

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-CSC-0035-2010

UGANDA **PROSECUTOR**

VERSUS

KATENDE IDDI **ACCUSED**

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

JUDGMENT

KATENDE IDDI (*hereinafter referred to as the “accused”*) is indicted for **Aggravated Robbery** Contrary to **Section 285 and 286(2) Penal Code Act**. The particulars of the offence are that the accused on 27/06/2009 at Rwenkoma Cell in the Mbarara District robbed Baker Mugume of six inch vitafoam mattress, one blanket and a box of Nomi detergent soap, and immediately before or immediately at or after the said robbery used a deadly weapon to wit; a panga on the said Baker Mugume. The accused pleaded not guilty to the indictment, and prosecution led by Mr. Ojok Michael, Principal State Attorney, adduced evidence of five witnesses (*hereinafter abbreviated as “PWs”*) to prove its case. For its part, the defence represented by Mr. Agaba Benon, learned Counsel on State Brief, only led evidence of the accused in his defence and called no other witness.

The facts as per “Summary of the case” by the DPP are that on 27/06/2009, at about 2:00 am, the accused attacked the home of one Tuhiriirwe Deus at Rwenkoma Cell, Rukindo Parish, Nyakayojo Sub-county in Mbarara District, which was guarded by one Mugume Baker (*hereinafter referred to as the “victim”*).

Armed with a panga, the accused robbed a six-inch vitafoam mattress, one blanket and a box of Nomi detergent soap. The accused used the same panga to cut the victim several times and left him seriously injured. The accused and the victim knew each other very well as both worked for the said Tuhiriirwe Deus. The latter has a village-home at Rwenkoma Cell, but lives in Mbarara town with his family where he operates a business. The victim was employed as a porter and also doubled as a guard at the village home.

On the fateful night about 2:00 am, the accused went to the home of Tuhiriirwe Deus where he found the victim guarding as usual. The accused deceived the victim that he had been sent by their boss Deus, to check on the house. The accused then got a panga and cut the victim several times leaving him to die, and he took off with some household items mentioned above. Shortly after the accused left, the victim raised an alarm which attracted neighbours who came and helped to take him to Mbarara hospital for treatment.

The medical examination report reveals that the victim suffered four cut wounds on the nasal bridge, upper lip, chin and cheek, classified as grievous harm. The accused was arrested the following day and taken to Mbarara Central Police Station. He too was medically examined and found to be of sound mind. The exhibits recovered at the scene of crime, such as pangas and a knife were also recovered by police.

On interrogation, the accused admitted in a charge - and - caution statement to have committed the offence and led Police to the recovery of all the stolen items from Nova Park View Lodge in Mbarara town where he had kept them.

At the commencement of trial, both sides agreed on having both Police Form 24 and Police Form 3 admitted in evidence pursuant to **section 66(2) of the Trial on Indictments Act (Cap 23)**. Indeed, the two were admitted as *Exhibit "P1"* and *"P2"* respectively.

The cardinal principle in a criminal trial is that the burden of proof of the offence charged on every issue lies with the prosecution. This burden does not shift to the accused person, save for very few specific exceptions, among which the instant case does not fall.

Secondly, the standard of proof in criminal trials is beyond reasonable doubt. If there is any reasonable doubt at the conclusion of the trial, such doubt should be resolved in favour of the accused person who must be acquitted. The above stated principles are time-tested and have been applied in several leading authorities, which this court will follow in this case. *See Woolmington vs DPP (1935) AC 862; Manyara S/o Malakoni Vs. Reg. [1955] 22 EA CA 502; Obar S/o Nyarongo Vs. R. [1955] 22 E.A.CA 422; and Nandudu Grace & Another Vs. Uganda, S.C.Cr. Appeal No. 4 of 2009; Sekitoleko Vs Uganda [1967] EA 53.*

The essential ingredients of the offence of **Aggravated Robbery** which the prosecution has to prove to the required standard stated above, have also been considered and applied in a number of leading cases. *See Walakira Abbass & 2 O'rs Vs. Uganda S.C. Cr. Appeal No. 25 of 2005; Uganda Vs. Mawa alias Mutua [1992- 1993] HCB 65.* They are:-

- (i) theft of property;
- (ii) use of; or threat to use violence;
- (iii) use of a deadly weapon; and
- (iv) the participation of the accused.

In order to prove the element of theft, the prosecution relied on evidence of Nakayima Assa (PW2) wife to Tuhiriirwe Deus (PW3), the owners of the property which was stolen, and later recovered and exhibited in court. Mugume Baker, the victim, testifying as PWI, stated that on the fateful night about 2:00 am, the accused came and opened the gate and entered the courtyard where PW1 was guarding. The accused proceeded to the main house and opened the door and

entered inside. While there, PW1 came and found him there, and the accused claimed he had been sent by Deus, their boss, to come and check on the house and stay and guard there too. As PW1 was preparing to leave, the accused got a panga and cut the victim between the eyes and went on to inflict several other cuts. The victim fell down and lost conscience.

