Hon. Mr. justice J.W.N. Tsekooko.

reckless driving Rtmz

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CRIMINAL APPEAL NO. 10 OF 1993.

MOSES PAMBA .... APPELLANT

VERSUS

UGANDA .... RESPONDENT

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

J U D G M E N T:

In the Chief Magistrate's Court at Mbale, the appellant/accused was charged with and convicted of Causing death through reckless driving contrary to sections 116 (1) and 138 (2) of the Traffic and Road Safety Act, 1970.

It was alleged that on the 30th day of July, 1993 at about 1530 hours along Mbale - Tororo Road, in the District of Mbale, the appellant caused the death of Ben Mushikom by driving motor vehicle registration No. UVX 660 Mini bus white in colour, recklessly.

In that count, the appellant pleaded guilty and was convicted accordingly. He was sentenced to three years' imprisonment. In addition he was disqualified from holding or obtaining a driving permit for the next three years.

In the second and third counts, he was charged with reckless driving contrary to sections 126 and 138 (2) (d) and 65 (1) and no driving permit contrary to sections 54 (1) and 185 (1) of the Traffic and Road Safety Act respectively. He too pleaded guilty and was convicted and sentenced to one week imprisonment on each count, sentences to run concurrently.

In his first ground of appeal, it is submitted that the learned Chief Magistrate erred in law in passing the sentence that was excessive and harsh and that the same ought to be set aside and or reduced. He was first offender who readily pleaded guilty and did not waste court's time.

The second ground is that the trial learned Chief Magistrate erred in disqualifying the appellant from holding or obtaining a driving permit for the next three years being a first offender.

The learned Counsel for the respondent conceded that the State does not support the conviction and sentences passed. Although the appellant pleaded guilty, on perusal of the records facts which the appellant admitted did not disclose the ingredients of the offences with which he was charged.

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In the first count, facts show that a person was knocked and died but the manner in which the appellant drove the vehicle was not disclosed. Similarly, in the second count of reckless driving the manner of driving was not disclosed. It is not disclosed that the appellant drove the vehicle at high speed or in a zigzag manner or that he was trying to overtake without caring whether he could injure anybody.

In the third count, it was not put to the appellant that he was driving without a valid permit. In the premises it was submitted that conviction therefore was null and bad in law and retrial be ordered.

After perusing court records, I'm in agreement with the view held by the learned State Counsel for the respondent. This is a fit case for a retrial order to be made and it is hereof ordered, accordingly to be heard by another Magistrate with competent jurisdiction.

STEVEN GEORGE ENGWAU

JUDGE

24.3.94.

24.3.94 - Appellant absent.

Ms Nandawula for respondent present.

Ruling delivered in open court.

STEVEN GEORGE ENGWAU

JUDGE

24.3.94.

SGE/eg

Hon. Mr. Justice
J.W.N. Tsekooko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI.

CRIMINAL SESSION CASE NO. 15 OF 1993.

UGANDA .... PROSECUTOR

VERSUS

EROKU Alias ERIMOS WILLIAM ... ACCUSED

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

S E N T E N C E.

The accused was originally indicted for murder contrary to sections 183 and 184 of the Penal Code Act.

The State accepted his plea of guilty to a lesser offence of Manslaughter contrary to sections 182 and 185 of the Penal Code Act.

Both the prosecution and the defence have conceded that the accused is a first offender. He is 33 years old and a Teacher by profession. He has been in remand custody for 3 years and 3 months.

Vividly, the background of the case is that, an N.R.A. soldier pregnated the wife of the accused. The accused was detained by the N.R.A. soldiers on the allegations that he was a rebel. Even another soldier concubined the second wife of the accused while still in detention.

On the fateful day, the N.R.A. soldiers escorted the accused to bury his in-law where he met his wife. He asked her why she refused to visit him in the military detention but rudely she said the accused also failed to rescue her when she was also detained by the soldiers.

