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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE

CRIMINAL SESSION CASE NO. 0029 OF 2019

KIS AA 005/2018

CRB224/2018

10 **UGANDA=====PROSECUTION**

VERSUS

SEBAHUTU

EMMANUEL=====ACCUSED

BEFORE: HON. JUSTICE SAMUEL EMOKOR

15

JUDGMENT

The Accused Sebahutu Emmanuel is charged with murder contrary to
Section 188 and 189 of the Penal Code Act. The facts giving rise to the
Indictment are that Sebahutu Emmanuel on the 28/02/2018 at Gakoro
20 Village, Sooko Parish, Muramba Sub County in Kisoro district with
malice aforethought unlawfully caused the death of Muhumuza Dismas.
The accused pleaded not guilty.

5 **Representation:**

Ms Nabagala Grace Ntege (Chief State Attorney) appeared for the Prosecution while Mr Felix Bakanyebonera appeared for the accused on state brief. The assessors in this case were Mr Ndyamutunga Livingstone and Ms Christine Kembabazi.

10 During the preliminary hearing sanctioned under Section 66 of the Trial on Indictment Act (TIA) medical evidence in PF 48B, PF24, and photographs were admitted as uncontested.

The PF48B is the post-mortem report in respect of the deceased Muhumuza Dismas and the findings were that he was 2 months old
15 with stab wounds and 3 penetrating injuries to the heart. The cause of death was reported as heart failure due to the injuries. This report was received as Exhibit P1.

The photographs 3 in total were of the body of the deceased and they were received collectively as Exhibit P2.

20 The PF24 was in relation to the Medical examination of the accused and the report indicated that the accused was of sound mind. The same was received as Exhibit P3.

5 **The burden and standard of proof:**

The accused in pleading not guilty in this criminal trial places the burden of proving the case beyond reasonable doubt upon the prosecution. This burden does not shift to the accused person and the accused can only be convicted on the strength of the prosecution case
10 and not on the weakness of the defence case. (***See Ssekitoleko vs. Uganda (1961) EA531***)

The accused doesn't have any obligation to prove his innocence and the onus is on the prosecution to prove each of the ingredients beyond reasonable doubt before it can secure a conviction. Proof beyond
15 reasonable doubt though doesn't mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at best creates a mere fanciful possibility but not any probability that the accused is innocent. (***See Miller vs. Minister of Pensions (1947) 2 ALLER 372***)

20 **Ingredients of the offence.**

The prosecution must prove each of the following essential ingredients beyond reasonable doubt for the accused to be convicted of the offence of murder.

1. Death of a human being.

2. The death was caused by some unlawful act.
3. The unlawful act was actuated by malice aforethought: and lastly
4. That it is the accused who caused the unlawful death.

a) Death of a human being:

Death maybe proved by production of a post-mortem report or evidence of a witness who states that they knew the deceased and attended the burial or saw the dead body.

PW1 Dukuze Sarafina aka Imanikuzwe testified that the accused is her husband and that they had lived together for one year and had a 2 months old son together called Dismas Muhumuza who died on the 01/03/2018 at Mutorele Hospital.

Her evidence is corroborated by that of Ssengoma Benjamin (PW2) a Senior Medical Clinical Officer attached to Kisoro Hospital who conducted a post-mortem on the deceased on the 03/03/2018 and whose detailed report was received on Exhibit P1.

Bulengeya Beno (PW3) the LC1 Chairperson of Gakoro village, (PW4) D/C Alex Ndayambaje the Scenes of Crimes Officer and PW5 Margret Nyarahabimana the mother of the accused all testified to seeing the body of the deceased Muhumuza Disamas.

5 Indeed the accused himself didn't contest the death of his son in his defence.

It is therefore this court's finding that the prosecution has proved beyond reasonable doubt the death of Muhumuza Dismas.

b) That the death was caused by some unlawful act:

10 The law presumes that any homicide (killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorised by law.

(See R vs. Gusambizi s/o Wesonga (1948) EACA 65.)

