

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

HCT-O6-CRSCO16/2009

UGANDA:.....PROSECUTOR

VERSUS

KATO KAJUBI GODFREY:..... ACCUSED

BEFORE: HON JUSTICE MOSES MUKIIBI

RULING

Kateregga Umaru alias Bosco and Nabukeera Mariam had been jointly indicted together with Kato Kajubi Godfrey for murder Contrary to sections 188 and 189 of the Penal Code Act. The particulars of the offence alleged that on the 27th day of October 2008 at Kayugi village in Masaka District :Kateregga Umaru alias Bosco, Nabukeera Mariain and Kato Kajubi Godfrey murdered Kasirye Joseph.

On 23.7.09 the case was by consent of counsel fixed for hearing on 6th and 7th August, 2009. When the case came up on 6th August, 2009 the Learned Principal State Attorney, Mr Wagona Vincent informed court that he had been instructed by the DPP to withdraw charges against Kateregga Umaru alias Bosco (Al) and Nabukeera.

Mariam (A2) with a view that their case would be handled separately later. He tendered to court a Nolle Prosequi signed by the DPP dated 5.8.2009. This court, acting in accordance with section 134 (1) of the Trial on Indictments Act (Cap. 23) duly discharged Kateregga Umaru alias Bosco (A1) and Nabukeera Mariam (A2) in respect of the indictment for Murder, and they were released from Prison immediately.

The Indictment was amended accordingly.

On arraignment Kato Kajubi Godfrey denied the charge where upon the prosecution called twenty two witnesses to prove its case. At the close of the prosecution case learned counsel Mr. Kabega Mac Dusman, on private brief for the accused person, submitted that there was no case to answer. The Learned Principal State Attorney Mr. Wagona submitted in reply.

The prosecution case is as follows:- On the 27th day of October, 2008 at Kayugi village in Masaka District Kato Kajubi Godfrey murdered Kasirye Joseph. On that day Kasirye Joseph aged 12 years (now deceased) disappeared from his grandfather's home, one Matia Mulondo (PW1). Kasirye Joseph was staying with Matia Mulondo (PW 1). Prior to the disappearance of Kasirye .

Joseph Kateregga Umaru alias Bosco (PW3), a neighbour, had paid a visit to Mulondo's home. Kateregga Umaru alias Bosco (PW3) talked to Kasirye Joseph (deceased). The latter gave Kateregga Umaru (PW3) water to drink. Shortly afterwards Kateregga Umaru (PW3) left. Kasirye Joseph (deceased) picked a ten litre jerrican purportedly to go and fetch water. It was at 7.30 p.m. Kasirye Joseph (deceased) never returned. A search for him that night was in vain. The next morning (that is on 28th October, 2008) residents saw Umaru Kateregga (PW3) and his wife Mariam Nabukeera (PW4) leaving the village carrying a bag. SPC Sebwana, who had been tipped off of the suspicious conduct of the two, arrested them and led them to the LC1 chairperson of the area, one Matovu Gerald (PW6). The latter forwarded them to Kako Police Post. The two suspects were later transferred to Masaka Police Station.

On interrogation the two suspects revealed that Kasirye Joseph had been killed, his head and private parts cut off and handed over to Kato Kajubi Godfrey, the accused. The accused gave Umaru Kateregga (PW3) a sum of Shs. 360,000/= and further promised to pay to Umaru Kateregga (PW3) a sum of Shs. 15 million.

Kateregga Umaru (PW3) directed the Police to the swamp where the remaining parts of the body were dumped. Police recovered the same and a postmortem report on the deceased was done by Dr. Bawakanya Mayanja Stephen (PW8) on 29.10.08. The postmortem report on police form 48B was admitted in evidence marked Exhibit P.1. The cause of death was that the deceased's head, neck and genitalia were completely cut off with a sharp object.

Kateregga Umaru (PW3) and Mariam Nabukeera (PW4) stated that Kato Kajubi Godfrey came to their home in a vehicle. Indeed tyre marks of a vehicle were seen at the home of Kateregga Umaru (PW3).

A search at the home of Kateregga Umaru (PW3) led to recovery of a ten litre jerican which the deceased had gone with. Also recovered were blood stained clothes of Kateregga Umaru (PW3).

Computer print outs for the mobile phone numbers of Kato Kajubi Godfrey (077-2-70092 1) and Umaru Kateregga (PW3) (077-2-717631) indicate that on that day, before, during and after the killing of the deceased there was communication between the two. The print out further shows that Kato Kajubi Godfrey was in the vicinity of the crime on the day in question. Kato Kajubi Godfrey was arrested. The charge sheet was amended and Kato Kajubi Godfrey was added as the third accused on the charge of murder. He was taken to court and also remanded in prison.

A set of 14 sheets relating to mobile phone No. 0772700921 was admitted as Exhibit P.7A. A set of 4 sheets relating to mobile phone No. 0773717631 was admitted as Exhibit P.7B. A tag showing MSK/CRB 3403/08 plus 8 photographs of a body without a head were admitted as

Exhibit P.8. A Nokia phone (formerly ID P.4) was admitted as Exhibit P.9.

The essential elements to be proved by the prosecution for the offence of murder are: (1

That a human being by the name of Kasirye Joseph is dead;

(2) That he died as a result of an unlawful act;

(3) That the unlawful act was accompanied by malice aforethought;

(4) That the accused person participated in the killing of the deceased.

At the close of the evidence in support of the charge the prosecution should have established a prima facie case against the accused person. As was pointed out by the court of Appeal **for East Africa in BHATT V. R [1957] E.A. 332 at pp. 334-335:-**

“A prima facie case must mean one where a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

“Nor can we agree that the question whether there is a case to answer depends only on whether there is some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence”.

The court is not required at this stage to decide finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively. That final determination can only properly be made when the case for the defence has been heard.

A submission of no case to answer can therefore be upheld either where there is no evidence to prove an essential element in the alleged offence, or the prosecution evidence has been so discredited in cross-examination or is so manifestly unreliable that no reasonable tribunal can safely convict thereon.

See: UGANDA Vs. STEPHEN ONYABO and 3 Others. (1979) H.C.B. 39 (Odoki, Ag. J. as he then was).

In the case of UGANDA: Vs. ALFRED ATEU [1974J HCB 179 Manyindo, J. (as he then was)
observed as follows: -

“The question whether there is a case to answer does not depend only on whether there is some evidence, irrespective of its credibility or weight sufficient to put the accused on his defence”.

