

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT TORORO

CRIMINAL SESSION CASE NO. 063 OF 2022

UGANDA :::::::::::::::::::::::::::::::::::PROSECUTOR

VERSUS

ISABIRYE MALIK:.....ACCUSED

JUDGMENT

BEFORE: HON. DR. HENRY I. KAWESA

The accused was indicted with the offence of **Murder contrary to Section 188 and 189 of the Penal Code Act**. It is alleged that the accused and others at large, on the 31st day of May 2020 at Nangwe Custom Road 'A' village in Busia District with malice aforethought unlawfully caused the death of Watulo Hakim.

The accused denied the charge. Prosecution has the burden to prove the case beyond all reasonable doubt. The ingredients of Murder to be proved are:

1. *That there was death of a human being.*
2. *That the death was unlawful.*
3. *That there was malice aforethought.*
4. *That accused participated.*

The resolution of issues is as follows:

Issue 1: Whether there was death of a Human Being.

The evidence on record from PW3 Dr. Rubanga and PEX1, PW2 (father of the deceased), is enough proof that indeed they saw the dead body of Watulo Hakim. DWI; (Accused) equally got the dead body of Watulo Hakim at his workshop. Evidence has proved that there was a death.

Issue 2: Whether the death was unlawful.

All homicides are presumed unlawful unless excused by law or accidental. See ***R versus Gusambizi s/o Wesonga [1948] 15 EACA 65.***

The evidence on record has two possible sources of information about this death. The scene descriptions by the witnesses showing that the body was covered in electricity wires, hence suggesting accidental death by electrocution.

However, there is an expert opinion by an experienced Doctor. Rubanza that the death was caused by strangulation. He tendered in PEX1 and explained why he ruled out the death by electrocution. His evidence was not rebutted. The allusion to accidental death is therefore without proof leaving this court with no evidence to show that the death was accidental or lawful. This ingredient is hence proved.

Issue 3: Whether there was malice aforethought.

Given evidence by PW3; Dr. Rubanga and PEX1, that death was due to strangulation, it goes without question that the assailant who goes

ahead to twist the neck and then wrap the body in electrical wires to cover up the cause, does so with intent to harm and cause death.

I agree with prosecution's submission that as per *Nanyonjo Harriet & Ors versus Uganda; SCC 24/2012;*

"Malice aforethought connotes an intention to do an unlawful act to any person foreseeing that death or grievous bodily harm is the probable outcome therefrom".

Guided by the standard set in *R versus Tubere S/O Ochen (1945) EACA 63*, considering the nature of the wounds and the fact of strangulation, there was malice aforethought. This ingredient is accordingly proved.

Issue 4: Whether accused participated in the death.

The evidence on the record from PW1, PW2, PW3, AND PW4 is evidence of after the fact of death. All these witnesses did not offer any evidence on record showing that accused was seen committing the death.

PW1 - only found the deceased at the scene already dead. PW2 went to the scene having been given a call by the accused and when he went, he found the body of a young man laying down dead having died from accused (Malik's) workshop. The body was rolled in electric wires.

He said accused did not sleep there, but just found the body there. PW3 is Dr. Rubanga whose evidence is that death was not due to electrocution but due to strangulation.

PW4; Sgt Opedun confirmed that when he visited the scene, he saw the body under electric wires. The wires were emerging from accused's house.

The accused testifying as DWI denied the charge. His defence is that he left work on 30th May 2020 around 6 pm, and went home on 31st May 2020 at 6:00 am. A neighbor called him and told him that the door of his house was wide open. He went there to find out what happened and to his dismay, he found his door open and inside was a dead body of the deceased. He was lying under electric wires. He then reported to Basalirwa the area Chairman who told him to go to Police.

The evidence above is missing a link that connects the accused to this death. The fact that he was aware from the scene of crime the day when the death occurred, has neither been destroyed by the prosecution's evidences nor explained by the prosecution evidence.

There is doubt as to how the deceased met his death.

The [accused's] explanation fits in within the State's own version of the fact that a dead person was discovered at the accused's workshop, but he was not in the house/workshop at that time. He had stayed away that night.

This evidence was not destroyed by the prosecution. In the result this ingredient remains not proved.

The assessors reached a similar conclusion that the evidence falls short of the required standard of proof in criminal cases.

I do not find evidence of participation. The accused is not found liable on this charge.

He is acquitted.

I so order.

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Dr. Justice Henry I Kawesa
JUDGE
19/07/2023

19/07/2023

James Mwamule for State.

Ochieng for the accused.

Accused present.

Court:

Judgment delivered.

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Hon. Dr. Justice Henry I Kawesa
JUDGE
19/07/2023.