

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA OF HOIMA AT KYANGWALI
CRIMINAL SESSION CASE NO.0296 OF 2023

UGANDA :: PROSECUTION

VERSUS

NIYONZIMA BALIGEREKA FRANCIS ::::::::::::::::::::::::::::::::::::::ACCUSED

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] The accused **Niyonzima Baligereka Francis** is indicted with the offence of **Murder C/s 188 & 189 P.C.A.** It is alleged that on the 9/4/2019 at Mukarange village in the Kikuube district, the accused murdered **Nyiramugisa Janet**.
- [2] The prosecution case is that the deceased was a wife to the accused with whom she had produced 2 children. During the time they were staying together, they had been having incidents of fighting, for the accused was always trying to chase the deceased from the home but she has always been resisting.
- [3] During the night of 8/4/2015, a fight between the accused and the deceased as usual ensued. The fight occurred in the presence of their 2 children aged 2 and 4 years respectively. The accused who had taken some alcohol beat the deceased to the death.
- [4] Upon the death of the deceased, at around 1:00pm, the accused went to the area L.C1 Chairperson and reported the death of the deceased. He claimed that when he reached home from his drinking place, he found his wife dead. The Chairman found the body of the deceased lying on the bed with wet clothes and beddings.

- [5] According to **Asifiwe Niyonzima**, daughter of the deceased, her father, the accused, came while in an angry mood and started beating the deceased. He had a panga which he used to strike the deceased behind the neck and a hoe which he used to hit the deceased on the belly and she died. The accused poured water on the body of the deceased, explaining the wet beddings and why the body was with wet clothes.
- [6] According to the Post Mortem Report conducted on the deceased, the cause of death was established to be a result of internal bleeding due to trauma on the internal organ (the spleen).
- [7] In his sworn statement in court, the accused denied the prosecution allegations. He explained that on the fateful night, he had been out drinking alcohol until 10:00pm. That when he proceeded home, he found his wife lying dead on the bed. Her neck was feeble. He had to get out to go and alert the neighbours. Though he admitted that as a couple, they had had domestic violence issues, he denied being the one who killed his wife. That a neighbor by the names of **Nyiraneza Dinah**, wife to the L.C1 Chairman told him that his wife, the deceased, returned home at around 6:00pm and was complaining of headache. That therefore in the circumstances, he could not tell how the deceased came to meet her death.
- [8] As in all criminal cases, the burden of proving the case against the accused person is on the prosecution and it has to prove its case beyond reasonable doubt. The burden does not shift to the accused person except in some exceptional cases set down by law. The accused can only be convicted on the strength of the prosecution case and not on the weaknesses in his defence, See **Woolmington Vs DPP (1935) AC 462** and **Israel Epuku S/o Achietu Vs R [1934] 1 EACA 166 at 167**. The authority of **Miller Vs Minister of Pensions [1947] 2 All ER 372** offer

legal guidance that the evidence adduced will satisfy the standard of proof if all the evidence suggesting innocence of the accused person is at its best a mere fanciful possibility but offers no probability that the accused person is innocent.

Ingredients of the offence of murder

[9] For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt.

1. Death of the deceased named in the indictment.
2. That the death was unlawful
3. That the assailant acted with malice aforethought
4. That it is the accused person who committed the offence.

See, **Mukombe Vs Uganda, SC. Crim. Appeal No.12/1995.**

1. Death of the deceased

[10] The prosecution adduced evidence of the Post Mortem Report that was admitted in evidence with the consent of the accused under **S.66 TIA** and it was admitted as **P.Exh.1**. As per **P.Exh.1**, the deceased **Nyiramugisa Janet's** body was examined on 9/4/2019 and it was found having bruises on the scapula areas and ruptured splenic vessels. A dead foetus was delivered out implying that the deceased was pregnant. The cause of death was established to be internal bleeding due to trauma on the internal organ (spleen).

[11] The area L.C1 chairperson **Munyambazi Theoneste** (PW1), the deceased's son who was a child of tender years, **Asifiwe Niyonzima** (PW2) and the Police investigating officer **D/Asp. Ivudia Eriga** (PW3) all confirmed the death of the deceased.