At this stage the court has to consider and determine two points, namely:

- (a) Whether there has been any lack of evidence to prove an essential element of the alleged offence; or
- (b) Whether the evidence adduced by the prosecution has been discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could convict on it.

On a submission of no case to answer the court has two options:⁷

- (i) To uphold the submission; or
- (ii) To reject the submission.

The court may either:

- (a) Consider the submission in general terms, or
- (b) Express an opinion or make findings on the evidence of the prosecution, depending on the option it chooses to take.

The court will normally consider the principal prosecution witnesses and pose the following questions: -

- (i) Have they been so badly discredited that no reasonable court can rely upon their testimony?
- (ii) Are they so manifestly unreliable that no reasonable court can safely convict on their evidence?

It is my view that if the principal prosecution witnesses have contradicted themselves on very material aspects and have been shown to be most unreliable then a submission of no case to answer may succeed.

SEE: UGANDA VS. KATABAZI MANUEL [1977] HCB 109. (Manyindo, J. as he then was).

It is clear from the provisions of section 73 (1) of the Trial on Indictments Act that when considering the issue whether a prima facie case has been made out to require the accused to be put to his defence the court is at this stage concerned only with the offence charged.

The first ingredient is that a human being by the name of Kasirye Joseph is dead.

Matia Mulondo (PW1) testified as follows: From the Police they went to Mulago Hospital- Masaka Referral Hospital. A Doctor examined a dead body in the mortuary. The witness saw a body without a head, a navel, a penis and genitals. One Joseph Mugwanya Nalumoso (PW7), the father of Joseph Kasirye, turned over the body. The body was in torn clothes. It was dressed in a shirt and shorts. The witness recognised the body. It was the body of Joseph Kasirye. The Doctor allowed them to take the body. They took it to the witness' home at Kayugi.

Kasirye Paul (PW2) testified as follows:

At 8.00 pm (on 28.10.08) he talked to Joseph Mugwanya (PW7), the father of Joseph Kasirye. Joseph Mugwanya (PW7) told him that he was coming with the police. At about 8.30 pm Joseph Mugwanya called him on phone. He directed the witness to the place where they were. The witness went to a swamp at Kayugi near lake Kayugi. Police was there. Joseph Mugwanya (PW7) was there. Villagers were there. Umaru Kateregga (PW3) and his wife were not there. The LC 1 chairman was present. The witness saw a body on top of grass. The feet were up. The trunk was down. Police had torches. The witness saw the body. It had no head, navel and private parts. The body was dressed in a T-shirt of brown colour and a pair of shorts of black colour. The witness knew that those clothes belonged to Kasirye

Joseph. He used to wear those clothes every day. The witness recognized the body to be that of Kasirye Joseph. Kasirye Joseph had a swelling on the left foot, a nail was missing on the small finger of the left palm. He had jiggers. Joseph Mugwanya (PW7), the father of Joseph Kasirye pulled out the body. The body was photographed by police, who also took it away.

Mugwanya Joseph (PW7) testified as follows:

Kasirye Joseph was his son. He was aged of 12 years. He was staying at Kayugi village at the home of Matia Mulondo (PW1), his grandfather. (On 28.10.08) his son was found dead. They found the body in a swamp. The body had been wrapped in black polythene material and put in a polythene sack. He was present. He examined the feet of the body. Kasirye Joseph had jiggers. The witness identified the feet by jigger bites. The police officers asked the witness to unwrap the body. He saw the clothes on the body. He recognised the clothes. He had bought the clothes. He was wearing a red T-shirt and a black short. The body had no head and genital organs. The witness was directed to put the body on the police pickup. The body was taken away by police.

On 29.10.2008 he came to the mortuary at Masaka Regional Referral Hospital. He had come to collect the body. He found the body in the mortuary. He identified the body to the Doctor. The Doctor examined the body. The Doctor told them to wrap the body and take it away.

Dr. Bawakanya Mayanja Stephen (PW8) testified as follows: -

In October, 2008 he was acting as Principal Medical Officer for Masaka Municipality and also working as a Medical Officer Special grade at Masaka Referral Hospital. (The witness identified

Police Form 48B-a postmortem report by his handwriting and signature).

The Police request was made by D/CPL. Migadde Joseph. The body was in Masaka Hospital mortuary. It was identified by Mugwanya Joseph (PW7) as that of Kasirye Joseph, his son. The witness carried out a postmortem examination on the body on 29.10.2008. The body was wrapped in a black polythene material and tied. When they unwrapped the polythene material they saw the body. There was a blood soaked grey shirt and brown shorts. The head and neck were missing. The body had been decapitated. It had been cut at the base of the neck. The penis and testicles were missing. The wounds had sharp edges. In his view a sharp object had been used to cut off the private parts and the neck. In conclusion he found that the head, neck and genitalia had been cut off with a sharp object. The victim had bled a lot from the wounds. The body had started smelling.

A postmortem Report on Police Form 483 made by the witness dated 29.10.2008 was admitted in evidence as Exhibit P.1. The witness clarified that the deceased was dressed in a T-shirt which was blood soaked. I do believe the evidence of Matia Mulondo (PW1), Kasirye Paul (PW2), Mugwanya Joseph (PW7) and Dr. Bawakanya (PW.8) on the factum of death of Kasirye Joseph, the deceased. In my view the prosecution adduced evidence to prove that Kasirye Joseph is dead.

The second ingredient is that the deceased died as a result of an unlawful act. The third ingredient is that the unlawful act was accompanied by malice aforethought. I will consider these two ingredients together.

Matia Mulondo (PW1) testified as follows:- From Masaka Police they went to Mulago Hospital- Masaka Referral Hospital. A Doctor examined a dead body in the mortuary. The witness was shown a body on the floor. He saw a body without a head, a navel, a penis and genitals. The father of Joseph Kasirye called Joseph Mugwanya (PW.7) turned over the body. It was the body of Joseph Kasirye.

Kasirye Paul (PW2) testified as follows: He went to a swamp at Kayugi near lake Kayugi. Police was there. The witness saw a body on top of grass. The feet were up. The trunk was down. Police had torches. The witness saw the body. It had no head, navel and private parts. The body was dressed in a brown T-shirt and a pair of shorts of black colour. The witness recognised the body to be that of Kasirye Joseph.