15 It is the evidence of PW1 that on the 28/02/2018 when she had returned home from the home of the Chairperson of their clan where she had gone to report the accused for assaulting and threatening her she found the child crying and when she checked on the child she found that he had been burnt under the armpit and that when she took the child to Mutolere Hospital the Doctor told her that the substance that had been
20 administered to the child had spread in the whole body and they couldn't treat him. He died the following day.

The Findings of PW2 in Exhibit P1 corroborates the evidence of PW1 in as far as death of the child (Muhumuza) being caused by the interventions of another human being is concerned because it reveals

5 that the deceased had a stab wound with 3 penetrating injuries to the heart leading to heart failure.

It is my finding that the Prosecution has proved beyond reasonable doubt that the death of Dismas Muhumuza was unlawful.

c) That the unlawful act was actuated by malice aforethought:

10 **Section 191 of the Penal Code Act** provides that malice aforethought maybe established by evidence proving either of the following:

1. An intension to cause the death of a person.
2. Knowledge that the act or threat or omission causing death will probably cause the death of some person although such act is
15 accompanied by indifference whether death is caused or not.

Malice aforethought in murder trials can be ascertained from the weapon used (whether it is a lethal weapon or not) the manner in which it is used (whether it is used repeatedly or the number of injuries inflicted) the part of the body that is targeted or injured (whether or
20 not it is a vulnerable part) and the conduct of the accused before, during and after the incident (whether there was impunity).

(See *R vs. Tubere (1945)*12EACA63)

It is the evidence of PW1 that when she undressed the deceased he was crying and she observed that he had been burnt under the armpit. It is

5 also her evidence that there were injections, blades and bottles of medicine in the house belonging to the accused who used to treat dead bodies in the village.

The post-mortem by PW2 in Exhibit P1 reveals that his findings on the deceased were a stab wound with 3 penetrating injuries to the heart
10 caused by a sharp object and that the deep penetrating wounds caused the death of the deceased.

PW3 testified that on the night in issue of 28/02/2018 at 9:00 pm when PW1 went to his home he saw that the child had injuries with 3 stab wounds and that there was a black colouring on the body of the child
15 that looked like clotted blood under the armpit about the size of a palm.

The evidence presented by the Prosecution of 3 stab wounds in Exhibit P1 and the same was witnessed by PW3 was an act of repetition on a vulnerable part of the body that covered the heart that is sensitive and very delicate. The finding in Exhibit P1 that it must have been caused
20 by a sharp object is proof that the intension to cause death was present in the mind of the assailant.

The burn referred to by PW1 under the armpit of the deceased as corroborated by PW3 who referred to the same as a black colouring on the body of the deceased that looked like clotted blood under the armpit

5 was not captured in Exhibit P1 strangely but PW1 refers to a Doctor in Mutolere Hospital as informing her that the substance administered on the child had spread in the whole body and that they could not treat him, in this courts mind required further medical examination in view Exhibit P2 a photograph of the deceased that shows that the area below
10 the armpit of the deceased was indeed darkened. I will return to this issue later in my judgment but it should suffice at this stage to find that the prosecution has proved beyond reasonable doubt that the unlawful act that caused the death of Muhumuza Dismas was actuated by Malice aforethought.

15 **d) Participation of the accused.**

It is the evidence of (PW1) that on the 28/02/2018 at around 4:00pm as they were going back home her mother-in-law was carrying Muhumuza a 2 months old baby as she carried beans in a basket they met the accused who is her husband and that the accused told her “It’s
20 at this time that you are going home? I can beat you”. It is the testimony of Pw1 that the accused held her by the arm and the beans poured on the ground and that they quarrelled while the accused’s mother informed him that they were from the garden. The accused then walked away.

