THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

HCT-04-CR-SC-0267/2001

UGANDA……..PROSECUTOR

VERSUS

OCEN S/O EYOU……ACCUSED

BEFORE THE HON. AG. LADY JUSTICE FAITH MWONDHA

RULING

The accused persons were indicted on a charge of murder C/S 183 and 184 of the Penal Code Act.

The particulars as alleged by the Prosecution were that the accused person on the 25/3/99 at Ongopai village in Katakwi District murdered one Opio S/O Eyou.

As usual the Prosecution has always the burden to prove the case beyond reasonable doubt in order to bring the guilt of the accused person home.

There are four ingredients which the Prosecution has to prove to that standard.

(1) That the deceased is actually dead.
(2) That the death was due to unlawful act or omission.
(3) That the accused participated.
(4) That the accused had malice aforethought.

The prosecution brought three witnesses for that matter. PW1 WAS A Police Officer who recorded the charge and caution statement. PW2 was an Officer attached to the Local Administration Police in Katakwi and for him he just received the accused together with the axe

and the yoke. PW3 was the Parish Chief, who just told Court hearsay to the effect that, the mother of the deceased who is at the same time the mother of the accused went to LC1 Chairman told him he went to the Clinic he found when the deceased had died and he saw him dead.

There was no evidence to put the accused at the scene of crime. All the witnesses were merely told. Even if the confession statement was there, it lacked the support of the eyewitnesses at the scene of crime. This means that the main essential ingredient i.e. of participation of the accused was too far from being proved.

And as it was held in the case of Bhatt – vs – Republic [1957] E.A 332 and I quote:-

> "The question whether there is a case to answer cannot depend only on whether there is some evidence irrespective of its credibility or weigh, sufficient to put the accused on his defence.
>
> A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence."

….. at least it must mean one on which a reasonable tribunal, properly directing it mind to the law and the evidence could convict is no explanation is offered by the defence.

I am satisfied that the Prosecution fell too short of establishing a case to answer for the accused person. I find the accused not guilty and he is acquitted as under section 71(1) of the Trial on Indictments Decree and should be set free unless is he is being held on other lawful charges.

FAITH MWONDHA

A.G. JUDGE

7/05/2002