Mugwanya Joseph (PW.7) testified as follows:- (On 28.10.08) his son was found dead. They found the body in a swamp. The body had been wrapped in black polythene material and put in a polythene sack, The Police officers asked the witness to un wrap the body. The body had no head and genital organs.

Dr. Bawakanya Mayanja Stephen (PW.8) testified as follows: -

The body was in Masaka Hospital Mortuary. It was identified by Mugwanya Joseph (PW.7) as that of Kasirye Joseph, his son.

When they unwrapped the polythene material they saw the body. The head and neck were missing. The body had been decapitated. It had been cut at the base of the neck. The penis and testacles were missing. The wounds had sharp edges. In his view a sharp object had been used to cut off the private parts and the neck. He found that the head, neck and genitalia had been cut off with a sharp object. The victim had bled a lot from the wounds.

No. 28033 D/C Nyanzi Rashid (PW. 16) tendered in evidence a tag showing Masaka/CRB/3403/08, Kayugi -Bukumbula-28. 10.08, D/C Nyanzi R. and eight (8) photographs of a body, all collectively marked Exhibit P.8. D/C Nyanzi Rashid (PW. 16) testified as follows: The scene was at Kayugi village, Mukungwe Sub- County in Masaka District. He is the District scene of crime officer (SOCO) Masaka. He had a Digital Camera At the scene he saw something tied and wrapped in a sack with the feet exposed. He photographed it. There was a lot of water. He asked that the sack be moved to a dry place.... When the father of the child opened the sack

the witness saw a dead body of a human being. They had a torch. He observed that the body had no head and private parts. The body was in a yellow sack and wrapped in a black polythene sheet. He photographed the body from the side of the legs, then from the side of the trunk in a supine position. They collected the body and took it to the mortuary at Masaka Hospital.

I have observed the photographs in Exhibit P.8. The pictures show the dead body as described by Matia Mulondo (PW1) Kasirye Paul (PW2), Mugwanya Joseph (PW.7) Dr. Bawakanya Mayanja (PW.8) and D/C Nyanzi Rashid (PW. 16). The neck had been cut off at its base. The Doctor, in a statement of the cause of death, confirmed that the head and neck and genitalia had been completely cut off with a sharp object. In my view the prosecution adduced evidence to prove that Kasirye Joseph died as a result of an unlawful act.

Kasirye Paul (PW2) explained to court that he saw the trunk of the body. The edge showed a clean cut. He compared the cut to one of a slaughtered animal.

It is the presence or absence of malice aforethought which determines whether an un-lawful killing is murder or manslaughter. Intent to kill is an essential mental element in the crime of murder. Malice or the lack of it can be determined by examining the nature of the weapon used, the manner in which it is used, and the parts of the body affected.

See R Vs. Tubere s/o Ochen (1945) 12 EACA 64.

The intention to kill may be inferred from the nature of the harm which caused the death.

SEE: SOLOMON MUNGAI and others V.R [1965]J E.A. 782 (CA) at P. 787 "G".

Where the weapon used is a deadly or lethal weapon, or where a lethal weapon is used savagely or where the vulnerable parts of the body of the deceased were affected by the injuries, malice aforethought would be more readily inferred by the court.

SEE: MOSES KAYONDO V. Uganda S.C.

Criminal Appeal No. 11/92 (unreported).

OTIM GABRIEL OGOLA V. Uganda, S.C.

Criminal Appeal No. 16/93 (Unreported).

Dr. Bawakanya Mayanja Stephen (PW.8) was of the view that a sharp object was used to cut off the private parts and the neck. The wounds had sharp edges. Kasirye Paul (PW2) shared the same view. It is reasonable to make the inference that the injuries were inflicted using a weapon which was sharp and adapted to cutting. It is my view that such an instrument fits the definition of a deadly weapon.

In the circumstances of this case it is my view that a lethal weapon was used most savagely on vulnerable parts of the body to wit the neck and the genitalia. It is my considered opinion that the prosecution has adduced evidence to prove that the unlawful act was accompanied by malice aforethought.

The fourth ingredient to be proved by the prosecution is that the accused person participated in the killing of the deceased.

Kateregga Umaru (PW3) testified that he met Kasirye and asked him if he could go to work. This was on 27. 10.2008 at about 5.30 p.m. He testified that he met Kasirye at home and Kasirye's paternal uncle called Kasirye Paul (PW2) and grandmother called Babirye Elizabeth were present. Kateregga Umaru (PW3) told Kasirye Joseph that the work was picking eggs laid by chicken. Kasirye Joseph told Kateregga Umaru (PW3) that he could go and work.

Kasirye Paul (PW2) testified that Kateregga Umaru (PW3) brought his mobile phone on 27.10.08 at 7.30 pm. Kasirye Paul (PW2) testified that Umaru (PW3) moved a few steps away and asked Kasirye Joseph to bring him water to drink. Kasirye Joseph went to the house and returned with water in a cup. Kasirye Joseph handed the water to Umaru Kateregga (PW3). He drank the water and gave back the cup to the boy.

The boy took back the cup into the house. Kasirye Paul (PW2) testified that he had finished working on Umaru Kateregga's phone. Kasirye Paul (PW2) gave the phone back to Umaru

Kateregga (PW3) and he left. Kasirye Paul (PW2) told court that he was seeing Umaru Kateregga when he got water from Joseph Kasirye. Kasirye Paul (PW2) testified that he did not see Umaru Kateregga (PW3) saying anything else to Joseph Kasirye. He said that he did not see Umaru Kateregga whispering anything to Joseph Kasirye.

Kasirye Paul (PW2) testified in response to cross examination that when Kateregga came to their home on 27.10.08 at 7.30 pm it was getting dark, and there was no moon light. In light of the testimony of Kasirye Paul (PW2) Umaru Kateregga (PW3) must have lied about the time he went to Matia Mulondo's home. Umaru Kateregga must have lied when he said that he told Kasirye Joseph about going to work and the nature of the job. Such an explanation required time. If Umaru Kateregga (PW3) intended to "steal" the boy I do not think that he could expose himself to suspicion by talking to the boy for a long time. In any case Kasirye Paul (PW2) told court that he did not see Umaru Kateregga whispering anything to Joseph

Kasirye. I think the story of chicken and eggs is untrue.

