

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT RUKUNGIRI
HCT-05-CR-SC-0036 OF 2002

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

1. **TAYEBWA ROBERT** }
2. **KANYAMANGA ENOCK** } :::::::::::::::::::::: **ACCUSED**

BEFORE: HON. MR. JUSTICE D.N. MANIRAGUHA

JUDGMENT:-

The two accused persons were indicted of murder contrary to sections 183 and 184 of the Penal Code Act, whereby the particulars allege “TAYEBWA ROBERT, KANYAMANGA ENOCK and others still at large, on 30th September 2000 at Kabaranga Trading Centre - Nyamitumba village in Rukungiri District murdered BYAMUKAMA GOD.”

Briefly the facts that led to this case are that in the material night Byamukama God and his wife were

sleeping when they were attacked by some armed thugs who gained access into the house after breaking open the door.

Their intention was to rob him of money but a struggle immediately ensued before the occupant (God) resisted the attackers who ended up cutting him with knives ending his life. Scared of the alarm he was raising they ran away from the scene but later inquiries slowly narrowed down up to the rest of Kanyamanga Enock while a combination of circumstances had earlier led to the arrest of Tayebwa Robert in Rukungiri. As the accused persons seemed to be implicating each other in their extra judicial statements there were accordingly jointly charge with this offence.

The prosecution called ten witnesses and put in eight exhibits in an endeavour to prove its case and discharge the usual burden cast upon that side.

Then the accused person gave their versions of events that led to their arrest in which they only recounted how they were arrested, and subsequently taken to make statements where each being charged.

The issues to decide now are:

- (a) Whether or not Byamukama God is dead;
- (b) Whether his death was cause unlawfully;
- (c) Whether there was malice aforethought in the killing,
and
- (d) Whether the accused persons participated in the killing.

Uganda Vs Dic Ojok [1992-1993] HCB 54.

On the death of Byamukama God we have the evidence of Justine Byamukama (PW1) wife of the deceased and Dr. Tibihaho Hector (PW9), and even the defence never disputed this. There is enough evidence to establish this fact and I find it duly proved.

Whether the killing was unlawful, medical evidence has shown that the death resulted as a result of cut wounds which led to severe bleeding.

Justine Byamukama told court how these injuries were sustained in the course of that night's attack - apparently a failed robbery. The killing was thus a result of an unlawful act and this issue is resolved in the positive.

As to the issue of malice aforethought, this is governed by S. 186 of the Penal Code Act and decided cases.

Uganda Vs Aramanzani Mubiru [1996] HCB 35.

Here the doctor (PW9) described the injuries as cut wounds on the left front part of the chest and left arm. Internally there was a cut on the left lung.

Considering that the weapons used according to the deceased's wife were knives, and seeing the vulnerable parts on which the injuries were inflicted leave no doubt as to the existence of malice aforethought in the killing; so this ingredient has been established and the issue is resolved in the positive.

The last issue, which is the crux of the matter in the participation of the accused in the murder. The accused put up the defence of alibi and this will be considered on its own merits. Then there is the suggested denial of physical participation in the stabbing of deceased as opposed to the legal conception of “participation” which arises in the extra judicial statements. This will also be considered separately.

On alibi there is a wealth of authorities as to the burden of the prosecution to place the accused at the scene of the crime, and sufficiently connect them to the commission of the offence. I bear their guidance in mind.

Kagunda Fred Vs Uganda Criminal Appeal No. 14/98.

Karekona Stephen Vs Uganda Criminal Appeal No. 46/99.

***Bogere Moses & Kamba Vs Uganda Criminal Appeal
No. 1/97 (all S.C.U).***

What evidence then has the prosecution sought to rely upon to achieve their role of proving this element beyond reasonable doubt?

The only eye witness to the events of that night is Justina Byamukama (PW1) whose visual identification evidence cannot legally be conclusively relied upon. The conditions were so difficult that even with all due warning the possibility of erroneous identification cannot be ruled out.

***George W. Kalyesubula Vs Uganda Criminal Appeal
No. 16/97 (S.C.U).***

In fact in her testimony she left court no doubt that she never recognized any of the attackers during the incident. She was clear why she failed to do so as never having seen the torch light directed to her face.

She must have told the truth on this. However in further answers to the learned State Attorney's questions she did not want to better her evidence by adding that she had seen the face of Tayebwa, then Kanyamanga whom she knew as a village mate. This was in my conclusion an afterthought due to questions put to her in court, and this apparent contradiction, though in the manner of identification is treated as minor and not intended to deceive looking at how it was chipped into her evidence. moreover, this court will not rely on visual identification which I have found too wanting in many aspects.

Other evidence is the identification Parade proceedings in respect of Tayebwa Robert for Justina Byamukama and Kabajungu Annet's claims against A1, the evidence of PW6 D/IP Juuko Jimmy and the extra judicial statements made by Tayebwa Robert and Kanyamanga Enock.

As for that evidence against Kanyamanga Enock there is the evidence gathered from the extra judicial statements of Tayebwa Robert (accomplice) and his own statements.

Before I make a move on the evidence available. I wish to restate the law briefly on the evidence of accomplices and the principle of common intention.

Here the two accused persons seem to implicate each other in their statements. Such evidence is deemed to be of the weakest kind.

