

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-343/2019

UGNANDA:.....PROSECUTOR

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VERSUS

TUSIIME RAMATHAN:.....ACCUSED

BEFORE HON. JUSTICE VINCENT WAGONA
JUDGMENT

101.0. Introduction

The accused TUSIIME RAMATHAN is indicted for aggravated robbery c/s 285 & 286 (2) of the Penal code act. It was alleged that Ochola Filbert, Tusiime Ramathan and Mutima Richard on the 18th day of August 2018 at around 10.00pm at Bukwali Ward in Fort portal Municipality in Kabarole District while armed with 15a gun robbed Muyama Joyce of a television screen (14 inch a Star Times Decoder and cash UGX 300,000/= (three hundred thousand shillings) and used violence during the said robbery. At trial, it was reported that A1 Ochola Filbert had died and thus the proceedings against him accordingly abated. A3 Mutima Richard was never committed to the High Court for trial as he had been released and jumped 20bail. The trial proceeded in respect of Tusiime Ramathan alone.

2.0. Summary of the Facts

On 19/8/2018, at around 10:00pm, the complainant was in her shop watching news with her neighbors while counting money from the day's sales when they were 25attacked by two robbers. One robber was armed with a gun and covered his face

with a cloth. The other robber did not cover his face with anything. The attackers put them at gun point and made them to lie down. The robbers made off with a 14 inch TV that they were watching, a Star Times Decoder, 25 kilograms of sugar worth 75,000/=, a carton of soda worth 20,500/=, and a crate of beer worth 45,000/30=, plus cash 300,000/=. The following morning at about 6.00am, she reported the case to police. At around 11:00am, investigators visited the scene and commenced investigations. On the way back to the police station, about half a kilometer away from the scene, the investigators who were using a police vehicle, met the accused and one Ochola Philbert being carried on a motorcycle; the accused was carrying a 35Star Times Decorder while Ocholawas carrying a TV. When they were stopped, they got off the motorcycle and fled, but they were pursued and apprehended as the motor cycle rider rode off. When asked about the TV and Decoder, the two claimed ownership. The police went and searched the house of Ochola, where they recovered a gun. Later, the police called the complainant to go to the police with 40purchase receipt of her TV. She found that they had recovered the TV that was robbed from her plus the Star Times Decoder. She left the receipt and the recovered items at the police station.The accused were charged but later Ochola died while another accused person was released and jumped bail. In an unsworn statement, the **Accused Tusiime Ramathan** denied the offence. He stated that in 45the morning he was on a Boda-Boda motor cycle going to work when they met a man who stopped them; that the man had a TV and Decoder and he joined them sitting behind him on the motor cycle. Near Buhinga Hospital a police car stopped them. That the Boda-Boda man stopped; that Ocholla Filbert jumped off and ran and entered the hospital. That Ochola was chased and arrested and they were 50brought to police.

3.0. The Burden and Standard Of Proof

The burden of proof is always on the prosecution. The prosecution has the duty to prove each of the ingredients of the offences and generally this burden never shifts onto the accused, except where there is a specific statutory provision to the contrary. (see *Woolmington vs D.P.P. [1935] A.C. 462*, and *Okethi Okale & Ors. vs Republic [1965] E.A. 555*).

The standard of proof is beyond reasonable doubt. All the essential ingredients of the offence are to be proved beyond reasonable doubt. This standard does not mean proof beyond a shadow of doubt. The standard is achieved if having considered all the evidence, there is no possibility that the accused is innocent (*Miller vs Minister of Pensions [1947] 2 All E.R. 372* at page 373 to page 374)

Evidence is evaluated as a whole. The Court considers evidence of both the prosecution and the defence relating to each of the ingredients before coming to a conclusion. The Court should not consider the prosecution evidence in isolation of the evidence presented on behalf of the accused (In *Abdu Ngobi vs Uganda, S.C.Cr. Appeal No. 10 of 1991*)

704.0. The Ingredients Of The Offences

Section 285 of the Penal Code Act Provides as follows: Any person who steals anything and at or immediately before or immediately after the time of stealing it uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained commits the felony termed robbery.

Section 286 of the Penal Code Act provides as follows:

(1) Any person who commits the felony of robbery is liable—(a) on conviction by a magistrate’s court, to imprisonment for ten years; (b) on conviction by the High Court, to imprisonment for life.

(2) Notwithstanding subsection (1) (b), where at the time of or immediately before or immediately after the time of the robbery, an offender is in possession of a deadly weapon, or causes death or grievous harm to any person, the offender or any other person jointly concerned in committing the robbery shall, on conviction by the High Court, be liable to suffer death.

(3) In subsection (2) “deadly weapon” includes—(a)(i) an instrument made or adapted for shooting, stabbing or cutting, and 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 bodily harm; and (b) any substance intended to render the victim of the offence unconscious.

On a charge of aggravated robbery, the prosecution has the burden to prove the following elements beyond reasonable doubt:-

- i. A theft of property belonging to the victim
- ii. Use of violence or threat of use of violence during the theft
- iii. Possession of a deadly weapon during the theft
- iv. Participation of the accused in the theft.

5.0. The Evidence In This Case

In this case, I have found it necessary to reproduce the evidence of the witnesses:

PW1 No 59392 D/CPL Ssempijja Kenneth testified that at the time of this case, 105he was attached to Fort portal Central Police Station and he was the Scene of Crime Officer (SOCO) in this case. That on 19/8/2018, at around 11:00 hours, he proceeded with D/ASP Mukiza Anthony and other officers on a police patrol vehicle, to Kisumbi Cell, Bukwali Ward, East Division Fort Portal Municipality. They went to Muyema Joyce's place who had reported that she had been robbed 110with a gun and lost cash 300,000/=, a Star Times Decoder, and 14 TV Television; that at the scene, he made a sketch plan, while his colleague Muhindo Zakaria took photos. The witness testified that on the way back to the police station, along Fort Portal Kamwenge road, at around 13:00 hours, there came a motorcycle carrying 2 people. The 2 people were carrying a Star Times Decoder and a 14 inch TV with 115them on the motorcycle. They were from the junction that joins Kamwenge road and Nyakabare, village heading towards Mpanga direction. The witness said that the 2 people jumped off the motorbike, abandoned the property, and ran and entered the hospital main gate. The witness joined others to chase them. The 2 people were apprehended. They identified themselves as Ochola Philbert (now 120deceased) who was working with Saracen Security Company and Tusiime Ramadhan the accused. The abandoned property was put on the police vehicle. The witness said they then proceeded to Ochola's place, searched and recovered a semi-automatic Rifle S/No 18105 with a bayonet and 2 rounds of ammunition. The recovered items were exhibited and handed to the stores in charge, D/CPL 125Chelangat Godfrey. The witness testified that they got interested in the items the accused were carrying because the complainant had been robbed of similar items and because the accused run away and abandoned the property. That upon getting information of the arrest and recovery of the property, the complainant came to police and identified the 14 inch TV; and Star Times Decoder by S/No behind it 130that was recorded in the exhibit slip, as some of the items that were robbed from