Umaru Kateregga (PW3) testified that he told the boy to go to his home. He testified as follows: When he came back home he found the boy at his home. He had a wife, Nabukeera Mariam (PW4). She was at home. She prepared supper. They ate supper. Nabukeera Mariam prepared a bed for Kasirye Joseph in the sitting room. He and his wife slept in the bedroom.

Nabukeera Mariam (PW4), in response to cross examination, testified as follows:—

The grandson of their neighbour was called Kasirye Joseph. She knew the boy. He came to their home after 5.30 pm. He came alone. When Umaru Kateregga (PW3) left her at home he went to Bukumbula. It was on 27.10.08. He came back at 7.30 pm. That evening she did not leave the home with her husband. Between 5.00 pm. and 8.00 pm. she and her husband did not leave their home.

On 30.10.08 at Masaka court Nabukeera Mariam (PW4) made a charge and caution statement which was recorded by H/W Batema N.D.A., Chief Magistrate. It was admitted in evidence and

marked exhibit D.3. At page 2 of the statement the Chief Magistrate recorded: -

“I shall record your statement and will read it back to you then you sign”.

Nabukeera answered: “That is okay. I shall use Luganda”.

The Chief Magistrate said: “Good I understand Luganda. Let me hear what you have to say”.

At the end of the statement the Chief Magistrate recorded: “statement read back to the maker in Luganda and she confirms it is true and correct.

Nabukeera Mariam signed below that statement. She made a statement as follows: “I recall it was a Monday this very week. There came a man at 7.00 p.m. I was at home with my husband Umaru Kateregga. I welcomed the man. Then the visitor, whom I knew as Moses, went out with my husband. I remained home. They came back home at about 8.00 pm at night. They came back with a child. It was a boy. I knew the boy as Kasirye”.

When Nabukeera Mariam (PW4) was cross-examined about this statement she denied knowledge of the said Moses. She was asked if it was true that it was her husband and Moses who came with the child to their home at 8.00 pm. She answered that it was not true. Kasirye Paul (PW2) testified as follows:

At about 8.30 pm he went to Bosco’s home to check. Bosco was Kateregga Umaru (PW3). He did not find Bosco at home. Bosco had wife. She was not at home either. Kasirye Paul (PW2) was cross-examined on this. He testified as follows: When he went to Kateregga’s home in the evening he did not find Kateregga there. His wife was not present. They used to close their door without a padlock. He did not enter the house. He did not expect the boy to be locked up in the house.

I do believe the testimony of Kasirye Paul (PW2) on the point for the following reasons.

(i) Joseph Kasirye was known to be a great friend of Bosco (Kateregga). Anybody looking for Kasirye Joseph would check at Kateregga’s home.

(ii) Joseph Kasirye had picked a ten litre jerican and gone with it. Joseph Kasirye’s grandmother told Kasirye Paul (PW2) that the boy had gone to the well. The water pond was near the court

yard of Umaru Kateregga (PW3).

(iii) Kateregga had come to Matia Mulondo's home, asked the boy for water, talked to the boy, and the boy left soon after Kateregga Umaru had gone. Kasirye Paul (PW2) suspected Kateregga Umaru (PW3) to have taken the boy.

I agree with Kasirye Paul (PW2) that in such circumstances it was most unlikely that Kateregga Umaru would keep Kasirye Joseph in his house.

Kateregga Umaru (PW3) testified that Kajubi rang him at about 7.30 p.m. to inquire if he had got the child. He was on the way from Bukumbula returning home. He told him that he had got the child and he was available. Kasirye Paul (PW2) testified that on 27.10.08 at 7.30 pm Kateregga Umaru (PW3) was at Matia Mulondo's home. Umaru Kateregga (PW3) told Kasirye Paul (PW2) that he was proceeding to Bukumbula.

Samuel Rugesera (PW15), quoting from Exhibit P. 7A told court that on 27.10.08 at 7.30 pm there was no telephone call made by mobile phone No. 0772700921 to 0773717631.

There is a contradiction between Umaru Kateregga (PW3) and Kasirye Paul (PW2) over where Kateregga Umaru (PW3) was at 7.30 pm and what he was doing. According to Kasirye Paul (PW2) Kateregga had not yet gone to Bukumbula. He did not have the child in his possession. Mariam Nabukeera (PW4) in the charge and caution statement (Exh. D.3) told the Chief Magistrate that the visitor called Moses and her husband came back home at about 8.00 pm with a child. She stated that they entered with that boy Kasirye and put him in the bedroom. Then her husband Kateregga asked her to escort him to buy paraffin at Bukumbula. They went together leaving Moses at home.

Kateregga Umaru (PW3) testified as follows: At around 12.00 midnight after speaking to Kajubi he heard the sound of a vehicle approaching his home. He woke up and went to the sitting room. He peeped through the window and saw a vehicle in his courtyard. He did not know the vehicle. He opened the door to see the visitor. He called his wife to light a candle. Somebody opened the door of the vehicle. The first person he recognized was Godfrey Kato Kajubi.

Mariam Nabukeera (PW4) testified as follows:- At 12.00 midnight Kateregga's phone rang. She heard what Kateregga answered. When Kateregga finished with the phone he told her that Kato Kajubi had called and said he was on the way coming. She then saw lights of a vehicle. The testimony of Kateregga Umaru (PW3) gives the impression that he was not aware that Godfrey Kato Kajubi was coming at that time, and that Kato Kajubi arrived unexpectedly. The evidence of Mariam Nabukeera (PW4) contradicted the evidence of Kateregga Umaru (PW3).

Kateregga Umaru (PW3) testified that Godfrey Kato Kajubi had earlier on at about 7.00 p.m. rang him to inquire if he had got the child. Kateregga told Kato Kajubi that he had got the child and he was available. Mariam Nabukeera (PW4) testified that a man entered- He was holding a black polythene bag. They welcomed him. He asked Kateregga: "Did you get the child for me?" Kateregga said: "Yes".

According to the evidence of Kateregga Umaru (PW3) Godfrey Kato Kajubi was already aware that Kateregga had the child. According to the evidence of Mariam Nabukeera (PW4) Kato Kajubi was not yet aware that Kateregga had got the child. In my view one of the two witnesses must have lied.

Samuel Rugesera (PW15), quoting from Exhibit P. 7A, told court that mobile phone No. 0772700921 called No. 0773717631 on 28.10.08 at 1.08.41 a.m. from Kako site and the call lasted 40 seconds. If mobile phone No. 0772700921 belonged to Godfrey Kato Kajubi then it cannot be true that around midnight Kateregga Umaru (PW3) received Godfrey Kato Kajubi at his home.