When asked about the child, the wife rudely replied that was none of her business. In the light of all that the accused threw his fist wanting to box the wife but the wife used the deceased child as a shield and the fist landed on the unfortunate child.

The child did not die instantly, the accused got somebody to treat it but after eleven hours, the child died.

This is a case where there is sufficient provocation not only by the wife who rudely answered her husband but also by getting a child outside marriage by a soldier who had detained the accused.

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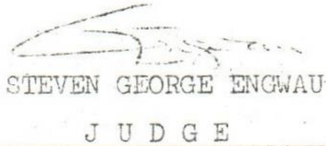
In my view, this is a case where leniency is necessary. Moreover the accused did not waste court's time by readily pleading guilty.

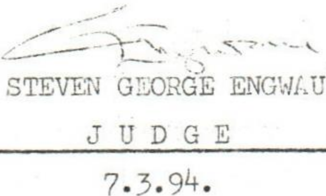
Accordingly, the accused is sentenced to 3 months' imprisonment.



STEVEN GEORGE ENGWAU

JUDGE

Court - R/A against sentence explained.



STEVEN GEORGE ENGWAU

JUDGE

7.3.94.

SGE/eg

Hon. Mr. Justice
J. W. N Tsekooko.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

MISCELLANEOUS APPLICATION NO. 9 OF 1993.

(From Soroti Criminal Case No. MS 11 OF 1993)

NO. RA 92222 CPL OBOTE CHARLES .....APPLICANT

VERSUS:

UGANDA ....RESPONDENT

No case

RULING:

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

The applicant/accused is charged in the first count with rape contrary to sections 117 and 118 of the Penal Code Act. In the second count he is charged with attempted rape contrary to sections 370 and 119 of the Penal Code Act. The complainants in both counts are defferent but allegedly the offences appear to have been committed on the 1st day of January, 1993 at Ocero village in the Soroti District.

The applicant first appeared in court for the above allegations on 5.1.92, a period of about 13 months by the time this application was fixed for hearing. He argued his application in person that he is not afraid of being prosecuted because his conscience is clear and free on the matter but the only worry is that he is kept on remand for so long. He contends that indicates the Police have failed and/or neglected to complete their investigations.

In other ground of his application, the applicant argues that his life is now in danger as he is suffering from T.B. He would get better treatment if released on bail. Now his health has deteroriated due to lack of better treatment and bad conditions in the prison.

In addition, he argues that he has a family of ten dependants including the children of his late brother to look after but because of his prolonged detention without trial his dependants who only rely on him are now also suffering. For all those grounds the applicant prays for his release on bail pending his trial if any.

The learned Counsel for the respondent/State brushed the above grounds of the application with an objection that the applicant is charged with capital offences and unless he proves exceptional circumstances the application should be dismissed. Illness alleged should be supported with medical report which is not before court at the hearing of this application.

Under Act 5 Trial on Indictments (Amendment) Act of 1985, section 14 A (1), it is provided among other things that a person accused of an offence triable only by the High Court or an offence relating to acts of terrorism, cattle rustling or an offence under the Firearms Act punishable by a sentence of imprisonment of not less than ten years, shall not be granted bail unless he

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proves to the satisfaction of the court that exceptional circumstances exist justifying his release on bail and that he will not abscond when released on bail.

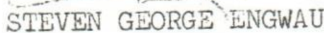
Under sub section (2) of the Act, exceptional circumstances are defined as grave illness certified by a Medical Board constituted by the Chief Medical Officer of being incapable of adequate medical treatment while the accused is in custody; or remand in custody for a period of fifteen months or more unless the accused has already been committed to the High Court for trial, or a certificate of no objection under his hand, from the Director of Public Prosecutions; or the infancy or advanced age of the accused.

In considering the application, there is no medical report that the applicant is incapable of adequate treatment while in custody. All what the applicant's contention is that he would get better treatment if released on bail. This line of argument may be true but falls short of statutory requirement which is mandatory.