her. The witness recorded the items in an exhibit slip and handed them over to the store man. The witness produced the Decoder in court and it was tendered together with the exhibit slip as Prosecution Exhibit P1A&B respectively. The witness explained that the TV could not be produced because it had been kept in a store 135that got rammed into by a vehicle and most exhibits got damaged. The witness described the TV as a Panasonic make, model YK 1438, 14 inch in size. The gun that was recovered from the search at the house of Ochola Philbert was described a semi-automatic Rifle with 2 rounds of ammunition- Rifle S/No 18105 having a bayonet. The witness explained that the gun could not be produced in court in this 140trial, because it had been exhibited in another case and taken for examination under Ref. No. FA046/2018 in CRB 1049/2018 and the rifle is still at the DGAL Wandegeya. The witness said that when the accused jumped off from the motorcycle, the Boda Boda man who was carrying them rode off; that the 2 accused were passengers on that motorcycle and they were carrying the TV and 145decoder. In cross examination, the witness stated that the accused in court and Ochola were being carried on a motorcycle; that the accused was seated in front of Ochola; that he arrested the accused because of the property and upon arrest they said it was their property. In re-examination by the prosecution, the witness said that he arrested the accused because they were possessing property alleged to have 150been stolen from the victim in answer to court, the witness said that the accused were arrested on 19/8/218 at about 13:30 hours; that the accused was arrested at the hospital gate while Ochola was arrested from inside; that the distance from the house of the complainant to where the arrest took place, was half a kilometer away. The witness said that the accused was carrying the Decoder while Ochola was 155carrying the TV.

PW2: MUYAMA JOYCE testified that she knew the accused because he is the person who came to attack her. That she got to know his name as Tusiime Ramathan. That she did not know him before that incident. That she got to know
160his name when he was arrested. That she got to know his name at the police station. The complainant testified that on 18/8/2018 at around 10:00pm, she was at her shop in Bukwali; that they were watching news on Bukedde TV with her neighbors Tumisiime Micheal and Mushikoma. She was also counting money that she got out the safe. She noticed that the other people were on the floor. She asked
165them what was going on and they were not responding. Then she was put at gun point by Ochola Filbert, now reported to be deceased. That the accused was behind him; that the accused carried the TV that they were watching, a decoder, 25 kilograms of sugar, a crate of soda and beer; that the sugar was worth 75,000/=; that the crate of beer was worth 45,000/=; that the carton of soda was worth
17020,500/= ; plus cash 300,000/=. The witness stated that she spent about 5 minutes on the floor; that when she did not hear the movements of the attackers any more, she crawled and opened the door and made an alarm; that her neighbor Prima opened her door and she entered her house. Then she remembered that she had left her children in the house and she started crying. That she went back and brought
175her baby and they spent the night at the neighbor's place. The witness said that in the morning they went to police and reported the case. The police recorded their statements and they went back home. The police promised to come to the scene. That at around midday she received a call from the police station. That they asked her to describe the TV that was robbed and whether she had its receipt and she said
180she had it; that she was told to go to the police with the receipt; that at the police, she found that they had recovered the TV that was robbed plus the Star Times Decoder. The witness said that she left the receipt and the recovered items at the police station and never got them back to date. Regarding the identification of the

robbers, the witness told court that at the time of the robbery there was electricity
185light; that the robbers were very close to her about 1 meter away from her; that the
accused was behind Ochola. She said she was able to see because there was light.
That Ochola had covered his face with a handkerchief but the accused was not
covering his face. That she saw them for only one minute before she was made to
lie down on the floor. That she could describe them but did not know the names of
190the accused. The witness said that when they called her at the police station she
found the accused and Ochola there. In cross examination, the witness accepted
that before the incident, she did not know any of the attackers. The first time she
saw their faces clearly was at the policeIn reference to her police statement, the
witness said that she told the police officer who recorded her statement everything.
195The witness also told court that an identification parade was carried out at the
police in a room where there were around 10 people and she was able to identify
the accused. In answer to court, the witness said that she reported the case at police
at 6:00am in the morning and the police called her at around midday.

200In an unsworn statement, the **Accused Tusiime Ramathan** denied the offence. He
stated that in the morning he was on a motor cycle going to work on a motorcycle
when they met a man who stopped them; that the man had a TV and Decoder and
he joined them on the motor cycle. Near Buhinga Hospital a police car stopped
them. That the Boda-Boda man stopped; that Ocholla Filbert jumped off and ran
205and entered the hospital; Ochola was the one that had sat behind him. That Ochola
was chased and arrested; they brought him and Ochola to police.

I. Theft of property belonging to the victim

The prosecution relied on the evidence of PW1 and PW2 to invite court to find that
210 this ingredient was proved. On the other hand it was submitted by the defence that
this ingredient was unproved as the complainant claimed that sugar, beer and soda
were stolen from her yet they were not mentioned in her statement; and that the
recovered items were not exhibited.

215 Theft is committed when a person fraudulently and without claim of right takes
anything capable of being stolen (per Section 254 of the Penal Code Act). The
prosecution is required to prove that an item capable of being stolen was taken
from the complainant with the intention to permanently deprive him of the
same. For this ingredient, there must be proof of what amounts in law to an
220 asportation (that is carrying away) of the property of the complainant without his
consent or lawful claim of right.

