

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LIRA
CRIMINAL SESSION CASE No. 0089 OF 2003

UNGADA ::::::::::::::::::::::::::::::::::::::::::::::::::::::: PROSECUTOR

-VERSUS-

GEOFFREY KASULE ONGUNE::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON LADY JUSTICE MARY I.D.E. MAITUM

J U D G M E N T:

The accused was indicted for Murder contrary to section 183 and 184 of the Penal Code Act. It was stated that the accused on or about the 26/8/2001 at Angwalo village, Adwari Sub-county Otuke County unlawfully killed Awio David with malice aforethought.

The accused denied committing the offence.

Briefly the facts are that on 26/8/2001 the body of David Awio was found by his wife on the road. She informed the people with whom she had been drinking. They took her to the sub-county headquarters as a suspect.

In the morning there was information that the accused had gone to the home of Ocan Patrick requiring him to give him shs.5,000/= to go to Lira. He told Ocan that he had hit the deceased on the head and thought he might be dead. Ocan had no money so the accused spent the night and left early in the morning.

The accused testified that he was in Loro on the night in question thereby raising an alibi. He stated that he had left for Loro on 23rd August 2001.

The prosecution called upon seven witnesses plus the post mortem report which was agreed to by both counsels, to be admitted in evidence.

The burden of proof of the guilt of the accused is in almost all cases on the prosecution. It does not shift to the defence unless there is a statutory provision:

Woolmington Vs DPP [1935] Ac 362 and Lubogo Vs Uganda [1967] EA 440.

There are four essential ingredients in the offence of Murder which the prosecution must prove beyond reasonable doubt.

These are:

1. Death of human being.
2. The death was unlawfully caused.
3. Malice aforethought.
4. Participation of the accused in causing death.

Concerning the first ingredient the post mortem report revealed that David Awio died of a fractured neck caused by a blow or blows from a club found near the body. PW2, 3 and 4 and others confirmed that the deceased was dead and later buried. Death has therefore been proved.

The second ingredient to be proved is that death had been caused unlawfully.

Every homicide is deemed to be unlawful unless legally justified: **R Vs Tubere s/o Ochen [1945] EACA.** David Awio's death was not legally sanctioned.

On the presence of malice aforethought, which is a mental element or state, this can be inferred from; the

1. Injuries sustained.
2. Parts of the body affected.
3. Weapon used.
4. Conduct of the accused before or/and after the offence.

In the instant case post mortem examination revealed a fractured neck and a probable damage to the brain and spine. The neck is a vulnerable part of the body which bridges the brain and all other vital organs to the body. A blow to the neck resulting in a fracture is certain to result in death.

Malice aforethought is defined as an intention to kill or knowledge that the act indulged in would probably cause the death of some person. The

blow inflicted on this deceased person was therefore accompanied by malice aforethought.

The last ingredient of murder to be proved is the participation of the accused in the murder.

Defence counsel conceded that the first three ingredients had been proved, beyond reasonable doubt, by prosecution. He challenged that the participation of the accused had not been sufficiently proved.

During the trial, PW4, Ocen Patrick testified that the accused had gone to his home at about midnight. He stated that the accused asked him to give him shs.5,000/= and that the accused wanted to leave his bicycle as a pledge to him. PW4 testified that he told the accused that he had no money. The accused further told PW4 that he had hit the deceased with a stick and the latter had fallen on the road and that the deceased might be dead. The accused said he wanted to go to Lira. Next morning the accused rode his bicycle at 5.00a.m and left PW4's home.

PW2 also testified that when he and his police colleagues went to the scene of crime PW4 told them about what the accused told him about the deceased. PW6 also testified that PW4 reported to him what accused said about hitting the deceased.

PW7 testified that he was the clan leader of the accused's and the deceased's clan and that he had received a letter addressed to him. The letter was to inform him that the accused and his brothers whose names had been stated in the letter would beat the deceased to death if he sold land he was intending to sell. The letter was not signed.

The letter was not challenged or objected to by the accused or his counsel during the trial. It was exhibited as P.2. PW6 testified that the letter was read in his presence by PW7. PW5 stated that when the wife of the accused was asked where her husband was, she told them that he had not spent the night of the 26th/8/2001 at home.

As mentioned above, the accused gave an alibi which he has no obligation to prove but which must be disapproved by the prosecution if the fourth ingredient is to be taken as proved beyond reasonable doubt:

Aniseth Vs R [1963] EA 266. DW2 the wife of the accused also testified that the accused left home on 23/8/2001 to go to Loro.

However, since DW2 admitted to have sat in court and heard all the evidence of the prosecution and that of the accused, court has discarded her testimony.

From the testimonies of PW4, 5, and 6, the prosecution has disproved the alibi of the accused. PW4 reported the information which the accused had given him about his hitting the deceased the very next morning . He also reported to the people gathered at the scene where the body was found, PW4 revealed to the sub-county chief and the LC1 what the accused told him.

PW8 testified that the clan leader of the accused informed persons at scene that he had been present at a meeting in which the accused and his brothers had planned to kill the deceased. That suggests that the letter addressed to PW7 was a confirmation of what had transpired in the meeting.

The assessors advised court to find the accused guilty as charged as the prosecution had proved the participation of the accused beyond reasonable doubt.

After weighing the evidence for the prosecution and defence and hearing counsel's submissions, I find, in conformity with the assessors, that the case against the accused had been proved beyond reasonable doubt.

I find the accused guilty of the murder of David Awio contrary to section 183 and 184 of the Penal Code Act and convict him accordingly.

MARY I.D.E. MAITUM,

J U D G E

29/1/2004.

SENTENCE:-

Since there is no other punishment for the offence of Murder other than a sentence of death, I sentence Geoffrey Kasule Ongune to death in a manner prescribed by law.

The accused has a right to appeal against conviction and sentence.

May God have mercy on his soul.

MARY I.D.E. MAITUM,
J U D G E
29/1/2004.

Mr Alule - State Attorney.

Mr Ogeng for the accused.

Judgment read in open court.

Right of appeal explained.

MARY I.D.E. MAITUM,
J U D G E
29/1/2004.