

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT PALLISA**

HCT-04-CR-SC-109-2011

**UGANDA.....PROSECUTOR
VERSUS
NAHASIO CHARLES.....ACCUSED**

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

Nahasio Charles hereafter referred to as the accused is indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. Prosecution alleges that the accused on the 9th day of March 2011 at Bulyabwita village in Kibuku District murdered one **Mugala Biitu Oliver**.

The accused pleaded not guilty to the indictment. As such it was incumbent upon the prosecution to adduce sufficient evidence to prove the guilt of the accused person as required by the law.

In criminal trials the burden of proof lies on the prosecution throughout the trial and does not shift to the accused at any one time. The standard of proof is beyond any reasonable doubt.

In an indictment for murder like in the instant case, prosecution led by **Mr. Walugembe** the learned Resident State Attorney had to prove that:-

- i) A human being was killed.
- ii) The killing was unlawful.
- iii) The killing was with malice aforethought, and
- iv) The accused participated in the killing.

I will deal with each of the above ingredients separately starting with the first two:-

(i) Whether a human being was killed unlawfully:

After evaluating the evidence for both the prosecution and defence I had no doubt that indeed a human being **Mugala Bitu Oliver** died. The contention is whether this death was caused unlawfully and not naturally. The learned Resident State Attorney submitted that this was a homicide and all homicides are presumed to be unlawful.

According to PW.1 the post mortem report Exhibit PE.I, the cause of death was repeated beating by a blunt object causing spinal and neurological shock. The autopsy was done at the scene in a one roomed house.

PW.2 Mulinda Veronica told court she had never seen the accused before the incident. That the deceased was beaten by a stick to death by the accused at 9:00p.m the day she died. That the accused hit the deceased around the heart and abdomen. PW.2 was 3 metres from the fighting. That after the mother collapsed the accused called a neighbour to assist him lift the deceased to the road to disguise that she was knocked by a car. When they failed the body was left in the doorway. That the accused ran away. She denied being asleep by the time the mother (deceased) was beaten. That both the accused and deceased were drinking alcohol. That the fight was because the deceased had left the waragi outside.

The LC.I Chairman Bulyabwita village testified as PW.3 and said the accused and deceased had lived together for 3 months. He received a report on 29.3.2011 from the accused that his wife had died. Earlier the accused called the chairman at 9:00a.m to go and ask the deceased why she was crying. When he went to the

deceased, he asked her but she did not answer. The chairman learnt later at around 11:00p.m that the woman had died. When he went to their home he found the deceased had fallen in the doorway head inside the house and legs outside. She lay on the back. PW.3 immediately arrested the accused and took him to police at Kadama.

In cross-examination the witness said the deceased had drunk and simply refused to talk to him.

PW.4 No.26312 D/Cpl Waganane Bumali re-arrested the accused. When PW.3 handed him in the accused confirmed the death of his wife but denied assaulting her. The accused told PW.4 that the deceased drunk herself to death. PW.4 visited the scene and found the deceased lying in the doorway. PW.4 observed signs of violence on the body with fresh bruises on the stomach and shoulder. The daughter to the deceased PW.2 said the accused and deceased fought twice.

In his defence (DW.1) the accused, denied killing his wife. He said when he went back from work he found his wife crying. When asked why she did not explain why she was crying. He thought somebody annoyed her. The accused further said he reported to the Chairman and asked him to go and ask the deceased why she was crying. The Chairman asked her but she did not answer him. She continued crying and beat all the children. She got a 10 litre jerrycan of waragi and started drinking directly from it. The accused removed the jerrycan from her. The accused further testified that the deceased progressively slowed down in crying. She removed a bicycle from the house, put it outside and on her way back to the house she collapsed. The accused asked **Balaki DW.2** to assist him lift his wife into the house. When they tried to make her sit, they realized she had died. The accused reported to the LC who took him to police. That he wanted to be taken to

police because he feared the deceased's relatives would harm him if they arrived. The accused was detained at police for safe custody. He further testified that he was surprised to be detained for murder yet he reported a case to police. That by the time the deceased died, the children including PW.2 were asleep. He woke them and told them their mother had died and they started crying.

DW.2 Robert Kabwetere testified that the accused collected him on a date he had forgotten and told him his wife was drunk with waragi. He asked DW.2 to go and help him lift the deceased. DW.2 found the deceased had fallen on a bundle of firewood near the door. He helped carry her into the house but the deceased was very heavy. DW.2 wondered why. He also noticed she was not breathing. He found out that the deceased was already dead. The matter was reported to the chairman and the accused was arrested.

When examined by court DW.2 said he was not present when the accused and deceased fought.

In his submissions **Mr. Okiror** learned defence counsel said that prosecution had not proved the offence of murder against the accused person to the required standard. **Mr. Walugembe** on the other hand submitted that he had discharged his duty satisfactorily.

After a careful evaluation of the evidence as a whole, I remained in doubt whether indeed the accused murdered his wife.

According to the evidence of PW.2, a minor and the only identifying witness, the deceased was selling waragi. It appears she operated a waragi bar (off license). That the accused assaulted her to death. On the fateful day the accused said he came back from work and found his wife crying. He asked her what was wrong

but she did not reply. He reported to the LC.I PW.3 who came to the scene and inquired if the deceased had a problem. She did not answer.

Evidence has it that the deceased was behaving in a strange manner to the extent of drinking waragi from a 10 litre jerrycan. It is the accused who removed it from her. When the deceased eventually collapsed on a bundle of firewood the accused asked DW.2 to assist him carry her into the house only to realize she had since died. This falling could have caused bruises which were found on her during medical examination. It is the accused who woke up the children and told them of the death because they were asleep. I believed this version of the story.

In view of the way the deceased was consuming waragi she could have lost balance and repeatedly fell down leading to injuries described by the doctor as resulting from repeated beatings. I noted from prosecution evidence in Exhibit PE.I that the doctor performed the autopsy from the scene. Results from such autopsy may not be trusted because the doctor had no equipment to assist him reach an informed finding. His findings in No.8 of Exhibit P.8 were not helpful to this court to determine the real cause of death. The answers are in form of “NILL” or “as above” or “N.B – L- Lumbar spine”. This was not a helpful report. I found it difficult to agree with the prosecution that PW.2 the only eye witness told court the truth. She first denied knowledge of the accused then said he seldom came to their home. That he killed the deceased. Although evidence has shown that the deceased used to drink alcohol and sold waragi from her house, PW.2 told court that this was not the case.

From what DW.1 explained in his defence, there is a high likelihood that the deceased simply collapsed and died from the effects of taking excessive waragi. The learned Resident State Attorney argued that if the deceased died of alcohol,

the postmortem would have revealed so. I agree but this would have been the case if the autopsy was done more scientifically than by mere observation of the deceased's body from the scene.

In the final a result, whereas it is not disputed that the deceased died, there is doubt whether the killing was unlawfully caused. Having held so, I have found it difficult to find that the accused caused the death of the deceased unlawfully.

The issue of malice aforethought does not arise in the circumstances.

Consequently, I will find prosecution has not proved the offence of murder against the accused person beyond any reasonable doubt.

The gentlemen assessors have advised to convict the accused because all the ingredients of the offence have been proved beyond doubt. With due respect I do not agree for the reasons I have given in this judgment.

Consequently **Nahasio Charles** is acquitted of Murder contrary to sections 188 and 189 of the Penal Code Act. The indictment is dismissed and accused set free unless lawfully held.

Stephen Musota

JUDGE

16.4.2012