The applicant has been on remand for a period of about thirteen months which again falls short of the mandatory statutory period of fifteen months or more but is not yet committed to the High Court for trial. It is my well considered opinion that if the applicant is not committed to the High Court for trial within two months, he qualifies for his release on bail as by law required.

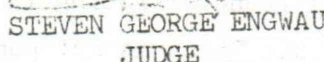
In addition, the applicant did not intimate to court that he will not abscond when released on bail nor has he provided his fixed place of abode within the jurisdiction of the court and/or any substantial sureties in court to ensure his return for trial if any. He has also not provided any certificate from the D.P.P. of no objection to his release on bail. From his apperance in court, he cannot plead infancy or being a person of advanced age.

Taking all that this bail application cannot be granted and it is hereof dismissed.



STEVEN GEORGE ENGWAU
JUDGE
15.3.94.

15.3.94: Applicant before court.
Ms Nandawula for the respondent.
Ruling delivered in open court.



STEVEN GEORGE ENGWAU
JUDGE
15.3.94.

SGE/eg

Hon. Mr. Justice J.W.N. Tsekooko.

THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA.

HOLDEN AT SOROTI.

CRIMINAL SESSION CASE NO. 238 OF 1993.

UGANDA .... PROSECUTOR

VERSUS

EPAKU FAUSTINO .... ACCUSED

BEFORE: THE HONOURABLE MR. JUSTICE STEVEN GEORGE ENGWAU

R U L I N G:

The accused is indicted for defilement contrary to section 123 (1) of the Penal Code Act. It is alleged that on or about the 1st day of October, 1991 at Soroti Senior Quarters in the Soroti District, Epaku Faustino had unlawful carnal knowledge of Deborah Amoding a girl under the age of 18 years old.

The essential elements of that offence include the following:-

1. THAT, the victim is under the age of 18 years old.
2. THAT, there was penetration however slight.
3. THAT, completion of sexual intercourse and ejaculation are irrelevant and
4. THAT, the sexual intercourse was done with or without consent.

It is the duty of the prosecution to prove the above ingredients beyond reasonable doubt.

According to the evidence so far adduced by the prosecution, the victim of defilement, Deborah Amoding states that she is now 15 years old. At the commission of the alleged offence, she was only 13 years old. She testified that she was born in 1976. She is totally illiterate but got her age from her father who usually tells her every year. In fact last Sunday, the 13th day of February, 1994 she was informed by her father that she is 15 years old this year.

If her testimony about her age is to be believed, from 1976-1991 when the alleged offence was committed, she ought to have been 15 years old. In her testimony she said by then she was only 13 years old. However, at the trial she said she is 15 years old whereas by now, 1976 - 1994 she ought to be about 18 years old. However, she stuck to her gun that she is 15 years old.

Taking into account that the victim is illiterate, the prosecution ought have called for medical evidence of a doctor or call on any parent especially the father whom the victim says often tells her of the age. Even when the doctor, PW1 examined her on 2.10.91, he never took trouble to give his opinion about her age. When the court looked at the victim, she looked a girl of 20 years old or slightly older than that.

It is my well considered opinion that the prosecution has not proved beyond reasonable doubt that Deborah Amoding is a girl under the age of 18 years old.

As regards penetration, her evidence is corroborated by medical evidence to which there is no need to go into in details. Similarly there is evidence to effect that she was sexually abused without or her consent. Her evidence and that of the doctor gives guidance.

Be that as it may, it is the duty of the prosecution to prove each and every ingredient of the offence with which an accused person is charged beyond reasonable doubt. In the instant case, the prosecution has failed to establish that the victim is a girl under the age of 18 years old.

In the premises, the prosecution has failed to establish a prima facie case and accordingly under section 71 (1) of the Trial on Indictment, the accused is hereof set free unless being lawfully held for some other crime.

STEVEN GEORGE ENGWAU

JUDGE

15.2.94.

SGE/eg