THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CRIMINAL SESSION CASE No.0024 OF 2005; HELD AT KYENJOJO

UGANDA …… PROSECUTOR

VERSUS

LUKWAGO RONALD …….. ACCUSED

BEFORE: - THE HONOURABLE MR. JUSTICE CHIGAMOY OWINY – DOLLO

JUDGMENT

The accused, Lukwago Ronald, has been indicted in this Court for the offence of aggravated robbery, in contravention of sections 285 and 286(2) of the Penal Code Act.

In the particulars of the indictment, it is alleged that on the 11th day of April 2004, the accused, and one Matovu Deo who, at the time of the trial was at large, stole U. shs. 600,000/= (Six hundred thousand only), and a scientific calculator, both properties of Bennie Mary Kisembo Rusoke; and that immediately before, at the time of the robbery, and immediately after the said robbery, the accused used deadly weapons, to wit, an axe and a panga, on one Tugume Seregio.

The accused took plea, flatly denying the charge which the Court had read out and explained to him; and which he stated he had understood. The Court accordingly entered the plea of "Not Guilty" for him; and a full blown trial ensued whereat the prosecution called three witnesses in its bid to discharge the burden which lay on it to prove beyond reasonable doubt, and thereby establish the guilt of the accused on each of the four ingredients comprising the offence of aggravated robbery; as charged. These ingredients are, namely:-

(i) Theft of property.

(ii) Actual use of, or threat to use, violence during the perpetration of the theft.

(iii) Actual use of, or threat to use, a deadly weapon either immediately before, or at the time of perpetrating the theft, or immediately after perpetrating the theft.

(iv) The participation of the accused person in the perpetration of the said theft.

Before the prosecution called its witnesses, I carried out a preliminary inquiry in accordance with the requirements of the Trial on Indictment Act. The prosecution and defence agreed on certain facts, and I accordingly prepared a memorandum of agreed facts which was executed in accordance with the law. The facts agreed to were:

(i) The report of the medical examination carried out on the victim of the said robbery at Kyenjojo Health Sub-District Centre, enumerating and classifying the various injuries suffered by the victim, and which was exhibited and marked as **CE1**.

(ii) A statement by the police officer who arrested the accused from Mubende Town, which was exhibited and marked **CE2**.

(iii) And finally, the report of the medical examination carried out on the accused at Kyenjojo Health Sub-District Centre, which was exhibited as **CE3**.

For proof of theft, it was principally the testimony of Bennie Mary Kisembo Rusoke - (PW2) which the prosecution depended on. Her account was that on the fateful Easter day of 11th April 2004, upon her hurried return home on learning that some grave harm had befallen her nephew – PW1, whom she had earlier left behind in good health, she found her bedroom door wide open, its padlock broken, with the bolt dangling freely.

Her bedroom was in a sorry state, with the bed sheets, pillows, and blanket thrown about in a disorganised manner. She discovered that her money in the sum of U. shs. 600,000/= (Six hundred thousand only) and her scientific calculator, which she had left on a table in her bedroom when she left for church earlier that morning, had been taken.

PW1, whose testimony I shall advert to while addressing the ingredients of violence and use of deadly weapon, testified that before he fell unconscious he had seen one of his two assailants in the process of breaking PW2's bedroom door with a hoe. I find PW2 a witness of truth. The disorderly state in which she found her house - the broken bedroom door, the beddings dismantled and thrown about - was clear manifestation of the work of someone who had

obviously gained entry therein with an ill intentioned design. The forceful access to the bedroom and the loss of the two items therefrom are clearly intricately linked.

In ***Sula Kasiira vs Uganda S.C. Crim. Appeal No. 20 of 1993,*** the Supreme Court stated the legal position in Uganda, regarding what amounts to the crime of theft, as follows:-

> *"There must be what amounts in law to an asportation (that is carrying away) of the goods of the complainant without his consent… The removal, however short the distance maybe, from one position to another upon the owner's premises is sufficient asportation… "*

From the evidence adduced by the prosecution, the consent of PW2 was not sought, leave alone obtained, in the taking and asportation of the money in issue. Theft as an ingredient of the offence charged, as rightly conceded by defence counsel, has clearly been proved to the standard required by law.

On the allegation of use of violence in the perpetration of the theft, PW1 adduced direct evidence. He gave a lurid account of how one of his assailants attacked him without any provocation or warning; twisted his neck, sank fingernails into the upper part of his throat, caused the axe to injure his right thumb, and strangulated him into unconsciousness.

Corroboration of this evidence of violence is in the report of the medical examination carried out on the victim –PW1; admitted in evidence as exhibit **CE1**. The examination established injury on his neck which was classified as grievous harm; bruises on his cheek and on the base of his tongue, both classified as harm; and the impairment of his speech, increased muscle tone, and decreased muscle power.

Further corroboration of that evidence of violence is in the testimony of PW2 who found her nephew – PW1 lying lifeless, as it were; with blood flowing from his mouth and nose, his neck and tongue swollen; and the living room in a state of total disarray, with several utensils broken, littering the room, and bloodstained. This corroborated the direct evidence of PW1 that he had, immediately before the perpetration of the theft, suffered the ordeal of a ferocious fight with one of the assailants, in which he sustained injuries named above; and was overpowered, and rendered unconscious.

