

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

HCT-05-CR-CO-0097-2001

UGANDAPROSECUTION

-VS-

1 KABERA KARAVERA) ACCUSED

2. PTE TUKAHIRWA GERALD)ACCUSED

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

Kabera Karavera the accused herein had initially been charged together with another for the offence of aggravated robbery, contrary to sections 272 and 273(2) of the Penal Code Act. The co-accused pleaded guilty to simple robbery and was convicted and sentenced to seven years' imprisonment.

The prosecution called the evidence of two witnesses in support of its case. PW1 was the complainant Asiimwe Annet while PW2 was No. 17458 D/Cpl. Tukamuhabwa Richard. In his defence accused gave a sworn statement but did not call any witness.

Briefly the prosecution case is that on the night of 29th August 2000 two men went to the home of PW 1 at Kakiika in Mbarara. The two men were strangers but PW 1 recognized only one of them who is not Kabera Karavera. The one she did not recognize had a mask on his face. The men were armed with guns and broke into the main house where they stole various items including a bank pass book, shop keys, an identity card for Nkumba University, several pairs of bed sheets and cash Shs. 180,000/-. The men later went away. The co-accused was arrested first and led Police to the accused at whose house some items of property belonging to the complainant were recovered three days after the event of the robbery. Accused was arrested and charged with the present offence.

In his defence statement which was on oath the accused said he had received the suitcase containing the stolen property together with a gun unwittingly from the co-accused when he was at his place of work. The co-accused had said he would collect the suitcase from him before long but when he did not show up accused had taken it home with him in the evening for safe custody. He claimed ignorance of the robbery and of the contents of the suitcase.

The following ingredients ought to be proved beyond reasonable doubt before the prosecution can succeed in having the accused convicted for the offence of aggravated robbery:

- (i) that there was theft;
- (ii) that theft was accompanied by violence;
- (iii) that a deadly weapon was used or threatened to be used;
- (iv) that the accused person participated in the commission.

PW 1 testified before court that on the night in issue property was stolen from her. The various items were later recovered first at Makenke Barracks in Mbarara and then at the home of the accused. Those items were also identified here in court and received as exhibits. I find the defence does not contest the fact that theft did indeed take place. Consequently I am satisfied that the prosecution has proved this ingredient beyond reasonable doubt.

The only witness to the robbery, PW 1, does not state anywhere in the course of her testimony that there was violence. I cannot elicit it from the goings on either. The prosecution has not proved beyond reasonable doubt that there was violence on the occasion. Similarly, though PW 1 testified she saw the attackers with a gun on the night in issue I note that the gun was not fired at the scene nor is there evidence that it was ever recovered. As such there is no proof that it was a deadly weapon as envisaged in S. 273 (2) of the Penal Code Act. See Wassajja - vs- Uganda [1975] EA 181. The prosecution has not proved beyond reasonable doubt this ingredient relating to use of a deadly weapon

The final ingredient to be proved by the prosecution is whether the accused person participated in the commission of the offence. I have stated earlier that PW 1 testified that she did not identify accused at the scene, and PW 1 was the only witness to the incident. Accused was implicated because some of the items of property stolen from PW1 were found at his home. Evidence against accused is therefore circumstantial, not direct. In a case founded purely on circumstantial

evidence court must find, before deciding on conviction that the inculpatory facts were incompatible with the innocence of the accused and incapable of any other hypothesis than that of guilt.

See Simon Musoke - vs- R [1958] E.A. 715.

Accused has been implicated on the basis of that doctrine of recent possession as stated in Andereva Obonvo and Another - vs- R [1962] EA 542 and a host of others. The position is that a court may presume that a person in possession of stolen goods soon after that theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. This inference of fact may be drawn as a matter of common sense from other facts including in particular the fact that the accused had in his possession property which it is proved has been unlawfully obtained shortly before he was found in possession. It is merely an application of the ordinary rule applied to circumstantial evidence that the inculpatory facts against the accused must be incompatible with innocence and incapable of explanation by any other hypothesis than that of guilt. In the instant case accused stated in his defence that he had unwittingly received the suitcase from his co-accused. The co-accused had sought accused to look after the suitcase for a short time while he went to collect some property from a bus. When the co-accused did not come back accused had taken the suitcase with him home for safe custody. That is how he had come to be found with the suitcase and its suspect contents. I do not find the prosecution has adduced evidence tending to assail this explanation. Yet the only evidence tending to implicate accused revolves around the fact that he was found with the property in issue. This ingredient has not been proved beyond reasonable doubt by the prosecution.

The gentlemen assessors were of the unanimous view that the prosecution had failed to prove that the accused had taken part in the offence. They advised me to acquit him. For the reasons given in this judgment I agree with their opinion and find the accused not guilty. He is accordingly acquitted and should be released forthwith unless he is being held on any other lawful charge.

P.K. Mugamba

Judge

23rd January 2003

Mr. Bezire for the accused

Mr. Murumba State Attorney

Accused in court

Ms Tushemereirwe court clerk/interpreter

Court: Judgment read in court.

P.K. Mugamba

Judge