In the case of Sula Kasiira v Uganda Criminal Appeal No.20 Of 1993 (SC) the
following legal position from Halsbury's Laws of England, Vol. 10, 3rd Edition,
225 paragraph 1484 was cited with approval with regard to the act of taking or
carrying away as an element of theft:

**“There must be what amounts in law to an asportation (that is carrying away)
of the goods of the prosecutor without his consent; but for this purpose,
provided there is some severance, the least removal of the goods from the
230 place where they were is sufficient, although they are not entirely carried off.
The removal, however short the distance may be, from one position to another
upon the owner's premises is sufficient asportation, and so is a removal or
partial removal from one part of the owner's person to another. ... The offence
of larceny is complete when the goods have been taken with a felonious**

235 **intention, although the prisoner may have returned them and his possession continued for an instant only.”***(emphasis added)*

PW2 Muyama Joyce gave evidence that on the night of 18/8/2018 at around 10:00pm while at her shop in Bukwali, she was watching news on Bukedde TV with her neighbors Tumisiime Micheal and Mushikoma while attending to her 240 shop. That she was put at gun point by Ochola Filbert and the accused was behind him. That the accused carried the TV that they were watching, a decoder, 25 kilograms of sugar worth 75,000/=, a crate of beer worth 45,000/=, a carton of soda worth 20,500/= and cash of 300,000/=. That when she went to police, after the suspects had been apprehended she found that they had recovered the TV that 245 had been robbed plus the Star Times Decoder. She described the TV as black in color, 14 inch and the star times Decoder as greenish. That she presented the receipt for the TV at police.

PW1 No 59392 D/CPL Ssempijja Kenneth, the SOCO in this case stated that on 250 19/8/2018, together with D/ASP Mukiza Anthony, they went to Muyema Joyce's place who had reported to have been robbed. He stated the property she lost to be 300,000/=, a Star Times Decoder and a 14-inch TV and told court that upon the arrest of the suspects and recovery of some of the property, Muyama Joyce went to police and identified the Star Times Decoder and 14-inch TV as some of the items 255 robbed from her. He stated that he prepared an exhibit slip exhibiting among others, the star times decoder S/No 3171981732011762, a TV Panasonic, mode YK 1438, 14 inch in size recovered from the accused persons. The witness produced the Decoder in court and it was tendered together with the exhibit slip as Prosecution Exhibit P1A&B respectively. The witness explained that the TV could 260 not be produced because it had been kept in a store that got rammed into by a

vehicle and most exhibits got damaged. The witness described the TV as a Panasonic make, model YK 1438, 14 inch in size. Failure to produce an exhibit is itself not fatal to the prosecution case if witnesses who saw the exhibit adequately describe it in Court. (*Kalist Ssebuggwawo vs Uganda SCCA No. 7 of 1987*).

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I am satisfied that the prosecution has proved this ingredient of the offence beyond reasonable doubt.

II. Use of violence or threat of use of violence during the theft

270The prosecution submitted that this ingredient was proved and the defence did not contest.

The prosecution was required to prove that during the commission of the offence, the assailants used or threatened to use violence. For this ingredient, there must be 275proof of the use or threat of use of some force to overcome the actual or perceived resistance of the victim.

PW2 Muyama Joyce told court that during the robbery she first noticed that the other people were on the floor and asked them what was going but got no response 280and then she was put at gun point by Ochola Filbert and that the accused was behind him. She stated that she spent about 5 minutes on the floor and only got up when she stopped hearing the movements of the accused persons; that was when she crawled, opened the door and made an alarm. The complainant PW2 stated that she reported the robbery to police. PW2 stated that PW1 had reported a case of 285robbery using a gun.

I therefore find that the prosecution has proved this ingredient of the offence beyond reasonable doubt.

290 **III. Possession of a deadly weapon during the theft**

The prosecution contended that this ingredient had been proved and the defence did not contest the proof of this ingredient.

295The prosecution was required to prove that immediately before, during or immediately after the said robbery, the assailants had a deadly weapon in their possession. A deadly weapon is one which is made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death or grievous harm. (*See Section 286(3) (a) (i) of the Penal Code Act*) A gun is a deadly weapon because it is made or adapted for shooting and when used offensively on a person it can cause death or grievous harm. Failure to produce an exhibit is itself not fatal to the prosecution case if witnesses who saw the exhibit adequately describe it in Court. (*Kalist Ssebuggwawo vs Uganda SCCA No. 7 of 1987*).

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PW2 Muyama Joyce stated that that on the night in question, during the robbery, she was put at gun point by Ochola Filbert and that the accused was behind him. That she spent about 5 minutes on the floor until she could not hear the movements of the assailants, that was when she crawled, opened the door and made an alarm.

310She stated that the next morning she reported the case to police and made a statement

PW1 No 59392 D/CPL Ssempijja Kenneth told court that he went with D/ASP Mukiza Anthony to Muyema Joyce's place who had reported that she had been 315robbed with a gun and lost 300,000/=, star times decoder, 14 TV screen. That on apprehending the two suspects, they searched Ochola's place and recovered a semi-automatic Rifle S/No 18105 with a bayonet and two rounds of ammunition which items were exhibited and handed to stores I/C D/CPL Chelengat Godfrey. The rifle however was not exhibited in court due to ongoing investigations in another case. 320The exhibit slip of all times recovered in this case was admitted as PE.1B.

I am satisfied that the prosecution has proved beyond reasonable doubt that the commission of the offence in this case involved the possession of a deadly weapon.

325 ***IV. Participation of the accused in the theft.***

The last ingredient that was required to be proved is that the accused participated in committing the offence with which they are indicted. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of 330crime as the perpetrator of the offence. The accused should be placed at the scene of crime not as a mere spectator but active participant in the commission of the offence

While the prosecution contended that this element was proved, the defence 335contested it on the grounds the conditions for identification were unfavourable and that the doctrine of recent possession could not be used against the accused because he had explained how he came to be in possession of the stolen items.

PW2 Muyama Joyce the complainant, informed court that she knows the accused person as the person who came to attack her. She stated that she did not know him before the incident; that she got to know his names at the police station when he was arrested. It was her evidence that on that night of the robbery, she noticed the other people in the shop were on the floor and asked what was going on but they were not responding, then she was put at gun point by Ochola Filbert and the accused was behind him. That the accused carried the TV that they were watching, a decoder, 25 kilograms of sugar worth 75,000/=, a crate of beer worth 45,000/=, the soda was worth 20,500/= (a cartoon) and cash of 300,000/=.

That she spent about 5 minutes on the floor until she couldn't hear any further movements then she got up, crawled and opened the door and made an alarm. That she spent the night at her neighbor's place and the following day she went and reported the robbery at police. That at the time of the robbery there was electricity light and she was able to see the suspects. That the assailants were very close to her about 1 meter away and the accused was behind Ochola. The witness said that when they called her at the police station she found the same suspects at police. That during the robbery, Ochola had covered his face with a handkerchief but the accused person was not covering his face and that she could describe him but did not know the names. That she saw them for only one minute before she was made to lie down on the floor. That Police called her and asked her to describe her stolen TV and also asked her to go to the station with her receipt of the TV. That she proceeded to police and found that they had recovered the TV that was robbed plus the Star Times Decoder. She described to court that the TV was black in colour, 14 inch and that the star times decoder was greenish. That she left the receipt for the TV and the recovered items at the police station.