Nabukeera Mariam (PW4) in her charge and caution statement (Exh. D.3) stated that her husband opened for a man whom he said he had been waiting for all along. He was called Kato Kajubi. As soon as he entered he led her by the arm to the rear sitting room and locked her there. He locked the middle door. She was puzzled. She knocked at the door asking him why she was being locked away. He (Godfrey Kato Kajubi) opened the door and told her to remain silent

lest he cut her. He pulled out a knife and pointed it at her. He then locked the door.

In her charge and caution statement Mariam Nabukeera (PW4) never mentioned (i

That Godfrey Kato Kajubi brought a drugged bottle of Mirinda fruity and possibly poisoned Sumbusas to give to the boy;

(ii) That Godfrey Kato Kajubi engaged in a conversation with Kateregga for about 35 minutes.

(iii) That drugs worked on Kasirye Joseph and he collapsed.

(iv) That Kateregga did not consent to the events which unfolded in his house and that he was put at gun (Pistol) point.

(v) That one Stephen held a white handkerchief over her mouth, took her through the rear door and put her outside.

In her testimony in court Mariam Nabukeera testified as follows: -

Kateregga Umaru (PW3) introduced the man to her as Kato Kajubi. Kato gave them 3 bottles of beer. He gave soda to the child. He gave sumbusa to Kasirye Joseph. Kato also drank a soda.

Kateregga Umaru (PW3) was conversing with Kato Kajubi. When the child was about to finish the soda she saw him lose grip of the bottle and he collapsed. She shouted: "Ee what has happened to the child?" She got up. Kateregga Umaru and Kato Kajubi also got up. As they were examining the child Kato Kajubi drew a small gun and placed it on Kateregga's neck. He ordered Kateregga to keep quiet. He ordered her to sit down. She heard him call out Stephen. A man entered the house. Kato Kajubi ordered Stephen to hold her. Stephen held her. Kato Kajubi asked him (Stephen) to take her outside through the rear door. Stephen held her mouth with a white handkerchief. He took her through the rear door and put her outside. She did not know what happened next.

I do not find it difficult to see that Mariam Nabukeera's story to court is a completely different version from what is contained her charge and caution statement. Several questions do arise.

- (i) Had Nabukeera Mariam (PW4) forgotten all the above events when she made her charge and caution statement?
- (ii) Did she tell the Chief Magistrate all the above information but he declined to record it?
- (iii) Did the Chief Magistrate manufacture a different story for her?

Mariam Nabukeera (PW4) made the charge and caution statement on 30.10.08. She testified in court on 15.9.09 after being discharged in respect of the offence of murder relating to the same child. In her charge and caution statement Mariam Nabukeera (PW4) opened her story by mentioning one Moses who according to her participated in all events of the night and eventually left at around 4.00 a.m. She never mentioned Stephen. Mariam Nabukeera (PW4) was cross-examined. She said.

“I never told the Magistrate that Moses came to our home at 7.00 pm. I never said that Moses went away with my husband. I do not know Moses”.

Court observed her demeanor. Her voice sounded as if she wanted to cry.

The following comes out of the evidence of Katereggga Umaru (PW3):-

- (i) Because of delay of 35 minutes Kato Kajubi took as a better option killing the boy at Katereggga's house than taking away a live person.
- (ii) Katereggga was threatened to keep silent after the event, he was threatened that if he talked he would lose his life.
- (iii) Katereggga was ignorant of Kajubi's real intentions and when he inquired he was assaulted.
- (iv) Kajubi warned Katereggga that there was no way he (Katereggga) would spill the beans without incriminating himself.
- (v) Godfrey Kato Kajubi had in his car all the gadgets required to carry out the killing.
- (vi) Godfrey Kato Kajubi promised Katereggga to give him whatever he wanted in Masaka, the next day. This gives the impression that there was no prior arrangement for payment to Katereggga for procuring a boy to be killed.
- (vii) Godfrey Kato Kajubi promised to assist Katereggga to relocate to another place or even

outside the county if he got problems in the village.

(viii) Godfrey Kato Kajubi asked Kateregga to lie down but not to assist in the actual killing.

(ix) It was Stephen, acting on Kajubi's instructions, who actually cut off Kasirye's head. Kateregga did not in any way assist in the killing.

(x) Kateregga protested though the act of killing the boy, but he had nothing to do.

(xi) Kajubi instructed Stephen to cut off Kasirye's private parts.

(xii) Kajubi and Stephen packed Kasirye's head and private parts in a polythene material and put it in a drum. Stephen was holding Kajubi's pistol.

(xiii) Kajubi and Stephen wrapped Kasirye's body in the black polythene material on the floor and tied it with white strings. They put the body in a yellowish sisal sack.

(xiv) Kateregga was ordered to assist Stephen lift the body to put it in the boot of Kajubi's vehicle.

(xv) Kateregga was "abducted" and was under guard in Kajubi's vehicle.

(xvi) Kateregga was ordered to lift the body from the vehicle and assist in disposing of it. Kajubi instructed them where to throw the body.

(xvii) Kajubi threatened Kateregga to remain silent. At the same time he promised Kateregga whatever he wanted if he kept quiet.

In his evidence in Chief Kateregga Umaru (PW3) stated as follows: 31

"Stephen opened the black polythene material. He laid it out in the sitting room..... Stephen went to the vehicle and brought a basin and a three litre jerrican.

"Stephen drained the blood in the basin. Kajubi assisted Stephen lift the trunk of Kasirye so that blood could drain into the basin..... I saw blood in the basin.

They had a can in the suit case. They poured some drug into the basin. The blood turned into liquid form. They drained the blood into a three litre jerrican. Stephen did this".

Kasirye Paul (PW2), in response to cross-examination, testified as follows: *"Incriminating items had been found in the house. I saw the jerrycan and blood stained clothes which had been found in Kateregga's house. The jerrycan belonged to the deceased. The clothes belonged to Kateregga. It confirmed to me that Kateregga had killed the deceased.*

I thought that the boy had been sacrificed in the house because of the items found in the house. The deceased had left with a ten-litre jerrycan.

It was found in Kateregga's house. I did not see blood around the pond. I did not see blood inside Kateregga's house. I saw blood on the jerrycan and on the clothes".

