 who examined PW1 and PW3 their injuries were inflicted by a blunt instrument. I find that the prosecution has not proved beyond reasonable doubt that a deadly weapon was used or threatened to be used.

The last ingredient was whether or not accused participated in the robbery. According to the defence accused was in residence at his house at the time the robbery is said to have taken place. His testimony is supported by that of his wife. When an accused person sets up a defence of alibi he does not assume that responsibility to prove it. Rather the

prosecution must disprove and destroy the alibi by adducing evidence that puts accused at the scene of crime. See **Sentale vs Uganda (1968)** **EA 365**. Both PW1 and PW3 state that they identified accused to be one of the intruders. According to PW1 she knew accused before the occasion as he lived in the same village as she. Each of the attackers stood one metre from the bed and there was light from their torches and from moonlight. She was able to observe accused when he assaulted her and tied her up. PW3 testified that he was able to recognise the accused because of torches and moonlight. He recognised their voices also. It is interesting that immediately after the attack PW3 told PW2 and PW4 what the identity of the intruders. When it was day PW3 went to Kashenyi Police Post where he reported accused to be one of the people who attacked him. The report is exhibit P.1. The evidence of PW5 supports it. Accused was arrested the very day the report was made. I warn myself as I warned the assessors about the danger of convicting on identification evidence alone. Where that evidence is of a single witness it must be tested by court with the greatest care. The need for caution is even greater where conditions favouring correct identification were

difficult. In such a case the court will look for corroboration before convicting an accused person upon identification of single witness under difficult conditions. Otherwise subject to well known exceptions court can convict an accused person upon the evidence of a single identifying witness so long as the judge adverts the danger of basing his or her conviction on such evidence alone. See **Abdalla Nabudere and other vs. Uganda** (1979) HCB 79. I find in the instant case that there were two identifying witnesses, PW1 and PW3 who gave convincing details of how they came to identify the accused person. I note also that the conditions were favourable for identification as I observe that immediately after the robbers had gone PW3 informed people in the neighbourhood that he had seen the accused amongst others. The accused was arrested that day. I am satisfied the prosecution testimony puts the accused at the scene of crime and I find the alibi advanced superficial and unsatisfactory. The prosecution has proved beyond reasonable doubt that the accused participated in committing the offence.

The assessors in their opinion which was joint advised me to convict accused as charged. For the reasons I have given in the course of this judgment I do not agree with that opinion. I acquit the accused of the charge of aggravated robbery and find him guilty of the lesser offence of simple robbery contrary to sections 272 and 273 (1) (b) of the Penal Code. I convict him accordingly.

P.K. Mugamba

**JUDGE**