365 **PW1 No 59392 D/CPL Ssempijja Kenneth**, the SOCO in this case told court that on 19/8/2018, at around 11:00 hours together with D/ASP Mukiza Anthony they went to Muyema Joyce's place following up on a case of robbery of 300,000/= a star times decoder and a 14 TV screen with a gun. That on their way back to the police station at about 13:30 hours, they met a motorcycle carrying 2 passengers
370 who were themselves carrying a star times decoder and a 14-inch TV. That they were from the junction that joins Kamwenge road and Nyakabare village heading towards Mpanga direction. The witness said that the accused was carrying the Decoder while Ochola was carrying the TV. That the two jumped off the motorbike, abandoned the property and ran and entered the hospital main gate but
375 were later chased and apprehended. That they identified themselves as Ochola Philbert (now deceased), and Tusiime Ramadhan the accused. That the abandoned property was put on the police vehicle and a search conducted at Ochola's place where they recovered a semi-automatic Rifle S/No 18105 with a bayonet and 2 rounds of ammunition. That the recovered items were exhibited and handed over to
380 stores I/C D/CPL Chelengot Godfrey. That the complainant came to police and identified the said property as her stolen property. During cross examination, he stated that when the two passengers jumped off, the motorcycle rider rode off and no effort was made to arrest the boda boda rider. In an answer to court, the witness stated that the accused was arrested on 19/8/218 at about 13:30 hours at the
385 hospital gate while Ochola was arrested inside the hospital. That the accused was carrying a decoder while Ochola was carrying the TV screen.

The accused Tumusiime Ramathan, in his unsworn statement denied participating in the robbery. He told court that on that morning he was on a motor
390 cycle going to work and they met a man who stopped them carrying a tv and decoder. That the man joined them on the motor cycle and when they reached near

Buhinga Hospital, a police car stopped them and the boda man stopped. That Ochola Filbert who was seated behind him jumped off and ran and entered the hospital. That Ochola was chased, arrested and brought is to police.

395As I warned the assessors, I hereby warn myself, that in an offence involving a single identifying witness of an incident that took place at night, such identification evidence should be considered with caution, and corroboration is required as a matter of practice

400PW2 the complainant told court that at the time of the robbery there was electricity light; that the robbers were very close to her about 1 meter away from her; that the accused was behind Ochola. She said she was able to see because there was light. That Ochola had covered his face with a handkerchief but the accused was not covering his face. That she saw them for only one minute before she was made to
405lie down on the floor.PW2 the complainant is a single identifying witness. She did not know the accused before. In cross examination, the witness accepted that before the incident, she did not know any of the attackers. The first time she saw their faces clearly was at the policeIn reference to her police statement, the witness said that she told the police officer who recorded her statement everything. The
410witness also told court that an identification parade was carried out at the police in a room where there were around 10 people and she was able to identify the accused.

The conditions were not favorable for proper identification because the assailants
415were armed, they put the witness and others who were found in her shop at gun point and made them lie on the floor; and the witness observed the attackers for a very short time. The court must approach the evidence of PW2 (the complainant)with caution and must be satisfied that PW2 was not mistaken and

that his evidence is free from any possibility of error. Where identification is made
420 under difficult conditions then the court should look for “**other evidence**” to
corroborate the identification. This is because a witness may be honest and
convincing but mistaken in regard to identification. Factors to be evaluated include:
length of time the accused took observe the assailant; the distance between the
witness and the accused; conditions regarding source of light during the attack;
425 familiarity of the witness to the accused before the attack. (See. *Abdalla Bin
Wendo & another vs R* 1953) 20 EACA 166; See. *Roria vs Republic* [1967] EA
583; See. *Abdulla Nabulere and others vs Uganda* [9791] HCB 79; See. *Bogere
Moses & another vs Uganda* Criminal Appeal 1/1999 Supreme Court of
Uganda).

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In particular, in the case *Abdulla Nabulere vs. Uganda Criminal Appeal
No.9 of 1978* the then Court of Appeal for Uganda held as follows:

435 “A conviction based solely on visual identification evidence invariably
causes a degree of uneasiness because such evidence can give rise to
miscarriages of justice. There is always the possibility that a witness
though honest may be mistaken. For this reason, the courts have over the
years evolved rules of practice to minimise the danger that innocent people
may be wrongly convicted. The leading case in East Africa is the decision
of the former Court of Appeal in *Abdalla Bin Wendo and Another v. R.*
440 (1953), 20 EACA 166 cited with approval in *Roria v. R.* (1967) EA 583.
The paragraph which has often been quoted from *Wendo* (supra) is at
page 168. The ratio decidendi discernible from that case is that:—

(a) *The testimony of a single witness regarding identification must
be tested with the greatest care.*

445 ***(b) The need for caution is even greater when it is known that the conditions favouring a correct identification were difficult.***

(c) Where the conditions were difficult, what is needed before convicting is ‘other evidence’ pointing to guilt.

450 ***(d) Otherwise, subject to certain well known exceptions, it is lawful to convict on the identification of a single witness so long as the judge adverts to the danger of basing a conviction on such evidence alone.***

The safe—guards laid down in “enc10 are in our view adequate, if properly applied, to reduce the possibility of a miscarriage of justice occurring. It will be observed that there is no requirement in law or practice for corroboration. In applying Wendo there have sometimes been references to the need for corroboration where the only evidence connecting the accused with the offence is the identification of a single witness. We think that this is not correct. First, there is clear statutory provision that for the proof of any fact, a plurality of witnesses is not necessary: see s. 132 of The Evidence Act (cap.43). Secondly, there is no particular magic in having two or more witnesses testifying to the identity of the accused in similar circumstances. What is important is the quality of the identification. If the quality of the identification is not good, a number of witnesses will not cure the danger of mistaken identity, hence the requirement to look for ‘other evidence’.

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470 ***Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. The reason for the***

special caution is that there is a possibility that a mistaken witness can be a convincing one and that even a number of such witnesses can all be mistaken. The judge should then examine closely the circumstances in which the identification came be made, particularly, the length of time the accused was under observation, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good, the danger of a mistaken identity is reduced but the poorer the quality, the greater the danger.