The prosecution's summary of the case contained the following statements:

"A search at the home of AI led to recovery of a ten litre Jerrycan which the deceased had gone with. Also recovered were blood stained clothes of AI".

Andrew Kizimula Mubiru (PW1 1) testified as follows:

"Another request was received on 1st December 2008. It was received from Masaka Police station. It was delivered by D/C Nyanzi. 5 exhibits were submitted. 5th exhibit was an old yellow 10 litre jerry can labelled Exhibit MD5 (F.2018/08). The request was to examine whether it contained human blood outside the sprout adjacent to the inside cut point and if the DNA matched with KB. All these exhibits were examined and the results are contained in a report submitted".

This evidence supports the evidence of Kasirye Paul (PW2) that a blood stained 10 litre jerry can was recovered. In my view the evidence of Kasirye Paul (PW2) introduces another version of the killing of Kasirye Joseph. That version which shows blood on a ten litre jerry can and on Kateregga's clothes cannot be reconciled with the version narrated to court by Kateregga (PW3).

If, according to Kateregga (PW3), a lot of care was taken to collect blood from Kasirye's body, where did the blood on the ten litre jerrican and on Kateregga's clothes come from?

According to Kateregga the killing process lasted about three and half hours. I find it quite unbelievable that a killing of a person lasting that long could take place inside the house, in a

sitting room, with an unusual motor vehicle parked outside, with nobody keeping guard outside to give a signal in case a search party came.

The prosecution's summary of the case contained the following statements: -

On interrogation both revealed that Kasirye Joseph was killed, his head and private parts cut off and handed over to A3 Kato Kajubi Godfrey. That they were given Shs. 360,000/= in return and with a further promise of 15,000,000/=".

Concerning the alleged part payment from Godfrey Kato Kajubi, Kateregga Umaru (PW3) testified, in his evidence —in-chief, as follows:

I told her (my wife) that matters would take long. I advised her to go back to her home after informing the police. I gave her Shs. 360,000/=. It was in Shs. 10,000/= denominations. I had earned that money from my work. I told her to put clothes in her bag. I told her to take my clothes and keep them".

Learned Counsel for the accused Mr. Kabega submitted that the case for the prosecution rests squarely on the evidence of Kateregga Umaru (PW3) and, to a less extent, his wife (PW4). He reiterated that Kateregga Umaru (PW3) and Mariam Nabukeera (PW4) had been indicted for the murder of the deceased. Counsel submitted that Kateregga Umaru (PW3) is an accomplice.

Learned Counsel for the prosecution Mr. Wagona, PSA, referred to section 132 of the Evidence Act and submitted that court can act on the evidence of an accomplice. He submitted that accomplice evidence is admitted out of necessity.

A person called as witness for the prosecution is to be treated as an accomplice if he was particeps criminis in respect of the actual crime charged in the case of a felony.

SEE: DAVIES VS. D.P.P. (1954)1 All E.R. 507 (H.L).

In the Law of Evidence, 14th Edn Vol. 2, A commentary on the Indian Evidence Act, 1872 by Chief Justice M. MONIR at P. 2172 No. 24 there is an attempt to define "an accomplice". An accomplice means a guilty associate or partner in crime, a person who is believed to have participated in the offence, or who, in some way or other, is connected with the offence, in question, or who makes admissions of facts showing that he had a conscious hand in the offence.

The learned author wrote that the test laid down in some of the cases is whether the witness sustains such a relation to the criminal act that he can be jointly indicted with the accused whom he implicates.

The learned author observed that if it is necessary to examine a co-accused as a witness in the case, he should either be tendered a pardon and made an approver, or be discharged.

It should be pointed out that the Indian Section 133 on an accomplice is verbatim similar to the Uganda section 132 of the Evidence Act (Cap .6) So, in my view, what is written by the learned authors about the Indian provision would equally apply to the Ugandan provision on accomplice evidence.

The learned Chief Justice M. NONIR wrote that an accomplice is a competent witness if he is not being tried in the case in which he is required to give evidence. If an accomplice is jointly indicted with his fellows, he is incompetent to testify, unless he is tendered a pardon, or unless he has been discharged, acquitted or convicted. The learned author wrote that an accomplice is a competent witness, if, at the time he is required to give evidence he is not an accused person in the case in which he is required to testify.

In the instant case Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) had been jointly indicted together with Kato Kajubi Godfrey, the accused, for murder. Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) were incompetent to testify against Kato

Kajubi, the accused, unless they were discharged. The charge of murder was withdrawn against Kateregga Umaru (PW3) and Nabukeera Mariam (PW4). The learned Principal State Attorney, Mr. Wagona informed court that their case would be handled separately later. So, Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) ceased to be accused persons in the instant case and they became competent witnesses. In my view Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) remain accomplices but at the time they gave evidence they were not accused persons in the case in which the prosecution brought them to testify.

In the Law of Evidence, 14th Edn. Vol. 2 at page 2152 the learned author wrote that though an accomplice is a competent witness, the court may presume that he is not worthy of credit, unless he is corroborated in material particulars.

The learned author wrote as follows:

“In practice, therefore, the courts almost invariably start with the presumption against the trustworthiness of the accomplice; and unless the circumstances are quite exceptional, refuse to convict on his un corroborated evidence.”

At page 2153 the learned author wrote:

The general rule that the evidence of an accomplice had not be accepted unless there is adequate corroboration in material particulars not only in respect of the commission of that crime but also in respect of the participation of each of the accused in the commission of the crime is too well-known”.

At page 2164 No. 12 the learned author wrote:

Corroboration need not be by direct evidence, but may be by circumstantial evidence. The corroboration need not be by direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime.

But where corroboration is by circumstantial evidence, it had sufficiently implicate the accused, that is to say, it hold show or tend to show that the accused committed the crime,

though, of course, it may not itself be, sufficient for conviction”.

The author quoted *R vs. BASKER VILLE (1916)2 K.B 658 as authority*

In *R vs. Baskerville (Supra) at Page 664 LORD READING, CJ said:* “Again, the corroboration must be by some evidence other than that of an accomplice, and therefore one accomplice’s evidence is not corroboration of testimony of another accomplice”.

I respectfully agree with the foregoing expositions of the law on the matter. In the instant case Nabukeera Mariam’s evidence is not corroboration of the testimony of Kateregga Umaru (PW3).

