

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL SESSION CASE 083 OF 2010

CRB 1462 OF 2009

UGANDA ::: :PROSECUTOR

VERSUS

MUHIIRE WILSON::: ACCUSED

BEFORE HON. JUSTICE J.W. KWESIGA J U D G M E N T

The Accused person is indicted under Sections 188 and 189 of the Penal Code Act. It is alleged in the particulars of the offence that on 10th December, 2009 at Busamba village, Muganza, Chahi, Kisoro District the Accused person murdered Nkurunziza Valence. The Accused person pleaded not guilty and therefore the burden of proof remained upon the Prosecution throughout the trial **see Oketcho Richard Vs Uganda Criminal Appeal N0. 2 of 1995 (SCU).**

The Prosecution must prove that: - Nkurunziza Valence is dead, his death was caused unlawfully by the Accused person and that he had Malice aforethought.

The simple facts of the case are that on 10th December 2009, the Accused, the deceased and others were in a bar drinking and a quarrel broke out which involved the Accused and others who were in a village bar at night. A fight broke out between the deceased and the Accused and the others. The deceased was fatally injured. The Accused admitted having been party to the fight but

denied responsibility or intention to cause death.

PW 1 Dr. Nsenga testified that on 11th December, 2009, the body was examined by Dr. Rwabugiri Christopher who prepared the postmortem report admitted as P1. The report shows that the deceased died of excessive bleeding due to a deep cut wound on the shoulder at the jugular vein. This medical report is silent as to what type of weapon or implement could cause this type of injury. Dr. Nsenga who produced the report made by Dr. Rwabugiri did not add any value to the findings. PW 4 Silver Nsimyimana prosecution witness who testified to the existence of a knife. That the Accused person had a necklace around his neck which had a knife which he used to stab the deceased. PW 4 Tabaro testified that the Accused first quarreled with JEROMU, the deceased intervened and the Accused picked his knife from the necklace and stabbed the deceased. PW 2 MUSENEZA testified that the quarrel and fight was between JEREMU and the Accused, the deceased tried to separate them, the Accused told the deceased that “all along it is you I wanted” during the fight that involved all the people who had been drinking, the Accused stabbed the deceased once and ran away.

In the Defence, the Accused testified that a fight broke out and involved all the people who had been drinking, the candle light went off, people threw bottles at each other. A bottle was thrown and hit him on the head, he got it and threw it back not aiming at any particular person. He did not deny ever possessing a

knife.

The set up of the story and the circumstances of this case is simple. The evidence of all prosecution witnesses is that Nkurunziza died out of the injuries he sustained during the fight in the bar. The Medical report admitted as prosecution exhibit P.1. Proves that he died out of a deep perforation wound on the shoulder. This evidence proves injury but does not show it was caused by a knife as opposed to Defence suggestion that it could have been caused by the bottles thrown during the fight. The eye witnesses testified that the Accused person had a knife which he used to stab the person.

The Accused person admits that he was at the scene. He stayed and drunk at least two bottles of beer according to his defence. He also admit that the small shop that was being ran as a bar had a light of a Tadoba or wick candle. He was able to recognize the other people in the bar and the bar attendant and what they were doing. Similarly, I have no doubt that the other people including **PW 2** Museneza were able to see him. Museneza specifically stated that the Accused stabbed the deceased. PW 4 Silver Nshimiyimana also testified that the Accused stabbed the deceased. Tabaro

corroborated the above evidence of the Accused person's stabbing the deceased. The medical evidence further corroborates the above prosecution evidence that the deceased died from the stab wound. I have no doubt in my mind that the Accused person was adequately and identified as the culprit who stabbed the Late Nkuruziza Valence to death. The death of Nkurunziza was caused unlawfully. He was stabbed to death and therefore it was not accidental death. There is evidence that the Accused was not in immediate danger. There was no threat to his life coming from the deceased that could only be prevented by the Accused inflicting the fatal injuries. In the circumstances the defence of self defence is not available. It is the duty of a trial Judge to consider all aspects of defence that appears to emerge from the Prosecution and Defence evidence. It does not matter whether the Accused person expressly puts up the specific Defence or casually testifies to the defence. As stated above the defences of accidental killing or killing in self defence are not available for the reasons given. I have a duty to examine the evidence to find or rule out the existence of provocation as a defence.

Section 193 of The Penal Code (Cap 120) defines provocation to include any insults or wrongful acts coming from or done by the victim or group of people that included the victim that were capable depriving the Accused of his or her power of self control and induce him or her to commit an assault of the kind as the Accused person is charged with. For this defence to be

available the circumstances and the manner he acted must have been at that
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very moment when he had lost self-control and acted in the heat of passion.
There should be no evidence that this was a pre-planned assault or that he acted
when he had time to cool down and most cases acting under provocation
involves a single blow and not repeated or multiple assaults which would
indicate intention to kill or cause grievous bodily harm. Considering that this
assault was preceded by quarrel and fight between the Accused and the
deceased who enjoyed the support of the prosecution witnesses leading the
Accused to run away. These conditions make the homicide in this case to be
killing on provocation provided for under section 192 of the Penal Code Act. In
the circumstances I find the Accused person guilty of manslaughter contrary to
sections 187 and 190 of the Penal Code Act. He is accordingly convicted.

**J.W KWESIGA
JUDGE
29/4/2011**

PRE-SENTENCING PROCEEDINGS

The convict is first offender, has been on remand for 2 years and three months.

The offence is punishable by life imprisonment I pray for the Appropriate.

DEFENCE COUNSEL:

He is a first offender. He is a young man, 23 years old. He is married with 2

young children. He has been on remand 2 years and 3 months. He is very sorry for the offence committed. Prays for lenient sentence. That will allow him to come out and look after his family.

COURT: I have considered what has been submitted by the State and Defence Counsel, I find 7 years appropriate sentence to allow the Accused to Reform. I sentence Accused to 7 years imprisonment.

J.W. KWESIGA
JUDGE 29-
4-2011

In the presence of :

Mr. Bwagi holding brief for M/s Nowangye

Mr. Kalinaki Brian for State.