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In our judgment, when the quality of identification is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused well before, a court can safely convict even though there is no 'other evidence to support to identification evidence; provided the court adequately warns itself of the special need for caution. If a more stringent rule were to be imposed by the courts, for example if corroboration were required in every case of identification, affronts to justice would frequently occur and the maintenance of law and order greatly hampered.

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When, however, in the judgment of the trial court, the quality of identification is poor, as for example, when it depends solely on a fleeting glance or on a long observation made in difficult conditions; if for instance the witness did not know the second accused before and saw him for the first time in the dark or badly lit room, the situation is very different. In such a case the court should look for 'other evidence' which goes to support the correctness of identification before convicting on that evidence alone. The 'other evidence' required may be corroboration in the legal sense; but it need not be so if the effect of the other evidence available is to make the trial court sure that there is no mistaken

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500 *identification. A good example is the case of Wasajja v. Uganda (1975) EA 181. The coincidence of a person previously identified behaving strangely by putting up a fabricated alibi of his movements at the time the offence was committed or telling lies in some material aspect of his evidence can, in a proper case, amount to ‘other evidence’ sufficient to support a conviction.”*

505 In this case, according to the complainant, the robbery started at around 10.00pm. According to PW2, the accused and another were found in possession of the stolen items at around 1:30pm the following day, only half a kilometer away from the scene. They jumped off the motorbike, abandoned the property, and ran and entered the hospital main gate. Upon being arrested because of the property, they
510 said it was their property. The question arises as to whether the accused was a thief or a mere receiver.

In the case of *Izongoza William vs. Uganda, Supreme Court Criminal Appeal No.6 of 1998*, Court held:

515 *“In the case of circumstantial evidence surrounding a robbery or theft, if the prosecution adduces adequate evidence to show that the accused was found in possession of goods recently stolen or taken as a result of robbery, the accused must offer some credible explanation of how he or she came to possess the goods otherwise the evidence of recent possession would justify his/her conviction.*

520 *In DPP v Neiser (1958) 3 WLR 75 7, The doctrine of recent possession was said to be merely an application of the ordinary rule relating to circumstantial evidence that the inculpatory facts against an accused person must be incompatible with the innocence and incapable of explanation upon any other reasonable hypothesis than that of guilt*

525 *according to particular circumstances. It is open to a court to hold that*
unexplained possession of recently stolen articles is incompatible with
innocence. But guilt in this context may be guilt either of stealing or of
receiving articles in question. Everything must depend on the
530 *circumstances of each case. Factors such as the nature of the property*
stolen whether it be of a kind that readily passes from hand to hand, and
the trade or occupation to which the accused person belongs can all be
taken into

account. A shopkeeper dealing in secondhand goods would naturally
535 *suggest receiving rather than stealing. ”*

I find that accused cannot be considered to be an innocent receiver since he was found in recent possession of a stolen Decoder not very long after the robbery and only a very short distance away from the scene of crime; he ran away and
540 abandoned the property when he was stopped by the police; and falsely claimed ownership after he was apprehended because of the property. His conduct of running away cannot be the conduct of an innocent person.

I have ignored the evidence relating to the identification parade referred to by the complainant because the conduct of the identification parade did not comply with
545 the law. (See: *R v. Mwangi s/o Manaa [1936] 3 EACA 29; Ssentale v. Uganda [1968] EA 365* and *Stephen Mugume v. Uganda, Criminal Appeal No. 20 of 1995(SC); Sgt Baluku Samuel and PC Walusa Joshua v. Uganda SCCA No. 21/2014*).

550The defence pointed out some inconsistencies between the police statement and court testimony of PW2. During cross examination accepted that it is not mentioned in her statement that there were two assailants and that the man without the gun was not mentioned. However, the witness said that she told the police that there were two robbers and that she told the police man who recorded the 555statement everything. I am reluctant to use the police statement to discredit the court testimony of the witnesses given on oath, when the police statement was not strictly proved against the witnesses, by calling the police officer who recorded the statement (Ojede s/o Odyek - vs- JR. (1962) EA 494).

The law also allows a court to accept parts of a witness's testimony that it finds 560truthful and reject those parts that it finds untruthful. It is open to the Judge to find that a witness has been substantially truthful even though he/she had lied in some particular respect. (*see Nasolo v Uganda [2003] 1 EA 181 (SCU)*). In this case, in court, the witness appears to have exaggerated the items stolen from her, beyond those mentioned in her statement and the indictment. In her statement she 565mentioned a TV, Decorder and 300,000/= which were cited in the indictment; but in court she included sugar, soda and beer. She was however substantially truthful.

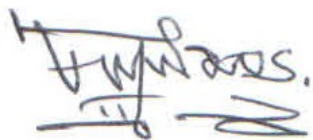
In an unsworn statement, the **Accused Tusiime Ramathan** denied the offence. He stated that in the morning he was on a motor cycle going to work when they met a 570man who stopped them; that the man had a TV and Decoder and he joined them on the motor cycle. That near Buhinga Hospital a police car stopped them. That the Boda-Boda man stopped; that Ocholla Filbert jumped off and ran and entered the hospital; that Ochola was the one that had sat behind him. That Ochola was chased and arrested; they brought him and Ochola to police.

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I have considered all the evidence as a whole. I find that the evidence of identification by PW2, coupled with my finding that accused cannot be considered to be an innocent receiver since he was found in recent possession of a stolen Decoder not very long after the robbery and only a very short distance away from 580the scene of crime; that he ran away and abandoned the property when he was stopped by the police; and that he falsely claimed ownership after he was apprehended because of the property; that his conduct of running away cannot be the conduct of an innocent person; that all this evidence taken together, places the accused at the scene of crime as having participated in the commission of the 585crime. His explanation to the effect that he was a mere victim of circumstances and that Ochola was the one in possession of the stolen items is not credible cannot stand in the light of all the available evidence.

I therefore find that the prosecution has proved beyond reasonable doubt that the 590accused participated in the commission of the crime. The lady Assessor advised me to acquit. It appears she did not have the benefit to fully consider the evidence of possession, the false claim of ownership and the conduct of the accused. In the end, I find that the prosecution has proved the case against the accused, by proving each of the ingredients of the offence against the accused beyond reasonable doubt. In 595agreement with the Gentleman Assessor, I find the accused Guilty of the offence of Aggravated Robbery as indicted and I convict him accordingly.

Dated at Fort portal this 9th day of March 2022.