It would have been straight forward if Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) had confessed to participation by pleading guilty to the offence, or had been convicted of the crime. However, their evidence is essentially exculpatory.

If Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) had remained co-accused persons with Kato Kajubi, and they made exculpatory statements of themselves but narrated the activities of Kato Kajubi, that would not have been considered evidence against Kato Kajubi. If Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) had remained co-accused persons with Kato Kajubi but they confessed to committing the crime by making statements from the dock implicating themselves and Kato Kajubi such confessional statements would have been of inferior evidentiary value, and they would not be relied upon as the main evidence upon which to found a conviction of Kato Kajubi.

SEE: BATALA vs. Uganda (1974)1 E.A. 402 (CA).

The prosecution knew this position very well. It could have been the reason why they opted to separate the trials of Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) on the one hand, from that of Kato Kajubi, the accused, on the other.

Learned Counsel Mr. Kabega had no kind words for Kateregga Umaru (PW3). He submitted that

the evidence of Kateregga Umaru (PW3) is a pack of lies. He described Kateregga Umaru (PW3) as a villain, a rascal, a man with incredulous character, a man with an insatiable appetite to lie. Counsel submitted that Kateregga Umaru (PW3) can do anything for money. He submitted that the prosecution case has fallen far too short of the standard required to ask the accused to say anything. He submitted that the prosecution evidence is worthless; it is simply speculative. He submitted that there is no way this court can convict the accused in terms of Bhatt vs. R if he said nothing. Counsel invited court to find that no case has been made out against the accused and to acquit him.

The learned Principal State Attorney Mr. Wagona, in reply, submitted that a prime facie case has been made out requiring that the accused be put on his defence. Counsel cited: -

FRED SABAHASHI VS. UGANDA

Supreme Court Criminal Appeal No. 23 of 1993 (unreported).

In that case the Supreme Court reviewed the statements of Lord Parker CJ. In the practice Note (1962) 1 All. E.R. 448, and the definition of a prime facie case given by Sir Newnham Worley, P. in the case of Ramanlal Trambaklal Bhatt V.R (Supra)

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The Supreme Court said:

“It is clear from the above two authorities that the test of a prima facie case is objective and that a prima facie case is made out if a reasonable tribunal might convict on the evidence so for adduced”.

The learned Principal State Attorney Mr. Wagona submitted that there is evidence to prove fundamental features implicating the accused. He gave as one such feature the alleged fact that soon after the deceased was killed the head and private parts of the deceased were taken away.

The learned Principal State Attorney conceded that Kateregga Umaru (PW3) may not have been

a witness of the whole truth but he fundamentally accounted fully for the body of the deceased. He provided information that led to the recovery of the remains of the body. Counsel referred to section 29A of the Evidence Act.

Counsel submitted that Kateregga Umaru (PW3) named the accused person as the one who took the missing parts. The learned Principal State Attorney submitted that the prosecution line is that the accused collected the missing body parts from Kateregga's home. He relied on the evidence of Kateregga Umaru (PW3) and Nabukeera Mariam (PW4) that the accused arrived in their home in a vehicle. Counsel referred to the evidence of Kateregga Umaru (PW3) that the tyre marks left in his compound were those of Kajubi's vehicle. Counsel submitted that evidence of the presence of the tyre marks was corroborated by Matia Mulondo (PW 1) and Kasirye Paul (PW2).

Counsel submitted that if court believed that Kajubi took away the body parts it could convicted the accused. He submitted that that evidence leads to an inference that the accused either participated in the murder or procured the murder.

Counsel submitted that it is the reality that witnesses, who have taken oath, whether for the prosecution or the defence, can lie in aspects of their evidence. Counsel further submitted that case law recognises that a witness can lie but also be substantially truthful. He submitted that the law allows court to believe the part which is truthful but reject what is untruthful. Counsel cited:

ALFRED TA JAR V. Uganda, E.A. C.A. Crim. Appeal No. 167 of 1969.

The point sought to be made by counsel is that the veracity of a witness must be assessed on his evidence as a whole. If he has been found to be untruthful in one part of his evidence then, in the absence of a reasonable explanation, the remainder of his evidence should be accepted

only with the greatest caution.

SEE also: FRANCIS TUICAHIRWA vs. Uganda E.A.C.A. Crim. Appeal No. 67 of 1972.

TOMASI OMUKONO and ANOR U. Uganda Criminal Appeal No. 4 of 1977 (C.A.).

The law governing inconsistencies is to the effect that grave inconsistencies, if not satisfactorily explained, will usually result in the evidence of the witness being rejected. A contradiction is minor if it does not go to the root of the case, and where the witness never intended to tell deliberate lies.

SEE: RUKUNDO FRED and ANOR U. Uganda, Criminal Appeal No. 10/96 (CA) (Unreported)

In my view the questions to consider here are:

- (i) Is the witness testifying about a matter which goes to the root of the case?
- (ii) Did the witness intend to tell deliberate lies?
- (iii) Has a reasonable explanation been offered for the witness' lies?

The learned Principal State Attorney referred to the Law of Evidence by Chief Justice M. MONIR at page 2164.

Counsel submitted that the fact that an accomplice is proved to have lied on a material particular does not prevent court from accepting his evidence on another material particular if it is confirmed by good evidence.

Counsel submitted that court may find that Kateregga Umaru (PW3) lied in some material particulars for example, with regard to his own involvement and the nature of the participation of the accused in the actual murder.

Counsel went on to contend that if the court believes other material particulars for example, the taking of the head and other body parts of the deceased, the court can still accept

Kateregga's evidence. Counsel submitted that the good evidence which confirms Kateregga's evidence are the telephone print-outs.

The learned Principal State Attorney submitted that the fact that Kateregga Umaru (PW3) admitted lying, and gave his reasons for so doing, should not be used to dismiss him as a dishonest and self confessed liar. Counsel argued that on the contrary where Kateregga Umaru (PW3) admitted lying he was being honest.

It is my view that the version of the killing of Kasirye Joseph introduced by the evidence of Kasirye Paul (PW2) which shows a blood stained ten litre jerrycan and blood on Kateregga's clothes is parallel to and cannot be reconciled with the version narrated to court by Kateregga Umaru (PW3). The evidence of discovery of a blood stained ten litre jerrycan and blood stained clothes belonging to Kateregga has proved that Kateregga Umaru (PW3) deliberately told court lies when he vividly narrated how one Stephen, acting on Kajubi's instructions, actually cut off Kasirye's head and private parts, and how Kajubi assisted Stephen to lift the trunk of Kasirye so that blood could drain into a basin.