5 According to Pw1 on reaching home, she placed the baby onto his bed and that the baby at the time was in good health and fell asleep. PW1 then began peeling Irish and as she was doing so, the accused returned and told her that it was late and that he could kick her. Pw1 testifies that she then decided to go and report the threats to the LC and left the
10 accused behind in the house with the child. PW1 states that when she returned she found the child crying and went to where the child was sleeping and saw that there injections like those used in hospitals and that these needles used to be in their house because they were for the accused who used to treat dead bodies in the village and that there was
15 also a liquid in a bottle that the accused used in the injections and surgical blades in the house. It is the testimony of PW1 that the accused was in the compound when she returned but as she was picking up the baby, the accused came and stood near her and that the baby was crying.

20 That she decided to dress the child since the chairperson had promised to come over in the morning but that when she undressed the child, she observed that he had been burnt under the armpit and the skin was peeling off. It is her evidence that when the accused saw her picking the child he took away the needles and went to her co-wife's home.

5 PW1 testified that she then went back to the Chairperson with the child and told him about the burns on the child and he told her to take the child to the hospital at Muramba where the accused was working as a Medical Practitioner and that this was around 7:00 Pm. The Medical Officer at Muramba, however, advised her to take the child to Mutolere
10 Hospital and gave her shs. 20,000/=

At Mutolere according to PW1 she was informed by the Doctor in-charge that the substance administered on the body had spread in the whole body and that they could not treat him. The baby died in the same hospital one day later.

15 The prosecution relied on the Medical evidence of PW2 Ssengoma Benjamin a Senior Medical Clinical Officer attached to Kisoro District Hospital who testified that on the 03/03/2018 under reference CRB 224/2018 he was requested to examine a dead body on PF48B and that the body was identified for him by the mother of the victim Dukuze
20 Sarafina and his findings revealed the following;

- That the child was 2 months old.
- That he identified 3 stab wounds under the armpit with three penetrating injuries around the heart.
- That the cause of death was due to heart failure as a result
25 of the injuries mentioned.

5 PW2's report was received as Exhibit P1.

PW2 under cross-examination revealed that he didn't measure the wound in terms of length or depth because he didn't find it necessary but that he found that the stab wounds had pierced the heart and could have been caused by a sharp object and that the stab wound was under
10 the right armpit, they were 3 stab wounds across the heart and that he didn't find it necessary to open up the body to test the body parts.

Pw3 Buregyeya Benon testified that he is the Chairperson LC1 of Gakoro village and that on the 28/02/2018 the wife of the accused PW1 came to his home at around 9:00 pm holding a child in her arms and that the
15 child was in a terrible condition. According to PW3 he was informed by PW1 that the child had injuries that had been caused to him by the accused and that he observed that the child had injuries, 3 stab wounds with one under the left rib near the armpit and that there was a black colouring on the body of the child like clotted blood under the armpit
20 about the size of a palm and that the child was very young.

PW3 states that he referred PW1 to Muramba health centre and even escorted her there himself that night and that on 01/03/2018 he heard that the child had died.

5 PW3 also testified that the accused used to work at Muramba Health Centre III as a cleaner and would help people who would treat dead bodies at the Hospital.

The prosecution also presented PW4 D/C Alex Ndyayambaje who testified that he was the Scene of Crimes Officer who visited the scene
10 and was present when the post-mortem was being performed on the deceased and that he saw 3 stab wounds on the right side under the armpit with a patch of clotted blood on the right side.

While PW5 Nyabahimana Margret testified that she is the mother of the accused, Pw1 is her daughter-in-law and that the two had a son
15 Muhumuza Dismas who is now deceased.

It is her evidence that the day that Muhumuza died she had been planting beans together with PW1 and after she walked back with PW1 carrying the child on her back and that on the way they met the accused near home and that the accused and PW1 began to fight during which
20 fight PW1 poured the beans that she was carrying and when she (PW5) began to pick the beans the accused pushed her and she fell down.

It is her evidence that they continued home and later she heard the child crying bitterly and she picked the child and handed him over to PW1

5 who was hiding near home and that at the time, the accused was going to the house of his 2nd wife. The two wives live in the same compound. According to PW5 the child was having difficulty in breathing when she handed it over PW1 and that PW1 took the child to the Chairperson. PW5 further states that when she visited the hospital she found the
10 child in a critical condition and the child later died.