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Vincent Wagona
JUDGE

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-343/2019

UGNANDA:.....PROSECUTOR
VERSUS

610**TUSIIME RAMATHAN:.....ACCUSED**

BEFORE HON. JUSTICE VINCENT WAGONA
SENTENCE AND REASONS FOR SENTENCE

615The accused has been convicted of the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*.

According to section 286 (2) of the *Penal Code Act*, the maximum penalty for the offence of Aggravated Robbery is death. However, this punishment is by
620sentencing convention reserved for the most extreme circumstances of perpetration of such an offence such as where it has lethal or other extremely grave consequences.

I have to be guided by The *Constitution (Sentencing Guidelines for Courts of*
625*Judicature) (Practice) Directions, 2013.*

Under paragraph 30 (1) The court shall be guided by the sentencing range specified in Part III of the Third Schedule in determining the appropriate custodial sentence for robbery; (2) The court shall, using the factors in paragraphs 31 and 32 630determine the sentence in accordance with the sentencing range.

Under paragraph 31, in considering imposing a sentence for robbery, the court shall be guided by the following aggravating factors— (a) degree of injury or harm; (b) the part of the victim’s body where harm or injury was occasioned; (c) 635whether there was repeated injury or harm to the victim; (d) use and nature of the weapon; (e) whether the offender deliberately caused loss of life in the course of the commission of the robbery; (f) whether the offender deliberately targeted or caused death of a vulnerable victim; (g) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime; 640(h) whether the offence was motivated by, or demonstrates hostility based on the victim’s age, gender, disability or such other discriminating characteristics; (i) the nature of the deadly weapon used during the commission of the offence; (j) the gratuitous nature of violence against the victim including multiple incidents of harm or injury; (k) the manner in which death occurred during the commission of 645the offence; (l) the value of the property or amount of money taken during the commission of the offence; (m) commission of other criminal acts such as rape or assault;(n) whether the offence was committed as part of a pre-meditated, planned or concerted act and the degree of pre-meditation; (o) the rampant nature of the offence in the area or community; (p) whether the offence was committed in the 650presence of other persons such as children, a spouse of victim or relatives; (q) whether the offender is a habitual offender; (r) whether the offence was committed while under the influence of alcohol or drugs; (s) whether the offender is remorseful; (t) previous incidents of violence or threats to the victim by the

offender; (u) evidence of impact on the victim's family, relatives or the
655community; or (v) any other factor as the court may consider relevant.

Under paragraph 32, in considering a sentence for robbery, the court shall take into account the following mitigating factors — (a) lack of pre-meditation; (b) whether the offender had a subordinate or lesser role in a group or gang involved in
660the commission of the offence; (c) mental disorder or disability; (d) whether the offender is a first offender with no previous conviction or no relevant or recent conviction; (e) whether there was a single or isolated act or omission occasioning fatal injury; (f) whether there was no injury or harm occasioned or no threat of death or harm; (g) remorsefulness of the offender; (h) the value of the property or
665amount of money taken during the commission of the offence; (i) whether property or money was returned or recovered; (j) family responsibilities of the offender; or (k) any other factor as the court may consider relevant.

When imposing a custodial sentence upon a person convicted of the offence of
670Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 4 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment

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In *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, the Court of appeal opined that these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial.

680In *Kusemererwa and Another v. Uganda, C.A. Criminal Appeal No. 83 of 2010*, a sentence of 20 years’ imprisonment was upheld in respect of convicts who had used guns during the commission of the offence, but had not hurt the victims. In *NaturindaTamson v. Uganda C.A. Criminal Appeal No. 13 of 2011*, a sentence of 16 years’ imprisonment was imposed on a 29-year-old convict for a similar 685offence.

In this case the prosecution has proposed 35 years’ imprisonment citing that this is a serious offence whose maximum punishment is death; a deadly weapon was involved; offences of this nature are rampant and there is need to protect the community; the convict needs institutional reform so as to learn to use lawful 690means of earning. In mitigation, the defence submitted that the convict is relatively young at 30 years and he is a first offender who can reform; the TV and Decoder were recovered; the gun was not wielded by the accused and it was not used; no one was killed or injured; there was no serious violence; the offender is remorseful – he has learnt his lesson; he has been in custody since 19/8/2018 now a period of 6953 years and 6 months. In allocutus, the convict said that he has a child to care for, who was left in the hands of a grandmother who also needs care. The defence has proposed 18 years’ imprisonment. I have considered all these factors.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda*, 7001995 to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, is to the effect that the court should “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account.

705

I consider a sentence of imprisonment 18 years to be appropriate in this case. After deducting the period spent in custody from the time of arrest being 3 years, 6 months and 18 days, the convict will now serve a sentence of imprisonment of 14 years, 5 months and 12 days with effect from today.

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It is mandatory under section 286 (4) of the Penal Code Act, where a person is convicted of Aggravated Robbery c/s 285 and 286 (2), unless the offender is sentenced to death, for the court to order the person convicted to pay such sum by way of compensation to any person to the prejudice of whom the robbery was committed, as in the opinion of the court is just having regard to the injury or loss suffered by such person.

The evidence led during the trial sufficiently established that the complainant lost cash 300,000/=, a TV and Decoder. The TV and Decoder were recovered by the police and kept as exhibits. The Decoder was tendered in court and should be returned to the complainant. The TV could not be produced because it allegedly got damaged when the exhibit store got rammed into by a vehicle. It was on account of the robbery that the complainant lost her TV in the first place; she deserves to be compensated by the convict. I consider an award of Shs. 1,000,000/= to be a reasonable compensation to cover the 300,000/= and the TV. The convict is to compensate the complainant in that sum within a period of three (3) months from the date of this judgment in default whereof the defaulting convict is to serve an additional term of two years' imprisonment.

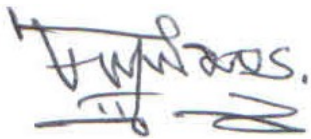
730In summary, the sentence is as follows:

1. The convict will now serve a sentence of imprisonment of 14 years, 5 months and 12 days with effect from today.

735 2. The convict will pay compensation of shs. 1,000,000/= to the complainant within a period of three (3) months from today; in default whereof the defaulting convict is to serve an additional term of two years' imprisonment.

