

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
CRIMINAL SESSION CASE NO. 119 OF 2017**

UGANDA:..... PROSECUTOR

VERSUS

SSONKO JIMMY:..... ACCUSED

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

JUDGMENT

The accused person is indicted with two counts; Murder **C/S 188 and 189** and Aggravated Robbery **C/S 285 and 286(2)** of the Penal Code Act.

In count I, it is alleged that Ssonko jimmy with others still at large on the 17th day of December 2016 at Nabwewanga village in Mpigi district with malice aforethought unlawfully murdered Migadde Godfrey.

In count II, it is alleged that Ssonko Jimmy with others still at large during the night of 17th December 2016 at Nabwewanga village in Mpigi district robbed Migadde Godfrey of his mobile phone, Itel, and a woofer Cortina model No. Ct 388 and at or immediately before or immediately after the said robbery were in possession of deadly weapons to wit a panga and a knife.

On arraignment, the accused denied the charges thus the burden is upon the prosecution to prove all the ingredients of the indictment. The ingredients in **count I** are:-

1. The death of the person named in the indictment
2. The death was unlawfully caused
3. There was malice aforethought
4. The accused person was responsible for the death

In **count II**, the ingredients include;

- i. There was theft of property
- ii. There was violence involved
- iii. A deadly weapon was used/threatened to be used
- iv. It was the accused person responsible for the theft

In order to discharge the burden of proving the case beyond reasonable doubt, the prosecution called three witnesses, namely George Mukiibi (PW1); Katumba Martin (PW2) and D/CPL Batelingaya Archangel (PW3). The accused person gave sworn evidence and called no witnesses.

In **count I**, The first ingredient requires state to prove the death of the person named in the indictment.

PW1 the father to the deceased, testified that he came to know of his son's death when his friend told him he was looking for Migadde, the deceased. He stated that when they reached the deceased's home it was locked and they broke the padlock whereby they found the deceased's body tied in a bed sheet and placed under the bed. **PW2** also testified that they found the deceased's house locked with a padlock and when they broke in, they found the deceased's body wrapped in bed sheets and placed under the bed. The post mortem report, **PEX1** confirmed that the deceased was Migadde Godfrey.

I therefore find that prosecution has proved ingredient one beyond reasonable doubt.

The second ingredient requires proof that death was unlawfully caused. In that regard, all homicides are presumed to be unlawfully caused, unless caused by accident or in defence of property or person or by an act of God. (See **R -Vs- Gusambizi s/o Wesonga [1948] EACA 65**).

PW1 stated that the deceased's body was cut in the throat, leg and stomach. **PW2** also stated that they found the body wrapped in bed sheets under the bed. I have no doubt that the death of the deceased was unlawfully caused. I

therefore find that ingredient two has been proved by prosecution beyond reasonable doubt.

Thirdly, prosecution has to prove that death was caused with malice aforethought.

Malice aforethought is defined under **section 191** of the Penal Code Act to mean;

- 1. An intention to cause death of a person, whether such a person is the one killed or not.*
- 2. Knowledge that the act or omission causing death will probably cause death of some person, whether such person is actually killed or not.*

Malice aforethought is therefore a mental element of the offence of murder and therefore difficult to prove by direct evidence.

However, it can be inferred from the surrounding circumstances of the offence, such as the weapon used, the part of the body targeted, the nature of injuries implicated and the conduct of the assailant before, during and after the offence. **(See: RV S. Tubere s/o Ochan (1954) EACA 63)**

In the instant case, the deceased's body was wrapped in a bed sheet and placed under the bed. **PW1** stated that the deceased's body was also cut in the throat, stomach and leg. The post mortem report also showed that the deceased had a wound on the neck and two stab wounds which caused loss of blood leading to his death. Basing on the areas of the body that were injured, being delicate parts, I find that there was malice aforethought.

I therefore find that ingredient three has been proved by prosecution beyond reasonable doubt.

Finally prosecution has to prove that it was the accused person who caused the death of the deceased.