The accused in his unsworn statement testified that on 28/02/2018 he was digging in Congo from 6:00 Am to 9:30 Pm when he returned home and went to the home of his senior wife Patience who stays about 500 metres away and spent a night there.

15 The next day according to the accused he returned to Congo to complete his work and while there his father informed him that his son Dismas and PW1 had been taken to hospital and that he informed his father that he knew nothing about that since he has been digging in Congo. That together they went to Mutolere Hospital where the doctors told
20 them that they should go elsewhere for treatment and as they were trying to look for money PW1 came and informed them that the child had died and he was arrested over the death of his child. The accused maintains that he knows nothing about the sickness and death of his son because he was away in Congo and the evidence that he does some

5 medical work is false and the prosecution witnesses told lies against him.

I don't accept the defence of the accused that he spent the entire day of the 28/02/2018 in Congo from 6:00 Am to 9:30 pm when he returned to the home of his senior wife. PW1 and PW5 both testify of the
10 confrontation that the accused had with PW1 when they were returning from the garden together. I don't believe that PW5 the mother of the accused was telling lies about this engagement.

The evidence of PW5 corroborates that of PW1 that the accused confronted her on the date in issue at about 4:00 pm over returning
15 late from the garden. I accept this evidence to be true.

I also accept the evidence of PW1 that she left the child Muhumuza sleeping in his bed with the accused around when she went to report to the Chairperson the threats that the accused was issuing against her and that when she returned later she found the child crying and when
20 she undressed him she discovered a burn under his armpit and that there were needles/ injections, blades and a chemical in the house that was used by the accused in treatment of dead bodies in the village.

5 PW3 corroborates the evidence of PW1 that he observed a black colouring on the body of the child that looked like clotted blood under the armpit about the size of a palm.

I do accept the evidence of PW3 that the accused used to work as a cleaner at Murambo Health Centre III and used to offer assistance in
10 the treatment of dead bodies at the hospital. Both PW1 and Pw3 testify to this effect. This court is mindful of the fact that the prosecution did not adduce direct evidence in this regard but the testimony of PW1 that the accused had syringes and a chemical for treating dead bodies coupled by the sudden change under the armpit of the child the
15 corroboration by PW2 when it was put to him by the prosecution about the kind of effect formalin may have on a human being when injected, PW2 replied that formalin is a form of poison and when injected in a human being it causes chemical burns. PW2 said that he was familiar with formalin.

20 The evidence of PW1 that the skin of her child appeared to be burnt is also corroborated by the evidence of PW4 who was present at the autopsy and testified that he observed that there was a patch of clotted blood under the armpit of the deceased and pictures of this were taken by D/C Edson. This court did admit 3 photographs of the deceased as

5 Exhibit P2 and these photographs indeed do show that there is a black patch under the arm of the deceased that didn't appear to be normal.

This court finds it strange that PW2 did who performed the post-mortem in his report in Exhibit P2 didn't make mention of this obvious fact. It is a short coming that would not be expected from a health professional at the level of a Senior Clinical Officer. I none the less
10 accept the testimony of PW1 that at Mutolere Hospital the doctor told her that the substance administered on the child had spread to the whole body and that they could not treat him. There is overwhelming evidence from the prosecution witnesses that a foreign substance had
15 been introduced under the armpit of the deceased,

I also accept the evidence of PW1 that when the accused saw her picking the child he took away the needles and went to his co-wife's home. The action of the accused person of removing the needles from the house was in a bid to get rid of evidence. It was the action of a guilty man.

20 I am therefore convinced by the evidence on record that the accused was in possession of syringes and chemicals used in the treatment of dead bodies and that the same was used on the deceased in the evening of the 28/02/2018.

5 The evidence of PW1 that the accused was in possession of surgical blades is corroborated by the finding of PW2 that the stab wounds on the deceased could have been caused by a sharp object. The stab wounds were witnessed by PW3 and PW4.