After sometime when the victim regained consciousness, the accused had left the place after locking the house. The matter was reported to Police, and the accused was arrested. PW2 and PW3 stated that the accused led the Police search team to a place called Nova Park View Lodge in Mbarara town where he had rented a room. A mattress (“Exhibit P12”) blanket (“Exhibit P.6”) and carton of Nomi detergent soap (“Exhibit P8”) all belonging to Deus Tuhiriirwe, were recovered.

When further interrogated by D/AIP Turyamureeba Patrick (PW4) and the investigating officer D/CPL Byamukama Clement (PW5), the accused admitted that he used the keys of his boss to open the village house and to take the property named above. Evidence of PW2, PW3, PW4, and PW5 is to the effect that the accused led the search team to Full Gospel Church at Kiswahili zone in Mbarara town from where the accused retrieved the bunch of keys belonging to Deus (PW2) from a toilet cistern where he had thrown them after the robbery.

Further, PW2 testified that the accused told him that he accessed the bunch of keys (“Exhibit P7”) from their bedroom using a master key.

For his part, the accused denied ever stealing any property belonging to PW1 and PW2. He made a general denial stating that on the morning of 28/06/2009, PW2 called him on phone, and the accused went straight to the business place of PW2 at a restaurant called Namu Restaurant in Mbarara town. As he parked his motorcycle, he was arrested by two men and taken to Police. He was beaten and led Police to his home but a search revealed nothing. That it was when they were

coming back that the search team stopped somewhere in Mbarara town and brought a mattress and blanket which were exhibited in court.

After exhaustive evaluation of the all the evidence on this issue, I have found that, indeed, property was stolen. The search team recovered the stolen items from Nova Park View Lodge. Property was positively identified by PW2 and PW4 as belonging to PW3 the owner. The property had been taken from Deus' house in Rwemikoma Cell and brought to Mbarara town. A Search Certificate was made of the property recovered ("Exhibit P3"). The removal of the property belonging to PW2 and PW3 from their home in the village to Nova Park View Lodge in Mbarara amounted, in law, to asportation. Property was taken with intention to deprive the owner of it. There is no doubt that the taking was fraudulent. All elements of theft have been proved to the required standard.

Regarding the ingredient of use of or threat to use violence, the prosecution adduced evidence of PW1 the victim who stated that the accused cut him several times after he had found him in their master's house at Rwemikoma Cell in the Rukindo Village. It is the same house from which the property exhibited in court was stolen. The victim was guarding the house when he was attacked. He had to be treated for the severe injuries which he sustained in the attack (see "Exhibit PI"). He lost consciousness at the scene of crime, and after wards also lost an eye. He was left for dead and the assailant-the accused, used the panga to subdue the victim before the theft could be committed. The accused for his part once again generally denied that he ever attacked the victim.

It is my opinion that the denial of the accused notwithstanding, there is overwhelming evidence to prove that violence was used on the victim in order to commit the theft. This ingredient has been proved beyond reasonable doubt by the prosecution.

Connected with the above later ingredient is the use of a deadly weapon. The **Penal Code Act** defines a “deadly weapon” under **Section 286 (3)** as –

- “(a) (i) any instrument made or adopted for shooting, stabbing or cutting, any imitation of such an instrument;**
- (ii) any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous harm; and**
- (b) any substance intended to render the victim of the offence unconscious.”**

From the foregone stipulations it is clear that a panga which is said to have been used to cut the victim falls under category (a) (i) of the cited section of the law as a weapon adopted for cutting and/or stabbing. PW1 testified that he was cut by accused several times using a panga. PW4 a Police officer who visited the scene of crime at Rwenkoma Cell recovered two pangas (Exhibits P9) and knife (Exhibit P10). PW4 testified that one of the pangas had blood stains on it and was found to a spot where there was a pool of blood in the courtyard of PW3. The medical report (Exhibit P1) upon which the victim was medically examined corroborates the fact of use of a sharp object because the victim had deep cut wounds consistent with use of sharp object. The injuries were classified as “grievous harm”. In my opinion, taking all the evidence together the prosecution has proved beyond reasonable doubt that a deadly weapon was used to commit the robbery.

The last ingredient concerns the accused’s participation in the commission of the robbery. Prosecution relied mainly on the evidence of the eye-witness PW1 the victim. The victim testified in great detail how on the fateful day, the accused came to the home of PW3 where PW1 was guarding. At about 2:00 am, the accused pushed open the gate and entered the courtyard. He proceeded and opened

the locked door of the main the house and entered. All along PW1 thought that the owner of the house had returned. He went to the house and stood in the door-way. A phone with torchlight was lighting inside the house placed on a table near a bunch of keys belonging to the owner of the house.

After identifying the accused, the victim asked him why he was in the house. The accused responded that he had been sent by their boss PW3 to help guard the place. He showed PW1 the keys to prove his claim. PW1 thought that, that was a relief to him since he could leave and go to his home nearby to have a rest. The two went outside the house and chatted together for awhile. The accused asked PW1 to hand him his panga. PW1 refused saying he needed it to ward off dogs on his way home. Instead, PW1 directed the accused to the kitchen for yet another panga.

