

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL APPEAL NO.24 OF 1999

(From Cr. C. No. 69/99 of Kisoro Court)

MUTABITNGWA SIMEOAPPELLANT

VERSUS

UGANDARESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

This is an appeal against the judgment of Rwatooro Esq. Magistrate Grade 1 delivered at Kisoro on 2 December 1999 whereby the appellant was convicted of causing grievous harm and sentenced to a fine of Shs. 1 50,000/ or, in default, to imprisonment for 12 months. The appeal is against conviction and sentence.

The first ground of appeal relates to contradictions in the evidence of prosecution witnesses concerning who exactly were admitted to hospital and whether this does not vitiate the core of prosecution evidence. The appellant also states that there is difference between the time mentioned by other witnesses and that mentioned by PW4, who said it was 8.30 p.m. whereas others said it was 8.00 p.m. I find the trial magistrate properly found that the variation in detail which were slight do not affect remarkably the body of the evidence adduced. This ground should fail.

The second ground states that the trial magistrate erred when he admitted wholesale medical forms exhibited by the prosecution when the Doctor did not appear in court and testify concerning the documents. It is true that the document was admitted in evidence upon being produced by the prosecution. It was upon the basis of the document that the appellant was convicted of causing grievous harm. Section 65 of the Evidence Act provides that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or

the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. Clearly there was no such proof and I must hold that the document was wrongly admitted in evidence. In the event the correct procedure to adopt is to look at the evidence as a whole excluding the assailed document.

The third ground of appeal also relates to apparent discrepancies in the prosecution evidence like where both PW1 and PW2 testify that their attackers used sticks whereas PW4 in his testimony talks of Tibirikwata's wife being cut on her arm. I do not find it mentioned with what the cutting had been done but in any case the case before the magistrate related to the assault on the complainant PW1 and not the person who was cut. In any event it does not affect relevant evidence. Nor do I find much wisdom in the contention that exhibits should have been produced. They could have been produced if they were available but where they were not available evidence of witnesses would suffice. The attackers were known to the witnesses as neighbours and there was bright moonlight which allowed for proper identification of the attackers by PW1, PW2 and PW3. I would therefore find this ground unavailing also.

For his fourth ground of appeal the appellant states that Court should have considered the alibi he set up. He says it was not challenged but the record of proceedings shows otherwise. In any case I find the prosecution evidence overwhelmingly puts the appellant at the scene of crime and his testimony and that of his witness a mere evasion. This ground too I find untenable.

Regarding the final ground, I do not agree with it insofar as it states that the prosecution evidence was shaky and fabricated. However I find as I have indicated concerning the second ground of appeal that admission of medical evidence was irregular and unconscionable.

In the result I would substitute conviction for common assault, contrary to section 227 of the penal Code in place of causing grievous harm as had been the verdict. The sentence should also be altered to a fine of Shs. 100,000/- or, in default to 3 months imprisonment.

P. Mugamba

Judge

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State Attorney in Court.

Mr. Beitwenda for the appellant.

Mr. Turyamuboona Court Clerk.

Court: Judgment read in open Court.

Right of appeal explained.

P. Mugamba

Judge