- [12] In the premises, since the accused did also confirm the death of the deceased, I find the 1st ingredient of the offence that the deceased is dead, proved to the required standard.

2. That the death was unlawful

- [13] It is trite that all homicides, an act of a person killing another, are unlawful unless it was accidental or excusable or authorized by law. The circumstances that make a death excusable include defence of person or property, See **Gusambuzi Wesonga Vs R [1948] 15 EACA 65** and **Uganda Vs Okello [1992-1993] HCB 68**.

- [14] In the instant case, as per the Post Mortem Report, the cause of death was internal bleeding due to trauma on the internal organ (spleen). It has not been shown that the death of the deceased fell within the exceptions of homicide. Traumas are caused by blunt objects used in an offensive manner. Clearly, the Post Mortem Report (**P.Exh.1**) indicate that the instant death of the deceased was a homicide.

- [15] In the premises, considering the injuries above that were inflicted on the deceased, I find that the 2nd ingredient of the offence has been proved by the prosecution to the required standard.

3. Whether the assailant acted with malice aforethought

- [16] Malice aforethought is defined under **S.191 PCA** to mean

“an intention to cause death of any person, whether such person is the person actually killed or not or knowledge that the act or omission causing death will probably cause death of some person, whether such person is the person actually killed or not, though such knowledge is accompanied by the indifference whether death is caused or not, or by a wish that it may not be caused.”

- [17] Malice aforethought may be inferred from the circumstances surrounding the death of the deceased and include, the weapon used (whether lethal or not), the part of the body targeted (whether vulnerable or not) the manner in which the weapon was used (whether repeatedly or not) and the conduct of the assailant before, during or after the attack.
- [18] In the instant case, the prosecution was conducted by State Attorney **Becky Seera** who submitted that the trauma referred to in the Post Mortem Report **P.Exh.1** must have been caused by a hoe and the failure by the Investigating Officer (**PW3**) to recover the weapons that could have been used to inflict the fatal injuries on the deceased is explained by the fact that **PW3** got to the scene when it had been tampered with. The accused person had time to put away his murder weapon before calling anybody to appear at the scene.
- [19] Indeed, since the murder took place in the house of the accused person during night time, the assailant must have had time to put away the murder weapon and therefore, the failure by the prosecution to recover and exhibit the murder weapon cannot be found fatal to the prosecution case. It is amply explained.
- [20] However, according to the uncontested Post Mortem report (**P.Exh.1**), the deceased had been pregnant. The dead foetus had to be removed from the body of the deceased. The nature and the number of injuries inflicted on the deceased and the parts of the body injured to wit; bruises on the scapula and rupture of the splenic vessels together with trauma on the belly, a vulnerable part of the deceased who was pregnant, in my view, point to the fact that whoever inflicted the fatal blows on the deceased must have had an intention to cause death or knew that such blows would cause death of the victim.

- [21] In the premises, considering the totality of the above and the evidence of the daughter of the deceased, **PW2**, who witnessed the incident and stated that a hoe and a panga were used to inflict upon the deceased the fatal blows as corroborated by the Post Mortem Report, I find that the deceased was killed with malice aforethought thus, the 3rd ingredient of the offence has been proved by the prosecution to the required standard.

4. Whether it is the accused person who committed the offence

- [22] The prosecution star witness is the deceased's daughter, **Asifiwe Niyonzima** (PW3) aged 8 years but who at the time of her mother's death was aged 4 years. He gave an unsworn statement to court after the results of the *voire dire*. According to her, the incident occurred at around 10:00pm. He was at home with his mother, the deceased and the other sibling/young brother a one **Charles Baligereka**. The accused came from outside while in an angry mood and started beating her mother. He used a hoe to hit her mother on the side of the belly and a panga on the behind of the neck and she bleed.
- [23] Evidence of such a witness, a child of tender years (i.e a child of or the apparent age of less than 14 years, **Kabangeny Arap Vs R [1959] EA 92**) require corroboration with independent material evidence, **S.40 (3) TIA**. **PW2** being a child of tender years who has given un sworn evidence, I must warn myself as I did to the assessors, the dangers of acting upon such evidence to ensure that no miscarriage of justice is caused to the accused person as guided in **Muhirwe Simon Vs Uganda, Crim. Appeal No.38 of 1995 [1999] KALR 9**.

