

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT M̄BALE.

CRIMINAL SESSION CASE NO. 269 OF 1991

UGANDAPROSECUTOR

VERSUS

A1: SABAHASHI FRED)
A2: No. 18013 P.C. JOHN KIZZA) ACCUSED

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

J U D G M E N T

The 2 accused persons are indicted for murder contrary to sections 183 and 184 of the Penal Code Act.

It is alleged in the particulars of offence that Fred Sabahashi and No. 18013 P.C. John Kizza on the 20th day of July, 1990 at Bubutu village in the Mbale District murdered Musawa Natto. 5

The Gombolala Chief of Bubutu Sub-County, PW1 on 20.7.90 at about 3 p.m. received in his office 2 suspects including the deceased on the allegation that they had stolen money of the Musamali. The arresting officer was the Defence Secretary Buwetsalo village and the complainant the said Musamali were present. 10

During interrogation the sum of shs.20,000/- was recovered from the person of the deceased who revealed that the Defence Secretary had given him 3 strokes of the cane on the buttocks. The other suspect, PW2 apparently was not assaulted. Both the deceased and PW2 promised to raise the balance of the stolen money the following day 21.7.90 and for that PW1 ordered their detention at the Gombolala cells which were controlled at the time by Mobile Police Patrol Unit, MPPU. 15

During the interrogation, A1 who was on duty as the Local Administration askari was present. He was charged with the duty of taking and handing over the 2 suspects to the MPPU detach for safe custody which he did. He took the suspects with a covering letter to that effect from PW1 and handed them to A2 who was in-charge at the material time. 20

On the same day at about 8 p.m. PW1 learnt from CPL Bavamusi that one of the suspects had died in the cells. The witness went there and confirmed the death with great surprise for what might have caused the death. 25

Thereafter he reported the matter to the Police at Butiru Police Post and also at Lwakhakha Police Post. He ordered the arrest of A1 and he was arrested.

Evidence of PW2 is that he was one of the 2 suspects who stole the money of his father. On 20.7.90 at around 3 p.m. the R.C. officials of the area took them to PW1 under arrest. The Defence Secretary had caned the deceased about 4 strokes but as for him, he was not assaulted. They accepted stealing the money and it was him who informed PW1 that some of the stolen money was in the person of the deceased and shs 20,000/- was recovered. Thereafter A1 took them and they were detained in the cells.

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After about 5 minutes, A1 and A2 removed them from the cells and started beating them seriously. Their hands were tied and were made to lie down on their stomachs. Both A1 and A2 used sticks and a handle of a hoe in assaulting them. They were beaten from the legs to the heads indiscriminately and interchangeably. After that they were returned into the cells but with much pain and unable even to walk and when the wife of the deceased brought food for them at around 6 p.m. they could not eat because of much pain.

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As they were put in different cells, at around 8 p.m. 2 Policemen went to the cell of the witness and asked how he was feeling but he did not tell them anything except he asked for some drinking water which was never given to him. It was in the morning of 21.7.90 that he learnt from the Police that his co-suspect had died. At about 2 p.m. the Police at Mbale visited the scene and the body of the deceased was taken to Mbale hospital mortuary while the witness was taken to Mbale Police Station. He was again interrogated and detained at Mbale Police Station for about one month before he was released.

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Evidence of the MPPU boss at Bubutu Sub-County Headquarters, PW3 is that on the day of the incident, he had gone out for field work but leaving A2 in-charge of the detach while P.C. Elungat, PW4 in-charge of the cells. On his return at around 6.50 p.m. he went to check on the suspects in the cells as a normal routine. He went in the company of A2 and P.C. Elungat but just as A2 was opening the cell, the witness heard one suspect groaning and saw him kicking the legs.

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When the cell was eventually opened, he rushed in a bid to rescue the situation but it was already too late and the suspect died. Blood was coming out of the nostrils and when the shirt was removed, there were bruises on the back of the deceased.

P.C. Elungat, PW4, P.C. Okello, PW5 and A2 never told the witness what had happened to the deceased and even declined to tell him the conditions in which the suspects were brought to the cells. Even when PW4, PW5 and A2 went with the witness and PW1 to report the matter at Lwakhakha Police Post, none of them gave details of what had actually happened to the deceased. However, on 21.7.90 at around 6 a.m. during fall-in parade, the witness discovered that A2 was missing and the wife gave information that A2 had left for unknown place at around midnight. It was from further interrogation that P.C. Elungat and P.C. Okello revealed that the deceased and PW2 were manhandled by A1 and A2.

