

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA  
HCT-05-CR-SC-0193 - 2003**

**UGANDA:.....PROSECUTOR  
OR**

**-VERSUS-**

**MUJUNI  
WILLIAM :.....ACCUSED**

**BEFORE: HON. JUSTICE ELDAD MWANGUSYA:**

**JUDGMENT:**

The accused, **MUJUNI WILLIAM** is indicted for the offence of Robbery Contrary to sections 285 and 286(2) of the Penal Code Act. The particulars of the offence are that in the night of the 8<sup>th</sup> day of May 2002 at Rwamuranga village, Kazo in the Mbarara District while armed with a panga and a knife robbed Namukazi Jane of cash shs.150,000= a pair of shoes, one mosquito net, two suit cases of clothes, a watch, three kilograms of ghee and at or immediately before or

immediately after the time of the said robbery used personal violence to the said Kamukazi Jane.

The accused pleaded not guilty to the indictment.

In brief terms the case for the prosecution was that the complainant, Namukazi Jane (PW1) and her daughter, Nayebare Juliet (PW2) were sleeping when two men entered their house after forcing the door open. On entering the house one of the assailants instructed Namukazi Jane to light a candle which enabled her to identify one of the assailants as the accused. Then the assailants asked for money from the complainant who was pushed down before she handed over shs. 150,000= . In addition to the money the assailants took a suit case full of clothes, a mosquito net, a wrist watch and three kilograms of cow ghee. After the thugs had left the complainant and her family hid in the bush till the following day when she reported the incident to the Local Council of the area and later the incident was reported to Kazo Police Post following which the accused was arrested and charged with this offence.

On the other hand the accused denied having participated in the Robbery. He stated that he spent the 7<sup>th</sup> day of May 2002 at a market in Kazo and spent the night at home with his wife, **MPAIRWE GORRETI**, who testified on his behalf. He was arrested on 8<sup>th</sup> May 2002 at 4.00pm and spent the night in prison. He stated that the case against him was fabricated by the family of the complainant because they suspected him to have reported **TASHOBYA APPOLO** *alias* **MUSHEGA** (PW3) to the Police for allegedly killing a person. Mushega was imprisoned and following his release he stated that the accused would be imprisoned.

In every criminal trial the prosecution is required to prove all the ingredients of the offence beyond any reasonable doubt. This burden never shifts to the accused to prove his innocence and if there is any doubt raised in the case the doubt is resolved in favour of the accused person.

In a case of Robbery c/s 285 and 286(2) of the Penal Code the prosecution is required to prove the following ingredients:-

- 1) That there was theft of some property.
- 2) That there was use or a threat to use a deadly weapon at the time the theft was committed.
- 3) That the accused was a participant in the Robbery.

The fact of the theft was established by the testimony of Namukazi Jane and her daughter Nayebare Juliet. These witnesses testified that they lost cash shs.170,000= and the property enumerated in the indictment theft is established when it is proved that the persons who took the property had no claim of right to the property and had the intention to permanently deprive the owner of the property. There is no doubt that whoever took this property had no claim of right to it and had the requisite intention to permanently deprive the owner of it. The defence did not dispute this ingredient

and in the circumstances of the case I make a finding that a theft took place.

The second ingredient is whether or not there was use or threatened use of a deadly weapon during the commission of the theft. Both the complainant and her daughter testified that the assailants were armed with a panga and a knife but none of these two witnesses was able to describe as to how the panga and knife were used or threatened to be used. Instead the complainant testified as to how she was pushed down when one of the assailants complained to his colleague that he was delaying with her. So although a panga and knife are by the definition of section 286(2) of the Penal Code deadly weapons their use or threatened use was not sufficiently established by the prosecution. However, the evidence that the door was banged open and the complainant was assaulted during the robbery establishes that there was an use of violence which reduces the offence from that of Robbery c/s 285 and 286(2) to that of Robbery c/s 285 and 286(1)(b).

The last issue is whether the accused participated in the Robbery. The accused raised a defence of alibi and called his wife to support him. I am fully aware of the law that places the burden on the prosecution to disprove this alibi. The accused assumes no burden of proving it. So the question is whether the prosecution has discharged this burden.

The prosecution relies on the testimony of the complainant and her daughter who testified that of the two assailants who attacked then they were able to recognize the accused. The law as regards identification has been stated on numerous occasions and the often cited passage in the case of **Abdala Nabulere and Anor V. Uganda Criminalk Appeal No. 9 of 1978 {1979} HCB** is relevant and I quote:-

“Where the case against the accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence disputes, the Judge should warn himself and the

assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. The reason for the special caution is that there is a possibility that mistaken witness can be a convincing one, and that even a number of such witnesses can all be mistaken. The judge should then examine closely the circumstances under which the identification came to be made particularly the length of time, the distance, the light, the familiarity of the witness with accused. All these factors go to the quality of the identification evidence. If the quality is good the danger of mistaken identify is reduced but the poorer the quality the greater the danger....

When the quality is good, as for example, when the identification is made after a long time of observation or in satisfactory conditions by a person who knew the accused before, a court can safely convict even though there is no other evidence to support the identification

evidence, provided the court adequately warns itself of the special need for caution.”

I was cautious of the danger pointed out in the above passage and I warned the assessors likewise. On examination of the conditions prevailing in this case it was observed that the accused was known to the prosecution witnesses, there was light in form of a wick lamp commonly known as a Tadoba, the assailants went close to the complainant who was pushed down and he was also close and the witnesses did not have a fleeting glance at the assailants because the whole episode took some minutes. All these factors favoured a correct identification being made and the possibility of a mistaken identity is ruled out. In addition to the favourable conditions enabling an identification free from error the accused fabricated a story that there was a grudge between him and the family of the complainant arising out of their suspicion that he is the one who reported PW3 to the Police leading to his arrest on allegations that he had killed a person. PW3 denied ever



being arrested on an alleged murder charge and **DAVID TUMWINE** a witness called by the defence stated that although he knew of the killing PW3 was not one of those arrested in connection with it. In my view the lie about a not existent grudge corroborates the testimony of the witnesses that identified the accused as one of the assailants and as a result of the lie that shows the accused as an unreliable witness I will reject his defence of alibi which in any case was disproved by the prosecution witnesses who placed him at the scene of the Robbery.

In his opinion the gentleman assessor advised this court to convict the accused for the offence of Robbery c/s 285 and 286(1)(b) because he was properly identified at the scene. I agree with the opinion of the assessor. Therefore I find the accused guilty of the offence of Robbery contrary to sections 285 and 286(1)(b) instead of Aggravated Robbery and convict him accordingly.

Eldad Mwangusya

**JUDGE**

**03/02/2006**