

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL SESSION CASE NO. 79/94

UGANDA PROSECUTION

VERSUS

JOHN BOSCO NAMULYA ACCUSED

BEFORE: THE HONOURABLE JUSTICE C. M. KATO

J U D G M E N T

The accused person John Bosco Namulya is indicted for murder c/s 183 of the Penal Code Act. The indictment alleges that Cpl. John Bosco Namulya on 24/12/1992 at Nabwigulu remand prison in the district of Kamuli murdered Kaheru Buyinza. The accused pleaded not guilty to the indictment.

It is the law of this land that the duty is upon the prosecution to prove its case against the accused beyond reasonable doubt. The accused has no duty of proving his innocence: Woolington v. DPP (1935)CA 462 and Okathi Okale v. Republic (1965)EA 555 at page 559. It is also the law that an accused person should not be convicted on the weakness of his defence but he should be convicted on the strength of the case as proved by prosecution: R.v. Israil Epuku s/o Achietu (1934)1 EACA 166 at page 167. In a case like the present one prosecution is enjoined to prove beyond reasonable doubt that a human being was killed, that the killing was unlawful, that there was malice aforethought as defined in sec. 186 of the Penal Code Act, that the accused participated directly or indirectly in that killing.

It is not in dispute that a prisoner by the name of Kaheru Buyinza is dead, it is not also in dispute that his death was caused by shooting, what is in dispute is whether or not the shooting which resulted in his death was accidental or intentional. It is the case for prosecution that the death of the deceased was unlawfully caused but the case for defence is that the death of the deceased was accidentally caused. In the case of: R. v. Gusambizi s/o Wesonga (1948)15 EACA 65 it was stated that in all homicide cases death is said to have been unlawfully caused unless it was accidental or it was authorised by law. In the present case the prosecution called witnesses who included PW2, PW3 and PW5 who testified as to what happened on that fateful evening. According to them the accused collected his gun from his house and went to where the prisoners

were squatting waiting for their rations where he opened fire and shot one of the prisoners called Kaheru; but according to the accused he picked the gun from his house in order to hand it over to one of the warders who was on duty that evening but as he was moving towards the prisoners the trigger got caught in his pocket and the bullet went off thus hitting the deceased. According to him that was something accidental.

It is my view that what happened that day was not accidental but was something which resulted from the gross negligence of the accused person in the manner in which he decided to handle his gun. His negligence may be found in 3 aspects.

In the 1st aspect he ought to have checked the chamber of his gun to find out whether or not there was a bullet, his failure to look the gun when going to the public was yet another act of gross negligence and the 3rd aspect of his negligence was the improper manner in which he was handling the gun, if he had been handling the gun in the generally accepted manner by either pointing it upwards or downwards the shooting of the deceased would have been avoided even if the bullet went out unnoticed.

I find that the deceased's death was caused by an act of carelessness or negligence on the part of the accused person thus making the death of the deceased unlawful.

The next point to be considered is whether or not the accused, who does not deny having killed the deceased, had malice aforethought. In the case of: Lokoya v. Uganda (1968) EA 332 at page 334, it was stressed that prosecution has a burden of proving malice aforethought in all cases of murder. In deciding whether or not malice aforethought has been established the court has to take into account such matters as nature of weapon used, the number of injuries inflicted and the part of the body where such injuries were inflicted and the conduct of the accused before and after the incident: Tubere s/o Ocen v. R. (1945) 12 EACA 63. In the present case there is no doubt about the fact that the deceased died of a gun shot wound inflicted upon him below the nipple. A gun is a deadly weapon and the part where it hit was very sensitive part of the body but that alone does not necessarily mean the accused intended to cause that injury.

...../3

Considering all the circumstances surrounding this case it would be unsafe to say that the accused acted with any malice aforethought. His conduct before and after the incident indicates that he was innocently acting but he was careless in his way of acting. The words stated by PW3 that he was going to kill a person cannot be true since there was no reason why the accused should have liked to kill anybody especially this prisoner whom he did not know. I agree with the accused when he says that when he went to pick the gun he wanted to pass it to the person who was going to be on guard duty on that night but it cannot have been his intention to use the gun for shooting anybody. As I have said earlier the accused was careless or negligent but had no intention of causing death of any person. Prosecution has failed to prove malice aforethought to my satisfaction.

In these circumstances I find the accused not guilty of murder and I do acquit him of that offence but I find him guilty of manslaughter as advised by the 2 assessors who assisted me in this case. I accordingly do convict him of manslaughter under section 182 of the Penal Code Act and section 86 of the T.I.D.

C.M. KATO

JUDGE

20/12/1994

