

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

HCT-04-CR-SC-283/2002

UGANDAPROSECUTIONS

VRS

1. WAFULA ASUMAN KASIM ALIAS WABWIRE

2. SAMAYA JASON..... ACCUSED

BEFORE THE HON. LADY JUSTICE FAITH MWONDHA

RULING

The two accused persons were 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 the two accused persons and another still at large on the 28th day of August, 2002 at Sofia “B” village in the Busia District murdered Esara.

Always in criminal cases the prosecution has the burden to prove the case beyond reasonable doubt in order to bring the guilt of the accused person home.

In a murder charge there are four ingredients, which the prosecution has to establish. That standard.

1. That the deceased is dead.
2. That the cause of death was due to unlawful act or omission.
3. That whoever caused the unlawful act/omission had malice aforethought or intention to kill.
4. That the accused participated in the killing.

The prosecution produced three witnesses and closed its case. The defence Counsel made a submission of no case to answer on the ground that the 4th ingredient of the offence was not established. That therefore the prosecution had failed to establish a prima facie case to require the accused persons to be put on their defence.

In the 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 cannot 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, discredited evidence.” It was further stated at page 335 that “a prima facie case must mean one on which a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is ordered in defence.

In the instant case as defence counsel submitted PW1 the doctor who carried out the post mortem, just proved that the deceased was dead and in any case, he didn't mention, whose body was examined. It could be that it was not that of the deceased.

PW2 didn't also mention the name of the deceased in fact she said that she saw people beating someone. Even when she came back to the scene with the Chairman LC I and found that, that someone had been killed she didn't tell Court his identity by name and how she knew him. The same happened to PW3. He didn't tell Court who the dead man/person was, much as he arrested some suspects he found about 40 meters from the scene of crime. This means that even ingredient one of the offence wasn't established.

For ingredient two- the law presumes that every homicide is unlawful unless if it was accidental or justifiable. From the evidence there is no doubt the cause of death was unlawful. But still because the body was not established who it was, this ingredient remains in balance. As for ingredient 3 S.186 of the Penal Code Act is very clear and many decided cases point to the fact that malice aforethought can be inferred from the nature of wounds, the kind of weapon, the part of the body where the injury is inflicted. From the evidence it comes out clearly that whoever assaulted this unknown person/body had the intention to kill. But still this evidence is of no use and remains in balance.

As regards the last ingredient, PW2 the only eyewitness told Court, that she saw many people coming towards her home in about 60 meters beating someone with stones. She couldn't recognise anyone and she didn't know that someone. She ran and reported to PW3 who came back together with her at the scene and found when that someone had been killed. She said PW3 arrested two men who were standing near the scene of crime, they were not having anything. She said she couldn't recognise them and she didn't know them. Then PW3 testified that he arrested the two accused persons in Court after PW2 had identified them to him. PW2 had already told Court that she couldn't recognise any of the people assaulting the unknown body/person. That she didn't know them at all. So PW3 testimony to that material particular couldn't be true. It becomes a major contradiction and or inconsistency which can't be ignored.

All in all, the above just go to the benefit of the accused persons that, the prosecution had failed to establish a prima facie case against the accused. The accused persons were merely victims of circumstances according to the evidence. Accordingly I find the accused not having a case to answer. They are not guilty and they are acquitted as per the provisions of S.71 (1) of the T.I.D. They should be released and set free unless if they are being held on other lawful charges.

Right of Appeal explained

F. MWONDHA

JUDGE

1/4/2003