

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CR-SC-0192/2002

UGANDA.....PROSECUTOR

VERSUS

LABU MICHEAL.....ACCUSED

BRFOR THE HON LADY JUSTICE FAITH MWONDHA

JUDGMENT

The accused was indicted on a charge of murder c/s 183 and 184 of the Penal Code Act. It was alleged by the Prosecution that Labu Micheal and others still at large on the 27th of July 2001 at Kapkwirwok Trading Centre in the Kapchorwa District murdered No. 28620 PC Wakalanga Richard.

As usual like in all criminal cases the prosecution has always the burden to prove the case beyond reasonable doubt in order to bring the guilt of the accused person home.

The accused has no obligation to prove his innocence.

There are four ingredients which have to be proved beyond reasonable doubt:-

- (1) That the deceased is actually dead.
- (2) That the death was caused unlawfully.
- (3) That there was an intention to kill or malice aforethought.
- (4) That the accused participated in the commission of the offence.

The Prosecution relied on the admitted evidence under S.66 of the T.I.D of the post mortem medical report by Dr. Bukoma of Kapchorwa Hospital and three witnesses.

As far as the first ingredient was concerned the post mortem report, the evidence of PW1, and PW3 proved beyond reasonable doubt that the deceased was dead. On the 2nd ingredient the evidence contained in the post mortem report, that of PW1 and that of PW3 showed that the death was not justifiable or accidental. For the law as stated in a host of cases in that every homicide is presumed unlawful unless if it is justifiable or accidental or excusable see ***Gusambizi Wesonga [1948] 15 EACA 65***

The evidence show that the deceased was killed in cold blood and there was no excuse for the same or justifiable. For the 3rd ingredient malice aforethought is deemed to be established as per S. 186 of the Penal Code Act. And it is also inferred from the nature, quality of injury, the part of the body where the injury is inflicted and the nature of weapon used. The conduct of the accused before and after the killing.

See ***Uganda vrs Kato and three others [1976] HCB 204***

From the evidence of PW3 and PW1 plus the post mortem report it clearly shows that the weapons used i.e. the panga and the guns and the areas where the injuries were inflicted there must have been an intention to kill. The defence has conceded also to the proving beyond reasonable doubt of those ingredients. The only ingredient that was contested was that of participation.

This is a case which depended entirely on correct and proper identification to exclude any possibility of error. I had mentioned it to the Assessors that there is need of caution when considering a conviction on such evidence particularly when the conditions are difficult.

The law on this kind of identification was long stated in many cases about subjecting this evidence to test of whether the evidence can be accepted as free from the possibility of error. And it was further stated in the case of ***Abdulla Nabulere and 2 others vrs Uganda Cr. App No. 12/81*** that the Judge should examine closely the circumstances the identification came to be made particularly the length of time, the distance from where the witnesses were observing the accused, the light present and the familiarity of the witnesses with the accused.

All these got to the quality of identification if the quality is good the danger of mistaken identity is reduced but the poorer the quality the greater the danger.

Considering the evidence on record as far as identification is concerned; PW1 said that he and his two colleagues PW3 and the deceased booked out at 5.00 p.m. to go to the Trading Centre to arrest someone who had been accused of malicious damage to property. Each of them was armed. That one Marut S/o Yosia came and cut the deceased with a panga. That the deceased shot Marut dead. He said that the accused came took the gun from the deceased and shot him on the chest several bullets. That other people came shooting and took cover in the calmet after running away. That, that was around 7.30p.m and he managed to recognize the accused because there was moonlight. That it was becoming dark. He said that the deceased was cut by Marut at around 7:50 p.m. and that Marut cut the deceased before he was shot by the accused. He said that the gunshots were from the other side of the road. That he also knew the accused before because he was a common person at Police. PW2 said that he heard that a Policeman had been shot. That he went to the scene where he found the two bodies i.e. the deceased Policeman and that of one Marut. That he learnt that it was Labu (accused) who shot him and ran with the gun. That he then went to mobilize soldiers. As he was riding the motorcycle, he met Labu (accused) with a gun and asked him if the witness was still looking for him. That was the following day. That he recovered the gun from him. That it was AK 47-SMG 56-3685752. The gun was tendered for identification. But there was no other evidence to show that this was the gun which the deceased booked away with.

That he handed this gun to Police. He said he got the gun at around 3:00 p.m.

PW3 was a colleague of the deceased like PW1. He said they booked out to go and arrest a malicious damage suspect from Police at 7:30 p.m. and it was becoming dark. That on reaching the trading Centre the suspect was arrested and it is him who hand cupped him personally. That the suspect made an alarm and a group of 50 people came armed with pangas and guns. That the group fired in the air. He said that one Marut who was among the group cut the deceased, that the deceased shot him. That among the group he identified the accused. That it was a bit dark coming to 8:30 p.m. That it had become dark. That he rolled down towards the coast at the edge of the cliff. That he saw the accused in a distance of about 50 meters and observed him for 10 minutes. That he had known the accused before since he escaped in one of the rape cases he was arrested for from Police. He said it was at about 7:30 p.m. he said there were many people who had pangas and guns. That after shooting the deceased he couldn't see the accused anymore.

That gunfire was rocking. He said that the bullet which killed from the direction where the accused was standing and there were many people who had guns and pangas. He said he was at the lower side of the hill and the mob was from the upper side.

When this evidence is analyzed, I find that it contradicts itself. PW1 said they booked out at 5.00 p.m. while PW3 said they booked out at 7:30 p.m. when it was becoming dark. PW1 in his testimony much as he said that Marut cut the deceased first, he said he cut him at 7:50p.m. when the deceased was shot by the accused at 7:30 p.m. If I believe PW1's story then it would mean that the deceased was killed at 7:30 p.m. and this would be in consonance with the medical evidence in the post mortem report to the effect that the cutting was done after the deceased had died. If I were to believe PW2's evidence it would mean that actually the deceased was killed immediately after booking out and if that be the case, then PW1 and PW3 knew better who actually killed the deceased but certainly Labu (accused). From PW1's testimony its clear that the alleged cutting of the deceased by Marut was done before the group came and in fact, it was not even at the scene, it was on the other side of the road, when these two people PW1 and PW3 decided to take cover and escape.

When I consider the light available it is only PW1 who talked about it, PW3 says nothing about whether there was moonlight or not. And yet he was always saying that it was becoming dark. The only weapon the two had in identification was that the accused was a common person in the Police. I am of the view that this is not enough for me to believe that, they were familiar with him. The distance where PW3 was observing the accused from of 50 meters given the conditions that it was becoming dark, it is doubtful if one could really have a correct identification free from any possibility of error. He said he was fearing for his life he couldn't even shoot in the air and he must have been busy to see that he moved away from the scene. This makes his assertion that he observed the accused for ten minutes not believable. PW2's testimony would have been probably useful if there was another evidence which showed that the gun he recovered from Labu was actually the gun that the deceased had booked out with. Without that even, that testimony is left hanging since PW3 was not at the scene of crime at the material time.

The lady and gentleman assessor have advised me to find the accused person not guilty as the last ingredient of participation was not proved.

I agree with them for the reasons already given in this judgment. The prosecution failed to prove beyond reasonable doubt. He is therefore not found guilty. He is acquitted accordingly.

FAITH MWONDHA

JUDGE

12/03/2004

12/03/2004

Accused present

Alex for State

Wesamoyo for defence

Judgment delivered in Open Court.

Right of Appeal Explained

FAITH MWONDHA

JUDGE

12/03/2004