740 The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Fort portal this 10th day of March 2022.



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Vincent Wagona

JUDGE

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0343 OF 2019

UGANDA:.....PROSECUTOR

VERSUS

770 **TUSIIME RAMANTHAN :;..... ACCUSED**

BEFORE HON. JUSTICE VINCENT WAGONA
NOTES OF SUMMING UP TO THE ASSESSORS

775 **1. INTRODUCTION**

Lady and Gentleman Assessors, you sat through the trial as the law requires you to do. You listened to all the evidence given by the witnesses for the Prosecution and you also heard the evidence of the accused. Your duty is to assess that evidence and advise me whether the accused should be acquitted, found responsible as indicted or of some other minor and cognate offence.

2. THE INDICTMENT

The indictment in this case is that of Aggravated Robbery contrary to sections 285 and 286(2) of the Penal Code Act. It is alleged that **Tumusiime Ramathan**, the accused together with others on the 18th day of August 2018 at around 10:00pm at Bukawli ward in Fort portal municipality in Kabarole District while armed with a gun robbed Muyama Joyce of a television screen (14 inch), a star times decoder and cash of Ug.shs. 300,000/= and used violence during the said robbery.

790 3. THE INGREDIENTS OF THE OFFENCE

For the accused to be convicted of Aggravated Robbery, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

- 795 i. Theft of property belonging to the victim
- ii. Use of violence or threat of use of violence during the theft
- iii. Possession of a deadly weapon during the theft
- iv. Participation of the accused in the theft.

800 4. THE BURDEN AND STANDARD OF PROOF

The burden of proof is always on the prosecution. It has the duty to prove each of the ingredients of the offence and generally this burden never shifts onto the accused, except where there is a specific statutory provision to the contrary which exception does not exist in this case.

The standard of proof is “proof beyond reasonable doubt. “All the essential ingredients of the offence are to be proved beyond reasonable doubt. This standard does not mean proof beyond a shadow of doubt. It is achieved if you are satisfied
810that having considered all the evidence from a perspective that is most favourable to the accused, you are satisfied that all evidence in favour of or pointing to the innocence of the accused, at best creates a mere fanciful possibility but not any probability that the accused is innocent.

815Evidence is evaluated as a whole. Consider evidence of both the prosecution and the defence relating to each of the ingredients before coming to a conclusion. You should not consider the prosecution evidence in isolation of that of the accused.

When a person is charged with an offence and facts are proved which reduce it to a
820minor cognate offence, he or she may be convicted of the minor offence although he or she was not charged with it. The minor offence sought to be entered must belong to the same category with the major offence. The offence of Simple Robbery c/s 285 and 286 (1) (b) of *The Penal Code Act* is minor and cognate to that of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act*.

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When court considers all the essential ingredients of the offence charged, finds one or more not to have been proved, finds that the remaining ingredients include all the essential ingredients of a minor cognate offence court may then, in its discretion, convict of that offence.

830

5. THE EVIDENCE IN THIS CASE

The Prosecution in this case called only 2 witnesses. It should be made clear that under the law, no particular number of witnesses is required for the proof of any fact. Even one witness can prove a fact.

i. Theft of property belonging to the victim

Theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen per Section 254 of the Penal Code Act.

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PW2 Muyama Joyce gave evidence that on the night of 18/8/2018 at around 10:00pm while at her shop in Bukali, she was watching news on BukeddeTV with her neighbors Tumisiime Micheal and Mushikoma while attending to her shop. That she was put on gun point by one Ochola Filbert and the accused was behind him. That the accused carried the TV that they were watching, a decoder, 25 kilograms of sugar worth 75,000/=, a crate of beer worth 45,000/=, a carton of soda worth 20,500/= and cash of 300,000/=.

That when she went to police, after the suspects had been apprehended, she found that they had recovered the TV that had been robbed plus the star times decoder. She described the TV as black in colour, 14 inch and the star times decoder as greenish. That she presented the receipt for the TV at police.

She stated to have made a statement at police which statement is admitted in evidence as DE 1. In her statement the stolen items are stated to be a 14 inch Sony Tv screen, a start times decoder and cash 300,000/=.

PW1 No 59392 D/CPL Ssempijja Kenneth, the SOCO in this case stated that on 19/8/2018, together with D/ASP Mukiza Anthony, they went to Muyema Joyce's place who had reported to have been robbed. He stated the property she lost to be; 300,000/=, a star times decoder and a 14-inch TV screen and that upon the arrest of the suspects and recovery of some of the property, Muyama Joyce went to police and identified the star times decoder and 14-inch TV by the serial number. He stated that he made the exhibit slip exhibiting among others; a red scarf, the star times decoder S/No 3171981732011762, a TV Panasonic, mode YK 1438, 14 inch in size recovered from the accused persons.

I invite you to advise me as to whether there was theft of the property of the victim based on the evidence on record.

870 **ii. Use of violence or threat of use of violence during the theft**

PW2 Muyama Joyce told court that during the robbery she first noticed other people were on the floor and asked them what was going but got no response and then she was put on gun point by one Ochola Filbert and that the accused was behind him. She stated that she spent about 5 minutes on the floor and only got up when she stopped hearing the movements of the accused persons that was when she crawled, opened the door and made an alarm. The complainant PW2 stated that she reported the robbery to police. PW2 the SACCO also stated that PW1 had reported a case of robbery using a gun.

880

Do you think there was use of violence or threat of use of violence during the theft? I invite you to advise me accordingly.

iii Possession of a deadly weapon during the theft

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The prosecution is required to prove that immediately before, during or immediately after the said theft, the assailants had a deadly weapon in their possession.

890A '*deadly weapon*' is defined to include any instrument made or adopted to... stabbing or any imitation of such instrument 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.

The position of the law is that as much as possible, the weapon of attack should be 895exhibited in Court, and where it is not, it should be explicitly described. The description is required in assisting the court determine whether the said instrument or weapon was leather or not.

PW2 Muyama Joyce stated that on the night in question, during the robbery, she 900was put on gun point by one Ochola Filbert and that the accused was behind him. That she spent about 5 minutes on the floor until she couldn't hear the movements of the assailants, that was when she crawled, opened the door and made an alarm. She stated that the next morning she reported the case to police and made a statement

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PW1 No 59392 D/CPL Ssempijja Kenneth told court that he went with D/ASP Mukiza Anthony to Muyema Joyce's place who had reported that she had been robbed with a gun and lost 300,000/=, star times decoder, 14 TV screen. That on apprehending the two suspects, they searched Ochola's place and recovered a semi- 910automatic Rifle S/No 18105 with a bayonet and two rounds of ammunition which items were exhibited and handed to stores I/C D/CPL Chelengot Godfrey. The rifle

however was not exhibited in court. The exhibit slip of all times recovered in this case was admitted as PE.1B.