Simon Musoke Vs Republic [1971] EA 74 and ***Anyanga Vs Republic [1968] EA 239***. This in a joint trial like this though it can be taken against a co-accused it can only be used as lending assurance to other evidence against the co-accused. ***Andrew Walusimbi & 3 Others Vs Uganda Criminal Appeal No. 28 of 1992, John Serumaga & 3 Others Vs Uganda Criminal Appeal No. 32/96, and Mushikoma Watete & 3 Others Vs Uganda Criminal Appeal No. 10 of 2000, (S.C.U)*** (all unreported).

On common intention this is governed by S. 22 of the Penal Code as dealt with in various court decisions. Notable are those of ***Rex Vs Tabulayaka s/o Kirya, Wamiro Vs R 1955 22 EACA 521 R Vs Okule [1941] 8 EACA 80*** as applied in various decisions in this

jurisdiction like ***Fred Sebahashi Vs Uganda Criminal Appeal No. 23 of 1993 S.C.U*** (Unreported).

The long and short of the law is that so long as the accused associated himself with the unlawful purpose then he is as liable as the actual executor of the act led to the death.

Anderea Mutebi & Another Vs Uganda Criminal Appeal No. 144/75.

Turning to the issue now before court Tayebwa Robert put up the alibi defence. On the other hand the prosecution led the evidence of Justina Byamukama who though unable to see clearly the faces of their attackers she managed to feel the roughness of her attacker's palms and the missing finger. She also felt that the clothes

were jeans type. By then her attacker was strangling her. At the parade she picked Tayebwa out through feeling his palms and the missing finger. I saw nothing amiss in the manner the parade was conducted apart from the minor discrepancy as to how the final report reflected the manner of identification by swapping the two ladies who attended the parade to identify the accused.

There is no doubt referring to and the mode of identification that assisted them.

Then there is the testimony of PW2 Kabajungu Annet who saw Tayebwa on 30/9/2000 morning emerge from the bushes, looked strange and had blood stained clothes. The clothes were jeans shirt and trousers. On inquiry from him the person (now accused) told her he was having nasal bleeding. She was able to identify him at

the police even from his toes which she closely observed during the encounter.

Moreover Tayebwa made an extra judicial statement before late Inspector Bashaija and gave a very detained and true account of the events of that night. Tayebwa's defence as to how he traveled is an afterthought as argued by the learned State Attorney he could not have traveled so fast on that morning. Moreover the coincidences on the day in question the clothes, the finger, the rough palms, the finding in the place where he was arrested trying to wash away the blood are not mere accidents but circumstances that go to show that the prosecution evidence is true and even the accused's own confession goes to strengthen this conclusion.

Considering Tayebwa's statement and that of Kanyamanga Enock (both to police and to the Chief Magistrate) then Tayebwa's recognizing Kanyamanga and vis-à-vis at the prison leave no doubt whatsoever that the prosecution has sufficient evidence placing Tayebwa at the scene of the crime, and under the principle of common intention sufficiently connecting him to the commission of murder of late Byamukama God.

In the case of A2 Kanyamanga Enock the prosecution led the evidence of D/IP Juuko Jimmy to the effect that after Tayebwa's confession a chain of information pointing to the whereabouts of the co-players which led finally to tracing the house of Kidokoli alias Twinamasiko Michael and his tenant (now A2) at Rubare. Upon his arrest Kanyamanga made a confessional statement to I.P. Tibakanya Stanley (PW8) admitting the offence and giving

a detailed account of the plan, execution and involvement by themselves.

This statement is supplemented by the proceedings before the Chief Magistrate Rukungiri (PW7) who recorded another extra judicial statement through it was notably flawed by not recording the vernacular version and having it signed by the maker. But it does see tally with one made to police thus giving it more credence.

After the police statement A2 was taken to the prison where he identified Tayebwa as the man they had gone together to rob the deceased, whereas A1 (Tayebwa) cross-identified Kanyamanga as the one who told them of the hard working man (late Byamukama), that A2 1aas from Rubare and is the one who led them to the place of intended robbery.

It is noteworthy that Kanyamanga admitted being known by the late and his wife (PW1) hence it would have been easy to identify him had he entered the house – so he did not do so according to the statement by Tayebwa. This adds weight to the allegation of his involvement.

Although A2 says in his statement that he stayed outside and did not participate in the killing but only wanted money, this sufficiently connects him to the offence under common intention seeing how he was actively involved from the beginning to end never backing out till the robbery mission failed but a murder resulted.

So under the case of ***Itwala Ronald & 2 Others Vs Uganda Criminal Appeal No. 20/99*** and other authorities cited above he is found to have been at the

scene of the murder although for a different purpose, and is as liable as the one who struck the fatal blows that ended Byamukama's life.

Consequently the alibi in both cases of the two accused does fail and is rejected. The prosecution having fully discharged its burden of proof, and in agreement with the opinions of both gentlemen assessors, I do find each accused person guilty as charged and convict them of murder each contrary to sections 183 and 184 of the penal Code Act as per indictment.

D.N. MANIRAGUHA

JUDGE

31/03/2004.

SENTENCE:-

Tayebwa Robert and Kanyamanga Enock, there is only one sentence prescribed by law in this case which is the death penalty.

You are each sentenced to suffer death in the manner authorized by law.

Right of Appeal explained.

D.N. MANIRAGUHA

JUDGE

31/03/2004.