In this case, **PW1** stated that he did not know the accused person and he only saw him in court. **PW2** stated that one Mukalazi a neighbor to the

deceased told him that he saw the accused person's clothes stained with blood with a blanket and suspected him. The said Mukalazi did not even come to testify in court thus what he stated was hearsay evidence. **PW2** stated that upon receiving that information, he informed the uncle to the deceased who informed the police and that is how the accused was arrested.

PW3 the investigating and arresting officer testified that he arrested the accused on getting information from Iga John an informer, who stated that the accused was the one who killed the deceased. The said Iga did not also testify in court so his evidence was based on hearsay and speculations.

The accused on the other hand denied the act and stated that he was at his home that fateful night and he was arrested because he did not go for burial of the deceased.

I have analyzed this evidence and have noted that Iga John who gave information about the accused killing the deceased never came to court to testify. I also noted in court when **PW3** was testifying that he refused to reveal that it's Iga John who had told him that the accused killed the deceased. This creates doubt in the prosecution evidence. The rest of the evidence was hearsay which cannot be relied on to secure a conviction for the accused.

I therefore find that prosecution has not fully proved that it was the accused person who killed the deceased beyond reasonable doubt.

I now turn to **count II** of aggravated robbery. The first ingredient is whether there was theft of property.

Theft occurs when a person fraudulently and with intent to deprive the owner of a thing capable of being stolen, takes that thing from the owner without a claim of right - **Section 254 (1) of the Penal Code Act.**

PW2 testified that he noticed that the deceased's whoofer and laptop were missing and he used to see them at the deceased's house before he was

killed. I find that these are items capable of being stolen thus prosecution has proved ingredient one beyond reasonable doubt.

Secondly prosecution has to establish whether violence was involved.

Violence is defined in black's Law Dictionary to mean **unjust or unwarranted exercise of force, usually with the accompaniment of vehemence outrage or fury.**

PW1 testified that the deceased had a cut on his throat, stomach and leg. The postmortem report also showed that the deceased was stabbed. I find that prosecution has also proved beyond reasonable doubt that violence was involved.

Thirdly prosecution has to prove that a deadly weapon was used.

Under **Section 286 (3) (a) (I)** of the Penal Code (Amendment) Act 2007, a deadly weapon includes "*any instrument made or adopted for **shooting, stabbing or cutting** or any imitation of such instrument.*"

In the instant case, no instrument was recovered from the scene of crime however; In the case of **Sentongo and Sebugwawo V. Uganda [1975] HCB 239**, it was stated that when the prosecution fails to produce the instrument used in committing the offence during trial, a careful description of the instrument will suffice to enable court decide whether the weapon was lethal or not.

PW1 testified that the deceased had a cut in the throat, stomach and leg. The post mortem report also showed that the deceased was stabbed. This means whatever was used to stab him was a deadly weapon thus prosecution has also proved ingredient three beyond reasonable doubt.

Lastly prosecution has to establish whether it was the accused person responsible for the robbery.

PW2 testified that he noticed that the deceased's items were missing including a whoofer Cortina model. **PW3** the investigating officer stated that

he recovered a whoofer from the accused's home and the accused told him that he got it from his in law. **PW3** also stated that he recovered other items and made a search certificate and exhibited 17 items but they were not produced in court since they were not identified as stolen items apart from the whoofer. The accused stated in his defence that a whoofer was brought at police but it was not his. He also stated that the whoofer was not got from his home.

PW2 who identified the whoofer as a missing item from the deceased's home stated that when he was taken to police to identify it, it looked like the one of the deceased but he was not sure. The said woofers were exhibited with other 17 items which were not brought in court thus the said woofers couldn't be connected to the accused, hence he was not placed at the scene of crime.

Basing on the above analysis, I find that there is still doubt in the prosecution evidence thus prosecution has failed to prove ingredient four beyond reasonable doubt.

I therefore find that prosecution has also not placed the accused person at the scene of crime in **count II**.

In conclusion and in agreement with the assessors, I find the accused person not guilty of Murder C/S 188 and 189 of the Penal Code Act in count I and Aggravated robbery C/S 285 and 286 (2) of the Penal Code Act in count II and I therefore acquit him of both counts.

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Emmanuel Baguma

Judge

2/07/19