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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
HCT-04- CR-SC-0003 OF 2005

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

-VERSUS -

10 WEPONDI ROBERT ALIAS MUTTO::::::::::::: ACCUSED

BEFORE: THE HON. MR. JUSTICE J.B.A. KATUTSI

JUDGMENT:-

The accused at the bar stands indicted on three counts of murder and one count of causing grievous harm.

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On count one it is alleged that he on the 19th day of February 2004 at Lubaala village in Mbale District, murdered Kimono Annet.

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On count two it is alleged that on the dame day, same time and place he murdered Lunyolo Shafula Recho and

on count three it is alleged that on the same day, time and place he murdered Numuwenge Caroline. On count four it is alleged that on the 19th day of February 2004 at Busiu Police Post, Tororo Road in Mbale District, he
5 unlawfully did grievous harm to Haji Yusufu Wamboga.

Dr. Lubanza Barnabas is Police Surgeon. In his evidence he testified that on the 19th day of February he examined the body identified to him by one Manana as that of
10 Kimono Annet. It was a body of a female of apparent age of 25 years and well nourished. On examination he found the clothes soaked with human faeces. There was mucus coming from the mouth and nostrils. The abdomen was extended and she had been 20 weeks pregnant. He saw
15 scratches around the neck, which was flexible. Cause of death was lack of oxygen supply to the brain due to manual strangulation.

At the same time he examined the body identified to him again by one Manana as that of Lunyolo Shafula. The body was a female child of about three years. It had
5 turned bluish and the abdomen was moderately extended. The neck was broken. Cause of death was due to lack of oxygen supply to the brain. This was as a result of manual strangulation. He also examined the body of Namuwenge Caroline again identified to him by one
10 Manana. It was a body of a female child of an apparent age of 11 years. The abdomen was extended, the neck flexible and broken. Cause of death was lack of oxygen supply to the brain due to manual strangulation.

15 On 23/02/2004 he examined the accused. He had no physical injuries on his body and was mentally normal. Tongoi William testified that he was a close

neighbour of the accused. On 19th February 2004 at about 6.00a.m. While at his home he heard an alarm being raised by a child from the home of Wepondi Robert now the accused at the bar. While on his way to respond to the alarm he met the accused ridding a bicycle and at fast speed. He, on asking the accused what had happened, there was no response from the accused. He continued to the home of the accused where he found three dead bodies. These were of Annet, Caroline and Shafula. The body of Annet was already cold. He raised an alarm, which was answered by people. He went to report the matter to Busiu Police Post and went back to the scene with a Police Officer. Later that afternoon the bodies were medically examined.

Mushikoma Godfrey appeared as PW3. He testified that on the morning of the 19th of February 2004 while at his

home close to that of the accused he heard an alarm being raised from the home of Wepondi Robert now the accused. When he arrived there he found it was Tongoi William who was raising the alarm. On the way there he met accused ridding a bicycle very fast. He asked him what the matter was but received no reply. At the scene he found three dead bodies of Annet, Shafula and Caroline.

Hajj Yusufu Wamboga appeared as PW4. He testified that on 19th February 2004 at about 8.00a.m. While at Busiu Trading Centre he saw Wepondi Robert boarding a taxi bound for Mbale Town. Shortly after Wepondi had left, he was told that Wepondi had killed his wife and children. He informed the LC Chairman who had told him that he had just seen Wepondi boarding a taxi bound for Mbale. He too was going to Mbale. When he arrived at Mbale

taxi Park he asked the driver of the taxi that had taken Wepondi where Wepondi was.

He was told he had alighted from the taxi at Aswan
5 Stage. Later that afternoon as he drove past the taxi park he saw Wepondi standing by the service station. He stopped the vehicle, managed to grab Wepondi and put him on his vehicle and drove to Busiu Police Post. At Busiu Police Post he saw Wepondi pulling something from
10 his trousers. He immediately grabbed him as he was about to hit the LC Chairman with whom they were traveling.

In the process Wepondi hit him with the hammer that he
15 had pulled out of his trousers. He however managed to push him into the Police Post where he was arrested.

No. 28662 D.C Ochen Richard was at the time attached to Busiu Police Post as O.C. Post. On 19/2/2004 he received Tongoi William who reported one Wepondi as having killed three people. He went to the scene which was in Lubaala
5 village where he found three dead bodies. He proceeded to go to Mbale to get a doctor who later in the day carried out a post mortem examination on the bodies. At 6.00p.m. of the same Haji Wamboga went to the post with a suspect. As they were about to reach the post he
10 saw the suspect removing a hammer from his trousers with which he hit Wamboga. The suspect was disarmed and detained. The suspect he said is now the accused at the bar.

