

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT NAKAWA CIRCUIT  
HOLDEN AT MUBENDE**

**HC. CR. SC. NO 212/04**

**UGANDA.....PROSECUTOR**

**VS**

**RAJAB SSEMPIJJA.....ACCUSED**

**BEFORE HON. LADY JUSTICE FAITH MWONDHA**

**JUDGMENT**

The accused with others still at large were indicted on a charge of aggravated robbery C/S 272 and 273 (2) of the Penal Code Act. It was alleged that the accused with others on the 25<sup>th</sup> December 2003 at Kayunga village Mityana District robbed one Gregory Nkuluziza of Uganda shillings 200,000/=, 7 pairs of trousers, 6 shirts, children wear, a pair of open sandals, a pair of shoes and a calculator. That at or immediately before or immediately after the said robbery used a deadly weapon to wit pangas, a big stone and metallic bars on the said Gregory Nkuruziza.

As usual the prosecution had to prove these ingredients beyond reasonable doubt in order to bring the guilt of the accused person home;

1. that there was theft
2. that there was use or threat to use a deadly weapon at or immediately after
3. that the accused participated in the same

The prosecution brought two witnesses to discharge its burden but this was a case which entirely depended on evidence of a single witness identification. The witness was PW1 the complainant. He testified that on the material night/morning 25/12/03 at around 3:30pm he was at his home in Kayunga. That he heard the door bang with a stone. That his assailants came in and in the house he was with one Matovu, one called Cyprian and he had his children Sebyala, Nabulime, Nancy and Grace who were young ranging ages from 12, 7 and 3 years. That he saw the accused who he knew very well. That he switched on the hydro electricity power light and he saw that

they were these assailants. That the accused was his friend and had known him for a year. And that his face had not been covered by the assailants. That he was observing the accused with a distance of one yard from him. And that he took about four minutes observing him. That he even called the accused's name and asked him why he wanted to kill him so that he leaves his children. That the accused used to come and buy items from his shop and he was a motor cycle rider (boda boda). That he was hit by an iron bar by the accused on the right shoulder and he started bleeding. That another assailant ordered that he should be killed because he recognised them. That the accused kicked him and they stole the 20000/= which was in a trouser, radio, cassette, plates, a lantern, trousers, a pair of sandals, a pair of shoes, source pans, calculator. That he was beaten and the whole ordeal took about two hours. That when the accused and the others at large left they raised alarms. That police was called but it came at around 8:00am in the morning. That the photograph of the stone was taken. That he told them that it was the accused that attacked him. That he went to Ziwa Clinic in Mityana and later he was taken to Mityana Hospital. That he was admitted for about two months but not sure as I was still nursing his wounds. That later he was transferred to Mulago Hospital. That the accused disappeared from the village but was later arrested. That he saw the accused and he went and notified the police. That the stone and the iron bar were taken to police at Mityana. That a small metallic bar was left there and a pair of rugabire sandals. He said he never recognised the others. That he was arrested after he had been discharged from hospitals. PW2 was the doctor who examined the victim complaint PW1. He said he found multiple injuries all over his body which he classified as bodily harm. The PF3 was tendered as EXP1.

The accused person in his defence pleaded alibi and he told court in his unsworn statement that it was because he befriended the complaints wife that why he was framed with the charges. That he left his home on 20<sup>th</sup> December 2003 and came back on 27<sup>th</sup> December 2003. That he knew nothing about the robbery, he just saw plain clothed police coming and arresting him.

The prosecution in its submission argued this court to convict the accused since it had proved its case beyond reasonable doubt while the defence counsel submitted that the accused should be discharged. That there was no corroboration in evidence to support PW1 testimony. That there was no independent witness to confirm the evidence of the

complaint and even the doctor could not confirm that it was as a result of robbery that he sustained the harm. That the prosecution did not perforate the defence of alibi which the accused raised. And that the burden always lies with the prosecution to put the accused squarely on the scene of the crime. He argued that there was need to confirm about the light. He cited the case of *G.W Simbwa and another v. Uganda [1977] HCB 118* and the case of *Kalyesubula v. Uganda Cr. App. 16/77* to support his arguments.

The accused put up the defence of alibi which under the law the burden is on the prosecution to perforate by putting the accused on the scene of the crime by the evidence it adduces. The evidence was such that the circumstances favoured proper and correct identification existed and left no doubt in my mind that the accused was at the scene of crime. When he stated (accused) that he had gone to load timber in Kampala on Hoima road and that he left on 22/12/0. In his statement at police he said that he came back on 02/01/2004 and that he by passed the complaint at Busujju Banda stage at 9:30am. That when he was still at about 10:00am two men in civilian clothes on a motorcycle and he was cuffed

The accused further stated in his police statement as follows, “On allegations that Gregory (complaint) and another worker of his met at the fence of Mzee Kayada alias Master. It’s true they met at the time the students went for school holidays. He flashed a torch at me and accused me for standing at a wrong place.” From the above when its analysed, it raises questions which if answered would point to the guilt of the accused person and gives sufficient corroboration to the prosecution case. For example, where was he when he saw Gregory and his worker in order for him to state that it’s true Gregory (complainant) were standing there on the fence when Kayada alias Master flashed a torch and told them that they were in a wrong place? His statement he recorded at police put him squarely at the scene of crime and the inference is that he was truthfully referring to the complainant and his complainant’s worker who has since disappeared since that material night. The complainant (PW1) in his testimony told court that he saw him (the accused) and called his name and asked him why he was killing him so that he leaves his children. The accused further incriminated himself when he stated that at that time he had gone to meet his girlfriend Jasi, Jasi who was actually the complainants wife. Though there were no stolen properties

recovered, it could not weaken the prosecution case. This evidence was irresistible pointing to the guilt not innocence of the accused.

There was evidence of theft and the metallic bar was recovered from the scene of crime. The complainant saw the accused take the 20,000/= which he removed from his trouser hanged behind the door. He took other belongings of his and he beat him seriously with an iron bar. The complainant was admitted in Hospital and the medical form PF3 specified the injuries sustained. There was hydro electricity light.

S.286(3) provides that a deadly weapon includes an instrument made or adapted for shooting, stabbing or cutting and any instrument which when used for offensive purposes is likely to cause death.

I warned myself and the assessors on the danger of convicting an accused person on evidence of a single identifying witness. As I have discussed above this was a case where all the facts to be taken into account to lead to proper identification and positive existence. In the case of *Abdulla bin Wendo and Another v. R [1967] EA 58*, *Abdulla Nabulere and 2 others v. Uganda Cr. Appeal 12/81 (Unreported)*, the factors were as hereunder; the period the witness took observing the accused, the familiarity of the witness with the accused, the distance at which the witness was watching the accused, the light which existed. There was electricity light and as soon as the witness heard the bang he woke up and switched on the light. It was not switched off at all during the time the accused broke into the house. The complainant knew the accused by name and the accused knew him before also. I was satisfied that favourable conditions existed void of the possibility of mistaken identity so the alibi raised by the accused could not be sustainable.

The assessors in their joint opinion advised me to find the accused guilty. I agreed with them for the reasons already given in this judgment. I accordingly find the accused guilty and convict him for having committed aggravated robbery as charged.

**Judge**

24/09/09