The learned Principal State Attorney submitted that this court may make a finding that Kateregga (PW3) lied in narrating that hair-raising ordeal; that he lied about his own involvement, and about Kajubi's physical participation in the actual killing.

In my view Kateregga's narration of the actual killing of Kasirye Joseph is the root of the case. Kateregga (PW3) has been shown to have deliberately lied to court about it. No reasonable explanation has been offered for Kateregga's lies.

The learned Principal State Attorney has urged this court to believe Kateregga's evidence when he says that it was the accused who took the head and other body parts of the deceased.

The prosecution's line on the taking of the head and private parts of the deceased is that they were handed over to Kato Kajubi who in turn gave Shs. 360,000/= to Kateregga Umaru (PW3), with a further promise of paying Shs. 15,000,000/=. However, Kateregga Umaru (PW3), in his evidence in chief, said that he gave his wife Shs. 360,000/= in denominations of Shs. 10,000/=. Kateregga testified that he had previously earned that money from his work.

Apparently, this line was abandoned by the prosecution. The said sum of Shs. 360,000/= was not produced in court.

The Learned Principal State Attorney conceded that there is no other evidence to show who took the head and private parts of the deceased, to help confirm Kateregga's story. However, the learned Principal State Attorney submitted that the telephone print outs are good evidence which confirms Kateregga's evidence.

Learned Counsel Mr. Kabega submitted that an accomplice's evidence must be believed first before looking for corroboration.

The Learned Principal State Attorney submitted that the prosecution relies mainly on the evidence of Kateregga (PW3) as corroborated by Nabukeera (PW4) to the extent it relates to the arrival of the accused.

Counsel prayed this court to find that the prosecution has made out a prima facie case against the accused requiring him to be put on his defence.

For the sake of appearing to have considered all the submissions of the learned Principal State Attorney I will comment briefly on the telephone computer printouts.

Samuel Rugesera (PW 15), while referring to Exhibit P.7B, stated that mobile phone No. 0773717631 (Kateregga) did not call No. 0772700921 (Kajubi) on 27.10.08, the whole day. He further stated that on 28.10.08 mobile phone No. 0773717631 (Kateregga) did not call mobile phone No. 0772700921 (Kajubi) the whole day.

An examination of Exhibit P.7B shows that Kateregga did not call Kajubi from 22. 10.08 to 31.10.08.

However, the same exhibit shows that Kateregga (PW3) on 27.10.08 called the following Numbers

- (i) At 11.07.45 pm—No. 0715119787;
- (ii) At 11.15.38 pm—No. 0703827141;
- (iii) At 11.17.50 pm—No. 0703827141.

The same exhibit also shows that Kateregga Umar (PW3), on 28.10.08, called the following Numbers

- (i) At 7.23.02 am — No. 0751733505;
- (ii) At 7.26.37 am—No. 0751733505;
- (iii) At 7.41.18 am—No. 0751733505;
- (iv) At 8.00.56 am — No. 0751733505;
- (v) At 8.06.16 am— No. 0751948879
- (vi) At 8.45.55 am — No. 0751948879.

From Kateregga's own evidence he must have made the night telephone calls on 27.10.08 when he had Joseph Kasirye, the deceased. He made the morning calls on 28.10.08 when he and his wife were leaving their home, and most probably when they were intercepted and arrested. Apparently, the police and the prosecution were not interested in those telephone calls. They were more interested in the calls made by mobile phone No. 0772 700921 to mobile phone No. 0773717631 on 27.10.08 during day and in the evening and around midnight. No. 0772700921

(Kajubi) made the following calls to 0773717631 (kateregga) amongst others: -

(1) At 7.54. 17 pm on 27.10.2008

(ii) At 12.32.02 am on 28. 10.2008

(iii) At 1.08.41 am on 28.10.2008.

In my view the above telephone calls do not say that Kajubi, the accused, came to Kateregga's home to collect the head and private parts of Joseph Kasirye.

On the submission by the Learned Principal State Attorney that the prosecution relies mainly on the evidence of Kateregga Umaru (PW3) as corroborated by Nabukeera (PW4) I refer to the holding of LORD READING, CJ in R V. Baskerville (Supra) that one accomplice's evidence is not corroboration of the testimony of another accomplice.

SARKAR ON EVIDENCE, 14th Edn, 1993 Chap. IX of WITNESSES at p. 1924 gave the principal reasons for holding accomplice evidence to be untrustworthy. Two of them are:

- (1) Because an accomplice is likely to swear falsely in order to shift guilt from himself; and
- (2) Because an accomplice being a participator in crime, and consequently an immoral person, is likely to disregard the sanction of an oath.

I find these two factors applicable to Kateregga Umaru (PW3) and Nabukeera Mariam (PW4). These are the two principal prosecution witnesses. I find them so manifestly unreliable that no reasonable court can safely convict on their evidence. Kateregga Umaru (PW3) has been shown to have deliberately lied to court in narrating to court the circumstances of the actual murder of Joseph Kasirye, the deceased. It is the law that if the principal prosecution witnesses have been shown to be most unreliable then a submission of No case to answer may succeed.

SEE: Uganda V. Katabazi Manuel (Supra)

In the instant case this court has found that there are major contradictions in the evidence

given by the prosecution witnesses on matters which go to the very root of the case. It has been shown that the principal witnesses intended to tell and actually told court deliberate lies about the actual killing of Kasirye Joseph. In law this court is entitled to reject the evidence of those witnesses. It is my view that the prosecution evidence is so manifestly unreliable that no reasonable tribunal can safely convict the accused on it if no explanation is offered by him.

The prosecution has failed to make out a case sufficiently to require the accused person to enter on a defence. I find that the accused has no case to answer. So within the meaning and intent of Subsection (1) of Section 73 of the Trial on Indictments Act I find Kato Kajubi Godfrey not guilty of the offence of Murder Contrary to Sections 188 and 189 of the Penal Code Act.

I accordingly acquit him of that offence.

I order that Kato Kajubi Godfrey be released from Prison and set at liberty immediately unless he is otherwise lawfully remanded for another offence.

Order accordingly.

MOSES MUKIIBI

JUDGE

23.4.2010