This court also takes issue with the evidence of PW2 that the stab
10 wounds pierced the heart of the deceased. It is my understanding that 3 stab wounds or injuries to the heart of a 2 months old baby would lead to automatic death and yet the baby only passed on the following day. I am convinced that PW2 did not get this finding correct because he admitted under-cross examination by the defence Counsel that he
15 didn't measure the width or depth of the stab wounds nor did he open the body. It therefore doesn't take rocket science to know that without conducting any of the above procedures PW2's evidence that the injuries penetrated the heart cannot be further from the truth. This fact notwithstanding, this court did look at the photographs in Exhibit P2
20 and I am sufficiently satisfied that there were stab wounds under the left armpit of the deceased as testified to by PW3, PW4 and corroborated by PW2 only to the extent of their existence.

This Court did find a minor contradiction between the evidence of PW1 and PW5 where by Pw1 testified that upon returning home from the LC
25 she found the child crying and began to undress him while PW5

5 testified that PW1 was hiding and that she took the baby to her. I find
the evidence of PW1 in this regard to be more believable than that of
PW5. The evidence of Pw1 has been very consistent and it would have
been out of character for her to hide and leave her child alone in the
house. I find this contradiction to be minor and not to go to the root of
10 the prosecution case.

The case against the accused solely relies on circumstantial evidence
since there is no direct eye witness. The Supreme Court ***Mbazira siragi
& Anor vs. Uganda SCCA No. 7/2004 held that:***

15 *“In a case depending exclusively upon circumstantial evidence, (the
Judge) must find before deciding upon a conviction that the exculpatory
facts were incompatible with the innocence of the accused and incapable
of explanation upon any other reasonable hypothesis than that of guilt.”*

The court also cited with approval the decision in ***Temper vs. R ((1952)
AC 480*** where the court held that:

20 *“It is also necessary before drawing the inference of the accused’s guilt
from circumstantial evidence to be sure that there are no other co-
existing circumstances which would weaken or destroy the inference”*

The prosecution witnesses in PW1 and PW5 have placed the accused at
the scene of a crime and that is within the same compound in which he

5 shared a house with PW1 and his senior wife. The defence of alibi that he was in Congo is therefore discredited.

The evidence that the accused used to help in the treatment of dead bodies and was in possession of blades, injections and chemicals used in this process has been proved in the evidence of PW1 and
10 corroborated by PW3.

The evidence of a blackened patch that was described as a burn under the armpit of the child by PW1, PW3 and patch of clotted blood by PW4 coupled by the evidence of PW2 that formalin causes a chemical burn on the body of a living human being and that the stabs on the deceased
15 were caused by sharp objects leaves no doubt in this court's mind that it was only the accused in the evening of the 28/02/2018 who was possessed with sufficient knowledge, expertise, medical instruments and chemicals to inject the deceased with and occasion the injuries that he had under his armpit. And also cause 3 stab wounds under his
20 armpit with a sharp object. The accused also had the opportunity having been left alone with the child.

The court in ***Rex vs. Tubere s/o Ochen (1945) 12 EACA 63*** held that the conduct of an accused person before or after the offence in question might sometimes give an insight into whether he or she participated in
25 the crime.

5 The action of the accused in removing the syringes from the house of
PW1 and taking them to the house of his senior wife plus the decision
to stay behind while PW1 sought for medical assistance at night arriving
at the home of PW3 at 9:00 Pm thereby prompting PW3 to escort her
to hospital because the child was in a terrible state points irresistibly at
10 the guilt of the accused.

This Court has not found any co-existing circumstances which would
weaken or destroy the inference that the accused in this case is guilty.

After considering the evidence adduced by the prosecution and defence
together and in full agreement with the Assessors, it is my finding that
15 the prosecution has successfully proved its case beyond reasonable
doubt and I accordingly find the accused guilty of the offence of murder
contrary to Section 188 and 189 of the Penal Code Act and convict him
of the same.

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SAMUEL EMOKOR

JUDGE

02/05/2023

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