As the victim sat down to remove his gumboots and trousers, there and then the accused attacked him and inflicted several cuts on him which caused the victim to lose consciousness. The accused for his part denied ever being at the scene of crime, that on that fateful night he was at his own home. In short he set up a defence of alibi.

It is settled that when an accused sets a defence of alibi, he or she does not assume the duty to prove it. The burden still lies on the prosecution to adduce evidence that destroys the alibi and places the accused at the scene of crime. See ***Francis Sekitoleko Vs. Uganda MB 68/69; Ausi S/o Okulu Vs. Uganda, MB 113/68 per Udo Udoma CJ (R.I.P.)***. If the alibi raises reasonable doubt as to the guilt of the accused, it is sufficient to secure his/her acquittal. See ***Mohammed Mukasa & Anor Vs. Uganda S.C. Criminal Appeal No. 27 of 1995; quoting with approval Leonard Aniseth Vs. R (1963) AE 206; R.V Johnson [1961]3 ALL ER; and Sentale Vs. Uganda [1968] E.A 365.***

In the instant case, the prosecution relied heavily on evidence of PW1. He was well known to the accused, the two being workers of PW3. PW1 saw the accused

that night at around 2:00 am. There was also the phone torch light by which he identified the accused. The two talked at length in the courtyard. The evidence leaves no doubt it was the accused who attacked the victim; and took the property belonging to PW2 and PW3. He was properly placed at the scene of crime.

The above testimony is corroborated by evidence of PW2 and PW3, that when the accused was arrested the following day, he led the search team to Nova Park View Lodge from where the stolen property was recovered in the accused's rented room. There is further corroborative evidence of PW5 that the accused led the search team to recover a bundle of keys from a toilet cistern at a church in Kiswahili Zone, Mbarara town. The keys are the same the victim saw with accused on the night of the attack and they belonged to PW3 Deus. In my view, the accused was placed squarely at the scene of crime, and his alibi does not hold at all. He was properly and correctly identified and placed at the scene of crime by prosecution's evidence. His denials are just a pack of lies and too general to raise any doubt in the mind of any right thinking tribunal. It was set up as an afterthought because at no time before did he indicate to Police or anyone else that he was not at scene of crime.

The Assessors after being directed on the essential ingredients of the offence of Aggravated Robbery and the law on the same, the need to exercise caution especially on evidence of a single identifying witness and the need for corroboration, in their unanimous opinion advised that the prosecution has proved its case beyond reasonable doubt, and that the accused should be found guilty and convicted as charged. I entirely agree with their considered opinion. I accordingly convict the accused as charged.

BASHAIJA K. ANDREW

J U D G E

Mr. Ojok (Principal State Attorney)

The convict is first offender and there are no previous records. He has been on remand for 2 years and 3 months. Aggravated Robbery attracts maximum of death sentence on conviction. The convict is a young man who did Boda Boda business and there was no need for him to violently attack the victim and cut him and leave him for dead. We invite court to take a serious view of this. The community needs protection. We pray for a stiff deterrent sentence to reform convict and protect society.

Mr. Agaba Benon Counsel for the Convict (Allocutus).

The convict is 28 years, married with 2 children, an orphan and looks after siblings. He has been on remand for over 2 years and has undergone rehabilitation. We pray for lenient sentence.

Accused: (Allocutis)

I pray for leniency. I don't eat posho which is the only food served in prison. I pray for lenient sentence of about five years.

Victim's prayer:

I lost an eye. I need help. I pray for 25 years imprisonment for convict.

BASHAIJA K. ANDREW

J U D G E

SENTENCE AND REASONS:

The convict is first offender, since there are no previous records of conviction. However, the offence he committed is a very grave one. He robbed property belonging to his master, and not only that, but severely hurt an innocent man doing his guard duties. The victim lost an eye in the most excruciating pain caused by the attack. The convict has not demonstrated any remorsefulness at all during the trial. He dragged the court process through the lengthy protracted trial with his denials well knowing he had earlier admitted to the offence. He does not appear repentant at all hence deserves a reasonably strong sentence, which will not only deter him but others would be offenders.

I have taken into account the period he spent on remand. Accordingly the convict is sentenced to 17 (**SEVENTEEN**) years imprisonment.

BASHAIJA K. ANDREW

J U D G E

09/03/2012

It is further ordered that the convict pays the Victim **MUGUME BAKER** Shs. 1,500,000= by way of compensation having regard to the injury and loss suffered by the victim, and thus shall be deemed as a decree which may be executed in the manner provided by the **Civil Procedure Act**.

BASHAIJA K. ANDREW

J U D G E

09/03/2012

Court:- Right of appeal explained.

BASHAIJA K. ANDREW

J U D G E

09/03/2012

Court:-

Judgment and sentence read and passed in open court before all parties, Court Clerk-Mr. Ngabirano present.

BASHAIJA K. ANDREW

J U D G E

09/03/2012