915 You need to be satisfied that the evidence available proves the ingredient beyond reasonable doubt and advise me on the same.

iv. Participation of the accused in the theft.

920 This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime as the perpetrator of the offence.

PW2 Muyama Joyce the complainant, informed court that she knows the accused person as the person who came to attack her. She stated that she did not know him
925 before the incident that she got to know his names at the police station when he was arrested. It was her evidence that on that night of the robbery, she noticed the other people in the shop were on the floor and asked what was going on but they were not responding, then she was put on gun point by one Ochola Filbert and the accused was behind him. That the accused carried the TV that they were watching,
930a decoder, 25 kilograms of sugar worth 75,000/=, a crate of beer worth 45,000/=, the soda was worth 20,500/= (a cartoon) and cash of 300,000/=. That she spent about 5 minutes on the floor until she couldn't hear any further movements then she got up, crawled and opened the door and made an alarm. That she spent the night at her neighbor's place and the following day she went and reported the
935 robbery at police. That at the time of the robbery there was electricity light and she was able to see the suspects. That the assailants were very close to her about 1 meter away and the accused was behind Ochola. That when they called her at the police station she found the same suspects at police. That during the robbery,

Ochola had covered his face with a handkerchief but the accused person was not
940 covering his face and that she could describe him but did not know the names. That
she saw them for only one minute before she was made to lie down on the floor.
That Police called her and asked her to describe her stolen TV and also asked her
to go to the station with her receipt of the tv. That she proceeded to police and
found that they had recovered the TV that was robbed plus the star times decoder.
945 She described to court that the Tv was black in colour, 14 inch and that the star
times decoder was greenish. That she left the receipt for the tv and the recovered
items at the police station which she has never recovered to date.

During cross examination she confirmed that it is not mentioned in her statement
950 that there were two assailants neither was the man without the gun mentioned. She
said that she told the police men who recorded the statement everything. During
her re-examination, she stated that she first identified the attackers at her house
during the robbery and later at police

955 **PW1 No 59392 D/CPL Ssempijja Kenneth**, the SOCO in this case told court that
on 19/8/2018, at around 11:00 hours together with D/ASP Mukiza Anthony they
went to Muyema Joyce's place following up on a case of robbery of 300,000/= a
star times decoder and a 14 TV screen with a gun. That on their way back to the
police station at about 13:00 hours, they met a motorcycle carrying 2 passengers
960 who were themselves carrying a star times decoder and a 14-inch TV. That they
were from the junction that joins Kamwenge road and Nyakabare village heading
towards Mpanga direction. That the two jumped off the motorbike, abandoned the
property and run and entered the hospital main gate but were later chased and
apprehended. That they identified themselves as Ochola Philbert (now deceased),
965 and Tusiime Ramadhan the accused. That the abandoned property was put on the

police vehicle and a search conducted at Ochola's place where they recovered a semi-automatic Rifle S/No 18105 with a bayonet and 2 rounds of ammunition. That the recovered items were exhibited and handed over to stores I/C D/CPL Chelengot Godfrey. That the complainant came to police and identified the said 970 property as her stolen property. During cross examination, he stated that when the two passengers jumped off, the motorcycle rider rode off and no effort was made to arrest the bodaboda rider.

In an answer to court, the witness stated that the accused was arrested on 19/8/218 975 at about 13:30 hours at the hospital gate while Ochola was arrested inside the hospital. That the accused was carrying a decoder while Ochola was carrying the TV screen.

The accused Tumusiime Ramathan, in his unsworn statement denied 980 participating in the robbery. He told court that on that morning he was on a motor cycle going to work and they met a man who stopped them carrying a tv and decoder. That the man joined them on the motor cycle and when they reached near Buhinga Hospital, a police car stopped them and the boda man stopped. That Ochola Filbert who was seated behind him jumped off and ran and entered the 985 hospital. That Ochola was chased, arrested and brought is to police. That he was also arrested, put in a pit and later taken to record a statement. That he was told to sign on a prepared statement which he did.

Directions on some aspects of the law evidence relevant to this case

990 • **Doctrine of recent possession**

The position of the law on the doctrine of recent possession is that where persons are found in possession of property recently stolen, they have a duty to explain such possession otherwise the inferences of guilt arising from the doctrine of recent possession are not displaced.

995

- **Identification parade**

An identification parade is a group of persons including one suspected of having committed a crime assembled for the purpose of discovering whether a witness can identify the suspect. Identification parades are normally conducted by the police 1000 during investigations in an attempt to identify the accused or suspect with the offence for which he or she is charged or suspected. The purpose of the parade is to find out from the witness who claims to have seen the accused or suspect at the scene of the crime whether he can identify the accused or suspect as the person he or she saw previously at the scene of the crime or actually committing the offence.

1005 • **Single identifying witness**

I should warn you that this being an offence involving a single identifying witness of an incident that took place at night, corroboration is required as a matter of practice. Such identification evidence should be considered with caution.

1010 • **Corroboration**

Corroboration means additional independent evidence connecting the accused to the crime. There is need to find other independent evidence to prove not only that the offence occurred but also that it was committed by the accused. Corroboration may be in the form of direct or circumstantial evidence or expert evidence.

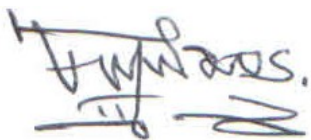
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The conduct of the accused can corroborate the complainant's testimony. For example, if the conduct of the accused indicates a sense of guilt on his part; such as escaping from arrest or running away or dumping/abandoning items being previously in possession of the accused and running off, can add strength to the 1020prosecution case and to his responsibility.

You can however advise me to proceed to rely on the evidence of a single identifying witness even without corroboration, if you are satisfied that the witness was truthful and there is no possibility of error in the identification of the accused. 1025That is, if you are satisfied that the evidence of PW2 the complainant was truthful and that there is no possibility of error in the identification of the accused, then you can advise me to act on her evidence, even if that evidence is not corroborated.

You should address the evidence as a whole and consider factors like: whether the 1030conditions under which the identification was made were favourable; the length of time the witness observed the assailant; the distance between the witness and the assailant; familiarity of the witness with the assailant; and the quality of light available.

1035You should advise me whether or not, in your opinion, the prosecution has proved the case of murder against the accused beyond reasonable doubt and advise me whether to convict or acquit him.

A handwritten signature in black ink, appearing to read "S. M. S." with a flourish underneath.

1040 Vincent Wagona

JUDGE

1/3/2022