

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE.
CRIMINAL SESSION CASE NO. 92 OF 1993.

UGANDAPROSECUTOR

VERSUS

ABDU LUPIDO ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU

R U L I N G:

The accused is charged in the 1st Count with murder contrary to sections 183 and 184 of the Penal Code Act.

It is alleged that Abdu Lupido and others still at large on the 3rd day of July, 1992 at Namunsi village in the Mbale District murdered Oliver Nadunga.

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In the 2nd Count, the accused is indicted for murder contrary to sections 183 and 184 of the Penal Code Act.

In the particulars of offence, it is alleged that Abdu Lupido and others still at large on the 3rd day of July, 1992 at Namunsi village in the Mbale District murdered Beatrice Nadunga.

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Under section 64 Trial on Indictment Decree, the following evidence was admitted:

The Medical Officer at Mbale hospital, PW1 on 16.11.92 examined the accused whom he found to be of an apparent age of 30 years with no evidence of any recent physical injuries and mentally well orientated in time, space and person. Medical report tendered as Exhibit P1.

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Another Medical Officer at Mbale hospital, PW2 on 4.7.92 carried postmortem examination on the body of Beatrice Nadunga identified to him by one Robert Mugwa found the body well nourished. Externally the body had a deep wound on the occiput made by a blunt object (hammer) with a lot of force. It had fractured occipital skull.

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Internally there was an intracranial haemorrhage and crashed occipital brain.

Cause of death was brain death intracranial haemorrhage due to trauma. Medical report Exhibit P2.

The witness also examined the body of Oliver Nadunga on the same day identified to him by the said Robert Mugwa. The body was of a pregnant well nourished young lady. Externally it had bruises on the left elbow, left shoulder and had a deep wound on the occiput made by a blunt small object (hammer) with a lot of force. It had also a fractured occipital skull.

Internally there were intracranial haemorrhage and crashed occipital brain. Cause of death was brain death and intracranial haemorrhage due to trauma. Medical report tendered as Exhibit P3.

Evidence of PW3 is that on 3.7.92 at around 9 p.m. she boarded the vehicle being driven by the accused at Mbale Clock Tower for Nakaloke. In the vehicle there were also other passengers. At Namakwekwe the vehicle stopped and some passengers got out but on reaching Nkoma, 2 girls stopped the driver. The vehicle stopped some short distance away and the driver, now the accused together with ton-boy, "wololo" went back and started talking to the 2 girls after which the girls also boarded the vehicle, but sitting at the back of the pick-up.

When the vehicle reached Sironko junction, the accused wanted to leave her there but as it was drizzling the driver took her home and the vehicle returned towards Mbale Town and whatever followed thereafter the witness did not know.

The defence Secretary R.C.1 Nakaloke Zone 2, PW4 testified that on 4.7.92 at around 6.30 a.m. R.C.1 Secretary of the area reported to him that 2 persons were killed and the bodies were on Mbale - Soroti road. He went to the scene and found 2 bodies lying in the middle of the road but did not see any signs of struggle. The bodies had some head injuries which appeared as if they were beaten up. The witness reported the matter to Nkoma Police Post who then visited the scene.

The Police investigating officer, PW5 on 4.7.92 at around 9 a.m. visited the scene and found it had been tampered with in that the bodies of 2 female Africans were removed from the middle of the road and put under a tree by the roadside.

The only explanation given by the R.C. officials of the area was that traffic would be affected. However, the witness requested the R.Cs to put back the bodies in their original positions which they did. He observed that one body appeared pregnant and was dressed in a spotted maternity dress but the other body was dressed in a jacket and there was too much blood at the scene, bleeding from the back of their heads. In addition, the body of the pregnant lady had a bruise on the left elbow and with another bruise on the left shoulder.

Robert Mugwa, a brother in-law identified the body of the pregnant lady as that of Oliver Nadunga and also identified the body of Beatrice Nadunga as the cousin sister of Oliver Nadunga. Thereafter the witness drew the sketch plan but which was not tendered in court. However photographs of the scene were tendered for identification only.

As investigations continued, 12 suspects including the accused were arrested in connection with this case. Whatever happened to 11 suspects the court was not informed.

In the light of all that the learned defence Counsel relying on the principles laid in Bhatt Vs: R (1957) EA 332, submitted that in the instant case, the prosecution has not established a prima facie case warranting the accused to be put on his defence and should be acquitted under section 71 (1) Trial on Indictment Decree. It is also submitted that the only feeble evidence pointing a finger at the accused is that the 2 girls boarded his vehicle on the fateful night but that alone is mere speculation which is not proved beyond reasonable doubt.

On the other hand, the prosecution contends that a prima facie case is established. Evidence of PW2 and PW5 including photographs prove that Oliver Nadunga and Beatrice Nadunga are dead and that their death was caused with malice aforethought.

As to whether it was the accused who caused their death, the prosecution relies on circumstantial evidence in that the accused was last seen in the company of the dead girls on the fateful night.

Evidence on record is that PW3 saw 2 unknown ladies board the vehicle driven by the accused at Nkoma on the fateful night but she does not specifically say that those were the girls whose bodies were found dead on Mbale - Soroti road.

Even if she had indentified the bodies as those of the ladies she had seen boarding the vehicle she used the previous night, that in itself alone is not conclusive evidence that it was the accused who murdered them. Moreover that explains the reason why the Police in the first place had arrested 12 suspects. In addition, evidence of PW4 and PW5 is that no signs of struggle were seen at the scene where the dead bodies were found. The Police investigating officer, PW5 had formed the opinion that the ladies were killed somewhere and their bodies dumped on Mbale-Soroti road.

In a case depending exclusively upon circumstantial evidence, the court must, before deciding upon a conviction, find that the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt: Simoni Musoke Vs: R (1958) EA 715. In the instant case, this is not the case and any reasonable tribunal properly directing itself on the facts and law cannot convict the accused even if he chose to keep quiet.

In the premises, the prosecution has not established a prima facie case against the accused warranting him to be put on his defence and under section 71 (1) Trial on Indictment Decree, the accused is hereof acquitted and set free forthwith unless being held for some other lawful grounds.


STEVEN GEORGE ENGWAU

J U D G E

11.10.93.

13.10.93: Accused before court.

Mr. Musiiho for accused & n state brief.

MS Nandawula holding brief for Khiisa for the State.

Ruling delivered in open court.


STEVEN GEORGE ENGWAU

J U D G E