

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

HCT-04-CR-SC-211-2002

UGANDAPROSECUTOR

VERSUS

MUNIALO ROBERTACCUSED

BEFORE: THE HON. MR. JUSTICE RUGADYA-ATWOKI

RULING

Accused in this case **Munialo Robert** was indicted for capital robbery. The prosecution case was that the accused way laid the complainant **Waniaye Robert** while he was on his way home at about 7:00 p.m, hit him on the jaw three times and run off with his bicycle. The assailants were two in number. The complainant raised alarms and tried to chase the assailant. People responded and chased the assailant who abandoned the bicycle. The victim was rushed to hospital unconscious. The bicycle was recovered as Waniaye identified his assailant as the accused, whom he knew before. While on his way back home, one **Charles Mandale** heard alarms some distance ahead of him. Time was about 8:00 p.m. He soon saw someone running away from the alarms and confronted that person, whom he identified as Faya s/o **Wamera**. This was the accused in court. This accused did not answer why he was running away. This witness tried to detain him and even chased him such that **Faya** abandoned his shirt with the witness. The witness took that shirt to the LC.I Chairman and **Faya** was apparently arrested and charged.

That was the case for the prosecution. At the close of the case for the prosecution, court is enjoined to make a ruling whether or not a case has been made out sufficiently to require the accused make a defence where a *prima facie* case is not made out for the prosecution evidence, the accused will not be put to his defence.

A *prima facie* case is one where court would not convict the accused if he made no defence. **Bhatt v. R.** Where the evidence is so discredited or where it is manifestly unreliable, then a *prima fade* case will not be said to have been made out, or where an essential element of the offence charged is not made out from the evidence.

In this case of robbery, the prosecution had to prove theft with violence, use of a deadly weapon and the participation of the accused.

The participation of the accused was for the evidence of PW.2, **Waniaye Robert**. He was the sole identifying witness. The time was night time, about 7.00 p.m and that the moon was just rising. This witness was ambushed, hit three times on the jaw and literally collapsed. His own testimony was that he lost consciousness, and did not know what happened, but found himself in Mbale Regional Hospital. At the same time, he told court that not only was he well enough to struggle with his assailants, two of them after being hit, but he also ran after the assailant who ran off with his bicycle as he alarmed, and was even able to see that assailant drop the bicycle as those who responded chased him. I found that a little awkward if not impossible. That must be what the witness was told. He could not collapse totally from the three blows on the jaw; when just seconds before he was fit enough to make a chase of someone who was running away with a bicycle and he even made alarms which attracted neighbours. That was the evidence of identification by the single witness. That was not credible evidence. The evidence which was produced to corroborate this was from PW.3, who confronted a person who was running from the direction of the alarms. Why that had to be the assailant is not known. The possibility that it was this **Mandale** who disclosed having met the accused hence the suspicion all around that this was the assailant was very real. A great doubt was created from the prosecution evidence regarding identification when this is coupled with the suspicion evidence of identification by **Waniaye Robert**. The doubt create is such that this tribunal would not convict the accused if he elected not to make any defence due to his unproven participation in the offence.

For the above reasons, I hereby made a finding of not guilty, in respect of the accused for the offence of robbery contrary to sections 285 and 286 (2) of the Penal Code Act.

The accused is hereby acquitted. He is to be set free and at liberty forthwith unless otherwise lawfully held. I so order.

RUGADYA-ATWOKI

JUDGE

2/7/2004