15 The accused gave an unsworn statement and said that he left his home on 18/2/2004 for Mbale where he worked as boda boda operator. He did not return home in the

evening but worked throughout the night as there was business in town that night. The following i.e. the 19th February 2004 at 5.00p.m. as he waited for a taxi to take him home Yusufu Wamboga with other three persons
5 arrested him. He asked them why he was being arrested but received no reply. Instead he was pushed into a vehicle and driven to Busiu. At Busiu Wamboga hit him with a Metallic object – exhibit P4.

10 In self-defence he grabbed the hammer from Wamboga and hit him with it.

These are four ingredients of the offence of murder that must be proved by prosecution. These are:-

- 1) That the alleged victims named in the indictment are
15 dead.
- 2) That death was as a result of an unlawful act or omission.

3) That the act or omission was by the accused at the bar; and

4) Of malice aforethought.

5 The burden of proof lies on the prosecution throughout the entire case and does not shift to the accused. This burden is discharged only on proof beyond a reasonable doubt. Any doubt however slight so long as it is reasonable must be resolved in favour of the accused.

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In this case the accused advanced a plea of an alibi as his defence. The fact that an accused had put forward an alibi as his defence does not make him assume the burden of proving it. It is sufficient if the alibi creates a
15 doubt in prosecution case. It is for the prosecution to destroy the alibi by placing the accused squarely at the scene of crime.

In this case there is no doubt that Annet, Shafula and Caroline are dead. Indeed they are dead and buried. Every homicide unless accidental is presumed unlawful
5 except if committed in circumstances which make it excusable. ***Musamazi Wesonga & Others Vs R. [1948] E.A.C.A. 53.***

There are no such circumstances in this case. That the
10 killing was with malice aforethought is not a subject of debate in this case. Whoever manually strangles another does so with the intention to kill pure and simple. The only question to be resolved is who carried out the said ghastly acts?

15 Prosecution says, it was the accused at bar and no other person. The defence said, this is not borne out by the evidence.

There is no doubt that prosecution place their reliance purely on circumstantial evidence. This is testimony not based on actual personal knowledge or observation of
5 facts in controversy, but of the other facts from which deductions are drawn showing indirectly the facts sought to be proved. But it has been said elsewhere that;

***“Circumstantial evidence may sometimes be evidence, but it must always be narrowly examined
10 if only because evidence of this kind may be manufactured to case suspicion on another.”***

Teper Vs R. [1952] A.C at pg. 489.

It has also been said that:

***“In a case depending exclusively upon
15 circumstantial evidence, the court must, before deciding upon a conviction, find that***

the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt.”

5 ***Teper Vs. R (supra), Simoni Musoke Vs R [1958] E.A. 715.***

All these warnings were given to the assessors and I am reminding myself of the same. That said, it has also been
10 said elsewhere that circumstantial evidence is sometimes the best evidence that can prove a fact with the accuracy of mathematics.

In the case before, I gave critical and meticulous
15 examinations of the demeanor of PW2, Tongoi, PW3 Mushikoma while in the witness box. I was left in no doubt that these were witnesses of impeccable credibility.

I accept their testimonies without any slightest hesitation.

I equally examined the demeanor of PW4 Haji Wamboga

while in the witness box. I have no slightest reason to

doubt his evidence. Accepting the evidence of the above

5 witnesses as I do, I find that accused was at his home on

the morning of 19/02/2004. His alibi is nothing but a pack

of lies which collapsed as a house of cards.

If the court is sure that an accused told lies in his

10 defence, it is entitled to ask why he did so. However, the

fact that an accused has told lies is not in itself evidence

of guilt, because persons may lie for a variety of reasons.

But if the court is sure that the accused did not lie for an

innocent reason, the lie can be evidence to prove his
guilt. **Lucas (Ruth) [1981] QB 720.**

In this case there is no doubt that the accused told lies in
5 order to escape the long arm of justice. The evidence on
record may be circumstantial. But it is no derogation of
evidence to say that it is circumstantial.

In complete agreement with the lady Assessors I find the
10 accused guilty on each count in the indictment and
convict him as charged.

J.B.A. KATUTSI

JUDGE

15 **14/7/2005.**

SENTENCE:-

On counts 1, 2 and 3 there is only one sentence authorized by the law and that is that you shall suffer
5 death in a manner authorized by the law.

On count 4 you are sentenced to two years imprisonment. Sentences on counts 2,3 and 4 are hereby suspended.

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J.B.A. KATUTSI

JUDGE

14/7/2005.

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