P.C. Elungat, PW4 admits that on the day in question he was in-charge of the cells but at around 3 p.m. he went to Munamba trading Centre to buy some drugs as he was not feeling well. He took about 10 minutes to go and return when the 2 suspects were not brought into the cells. On his return he found A1 and A2 torturing the 2 suspects by beating and kicking them. He saw A2 beat the deceased with a stick the size of a baton around the back and the buttocks. He also saw A2 kick the deceased several times with the Police jungle boots.

On inquiry the witness learnt that both A1 and A2 were torturing the 2 suspects on the allegation that they were thieves who were to be disciplined. The deceased was in a very weak condition but PW2 was fair. When PW4 and PW5 appealed to both A1 and A2 to stop torturing the suspects they positively responded and returned them (suspects) into their respective cells.

On the same day at about 7 p.m. PW3, PW5, A2 and the witness went to check the conditions of the suspects only to find that one of them had died. However, he admits that he never told his boss, PW3 and Lwakhakha Police that A1 and A2 were responsible for the death of the deceased on the ground that subsequent investigations would reveal.

Whereas it is on record that nobody actually saw any of the 2 accused persons hit the fatal blow but it is not disputed that they participated in assaulting the deceased. There is no evidence to show that the deceased ever fell on any hard surface. The only evidence is that the deceased was assaulted which negates injury by other means. Injuries described by medical report could not be sustained by groaning and kicking legs which is a process of death. Nobody said the deceased was knocking his head on something hard.

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There is no provocation in the instant case anywhere. The so-called disciplining as a method of interrogation instead of keeping the suspects in safe custody, was unlawful act and each of the accused is liable for the fatal blow. A1 was at the scene according to PW2, PW4 and PW5. He never went anywhere as he claims. He also lied when he said that he made the report with PW1 to the Police at Butiru Police Post because PW1 so denied. His conduct is that he ran away for sometime from the scene until his arrest the following day after the incident. Similarly A2 ran away from the same but lied when he said he reported the matter to the Zonal Commander at Busia the following day. He was arrested on 31.7.90 and handed to the Police at Mbale Police Station. His conduct similarly points at his guilt in the same way as A1.

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According to the evidence on record, the court finds the 2 accused persons guilty of and convicted them of a lesser cognate offence of Manslaughter contrary to sections 182 and 185 of the Penal Code Act and thereby differs with the opinions of the gentlemen assessors with due respect to them.

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STEVEN GEORGE ENGWAU

J U D G E

26.10.93.

28.10.93: The 2 accused persons present. *
 Mr. Wegoye for A1 on private brief.
 Mr. Dagira for A2 on State brief.
 Ms. Khisa for the State.
 Judgment delivered in open court.

STEVEN GEORGE ENGWAU

J U D G E

28.10.93.

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S E N T E N C E: The 2 accused persons are convicts who were law enforcement officers. The deceased and co-suspect were taken to them for safe custody. The suspects never provoked any of them in any way. They did not attempt even to escape from detention. Torture as mode of interrogation is unlawful and in this case there was no need for it since the suspects accepted stealing the money.

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Court also notes that the 2 accused persons have been on remand since July, 1990, about 3 years and 3 months. All their mitigating factors duly considered. However, this is a sad story where the 2 accused deserve a deterrent sentence in order to instill to others that life is second to none.

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Accordingly each accused is sentenced to 7 years' imprisonment.


STEVEN GEORGE ENGWAU

J U D G E

28.10.93.

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Court: R/A against both conviction and sentence explained to each accused person in the presence of their advocates.


STEVEN GEORGE ENGWAU

J U D G E

28.10.93.

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MOROTO

MISC. CRIMINAL APPLICATION NO. 116 OF 1993
(Original Criminal Case No. MMO 52/93)

LOGIT JUMA APPLICANT
VERSUS
UGANDA RESPONDENT

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

R U L I N G:

The accused is indicted for defilement contrary to section 123 (1) of the Penal Code Act. He was arrested and charged with that offence since July, 1993.

Under section 14A, Act 5 of 1985 bail application of this nature requires exceptional circumstances before it can be granted. In the instant case, the Counsel for applicant conceded and prayed for the application to be struck off. 5

In the premises the application is misconceived and is hereof struck off accordingly. 10


STEVEN GEORGE ENGWAU

J U D G E

8.11.93.