- [24] In the instant case, the Post Mortem Report (**P.Exh.1**) description of the injuries that were inflicted on the deceased corroborate **PW2's** evidence regarding the probable weapons used to inflict the fatal blows. The bruises on the scapula areas are consistent with the panga **PW2** stated was used to strike the deceased behind the neck. The witness being what she was at the time, aged 4 years, may not be expected to have identified the exact spot that was struck. The neck and scapula areas of the back are in my view consistent with a panga being used to strike the behind of the neck of the deceased.
- [25] The use of the hoe to hit the deceased on the belly is consistent with the findings as per the Post Mortem Report about the rupture of the spleen vessels, use of the panga to inflict the other injuries and the fact that the deceased was pregnant, she was in such a vulnerable state that she would not survive.
- [26] According to the area L.C1 chairperson (**PW1**) and the Investigating Officer (**PW3**), the accused and the deceased were known to had gotten themselves involved in domestic violence, the accused beating the deceased with the intention of driving her out of the home and the deceased resisting. **PW1** was a neighbor to the couple while **PW3** as the then OC CID at Kyangwali police post serving the accused and the deceased, knew the levels of domestic violence that were taking place between the couple. The accused himself admitted to the above referred to domestic violence history.
- [27] In my view, I find that the fact that the death of the deceased occurred in the house of the accused where it is only the deceased, **PW2** and her sibling who were in occupation at the time of the death of the deceased. The evidence of **PW2** as the only eye witness has to be believed. The evidence of **PW2** is corroborated by the circumstantial evidence

surrounding the death of the deceased i.e, the fact that it is the couple and the 2 children who were the only ones in the house at the time the deceased lost her life and the domestic violence history of the couple. The accused's act of reporting the death of the deceased does not alone exonerate him.

[28] The Investigating officer (**PW3**) found the body clothed in wet clothings lying on wet beddings. **PW2** explained how the body of the deceased had to be in wet clothes. The accused poured water on the deceased presumably to resuscitate her from unconsciousness or apparent death. This uncontroverted evidence regarding the conduct of the accused also supported and corroborated the evidence of the child of tender years, **PW2**.

[29] Counsel for the accused **Mr. Benjamin Asasira** submitted that police never extracted a statement from **PW2** at the time of the death of the deceased and therefore, in his view, the omission by police to do so discredits the evidence of **PW2** for the reason that at the time, **PW2** had no capacity to comprehend what took place.

[30] However, the Investigating Officer **PW3** explained that at the time, the 2 children of the couple were young to be subjected to elicitation of evidence because they were in a state of fear and shock.

[31] I find that police ought at the appropriate time, to have made use of **PW2** who was at the time aged 4 years to extract the necessary useful information regarding what she saw. The failure by the police however to extract a statement from **PW2** is not in my view, fatal to the prosecution case. **PW2** adduced evidence that was not discredited during cross examination and now that her mother, the deceased is dead, no evidence is available that she could have been influenced by anybody to tell lies against her father, the accused person. Besides, the

other available circumstantial evidence point to nobody else but the accused person as the one who killed the deceased. There is no evidence that the deceased died of headache or other natural causes as the accused tried to suggest in his defence since the injuries sustained by the deceased as per the Post Mortem Report (P. Exh.1) are not consistent with natural causes of death.

[32] As a result of the discussion above, I find that it is not in contest that the children of the deceased witnessed how the deceased met her death. She met her brutal death in the hands of her husband, the accused who assaulted her to death. PW2, the eye witness, was truthful in her evidence. She was firm and cross examination could not break her. Her evidence was well corroborated.

[33] In disagreement with the Honourable assessors who found that the deceased must have sustained the fatal injuries from elsewhere other than from the accused and therefore returned a plea of innocence of the accused, I find that the prosecution has proved the case beyond reasonable doubt that it is the accused person who caused the death of the deceased.

[35] I find the accused guilty of the murder as charged and I convict him accordingly.

Dated this 23rd day of January, 2024.

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Byaruhanga Jesse Rugyema.
JUDGE.