These testimonies are proof of the actual use of violence in the course of the perpetration of the theft. This ingredient too, defence counsel graciously agreed, had been established by the prosecution in accordance with the law. The remaining two ingredients, namely: the threatened or actual use of a deadly weapon, and the participation of the accused were however irreconcilable bones of contention between the prosecution and the defence. Mr. Kateeba, counsel for the accused, contended quite strongly that these last two ingredients had not been established beyond reasonable doubt.

Regarding the use of a deadly weapon, there was the direct evidence of PW1 whose gripping narrative of the attack and injuries inflicted on him, inclusive of the one caused by the axe the control of which they were fighting for, is set out herein above. This violence occurred in 2004. At the time, the law on 'deadly weapon' as contained in the Penal Code Act, provided as follows:-

S. 273 (3). In sub section (2), "deadly weapon" includes any instrument made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death.

After the close of the case for both sides; and after counsels had made their final submissions, and the matter had in fact come up for my summing-up to the assessors, the prosecution applied to amend the indictment by including a panga alongside the axe as the deadly weapons used or threatened to be used on the victim – PW1.

Counsel for the defence however vehemently protested this late amendment; urging Court to disallow it on the grounds that albeit the law allowing for amendment of an indictment at any stage of the trial, prior to the delivery of judgment, to do so at this stage would occasion grave injustice to the accused; and that the medical report earlier admitted by consent had been so done on the understanding that, therein, the axe was not indicated as having occasioned any grievous harm.

Section 50 of the Trial on Indictment Act, so far as it is relevant to this matter provides as follows:

"50. Orders for alteration of indictment.

(2) Where before a trial upon indictment or at any stage of the trial it is made to appear to the High Court that the indictment is defective or otherwise requires amendment, the court may make such an order for the alteration of the indictment (by way of its amendment or by substitution or addition of a new count) as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required alterations cannot be made without injustice; except that no alteration to an indictment shall be permitted by the court to charge the accused person with an offence which, in the opinion of the court, is not disclosed by the evidence set out in the summary of evidence prepared under section 168 of the Magistrates Courts Act."

In ***Uganda v. Mushraf Akhtar, [1964] E.A. 89***, the appellate Court, agreeing with trial Court which had declined to exercise its discretion to amend the charge after the close of evidence, held that an amendment to the charge as contemplated had not been borne out by the issues at the trial; hence, the accused would not have had the opportunity to make his defence to any such charge.

Further, since the amendment sought would have entailed a major reconstruction of the charge, by formulating two counts of theft of different sums of money, stolen on different dates, the property of an organisation different from the person originally specified in the charge, to permit a reconstruction of the charge of such magnitude, particularly when that discretionary power may be exercised only in cases where it is clear that no injustice to an accused person will result, would have been improper.

In ***R. v. Nyamitare s/o Kachumita [1957] E.A. 281***, the particulars in the charge of murder had not included the word *'murdered…'* and the accused had sought to have it quashed. The trial Court – McKISACK, C.J. declined to quash the indictment; and instead allowed it to be amended, saying at p. 281 (F - G) as follows:

> *"The test is whether the amendment can be made 'without injustice,' having regard to the merits of the case. The authorities cited in* ***ARCHBOLD*** *(33rd Edn.), at p. 54, show that an amendment may not properly be made where it alters the substance of the offence charged."*

I declined to uphold the objection by learned defence counsel, and allowed the amendment, on the ground that the issue of use or threatened use of the panga in the commission of the theft

charged was fully canvassed both during the examination in chief and cross examination of the victim – PW1. The key phrases in the cited section of the Trial on Indictments Act are: *"as the court thinks necessary to meet the circumstances of the case,"* and that it can disallow an application for amendment when: *"having regard to the merits of the case, the required alterations cannot be made without injustice."*

I do not see how it can be said that such an amendment as sought could embarrass or occasion any injustice at all to the accused whose counsel had actually expressly dealt with the issue of the panga in the course of the cross examination referred to herein above. The struggle for the axe with the resultant injuries described by PW1, and the tell– tale findings of PW2 when she returned home, could be likened to a fight between wild cats. That notwithstanding, defence counsel contended that, given that the assailant did not wrench the axe from PW1, he did not take possession thereof; and therefore, it would be wrong to hold that he had either threatened to or actually used the axe on PW1.

The thrust of counsel's contention was that a number of inferences could be made regarding the possible motive of the assailant in struggling to take possession of the axe. He may have understood the potential danger PW1 would pose to them if he were not disarmed of the axe, and were to put it to use against them. On the other hand, counsel conceded, he may indeed have intended to use the axe on PW1 so as to disable him as an impediment to the realisation of the enterprise they were pursuing there that morning.

Justice can only be done to this seemingly problematic issue of the use or threatened use of the axe, that day, on the victim – PW1, by properly appreciating the importance of the axe in the circumstance of the struggle, not in isolation; but as an integral part of the assailant's motive for the brutal and wanton violence that they meted out on PW1; and as well in the destruction of the bedroom door which PW1 partially witnessed.

Finally, the urging by the assailant that his companion pick a panga and harm PW1 with, clearly betrayed his intentions in seeking to wrest the axe from PW1. I find that the axe, a deadly weapon, was certainly an important element in the pursuit of the evil mission of the assailants; which, as I have found above, was the theft of items from PW2's home. It was used by the assailant immediately before committing the crime of theft charged.

If the use of the axe on PW1 as alleged, was contentious, not so for the panga; the threatened use of which against PW1 was only too clear. Both the axe and panga are without doubt, each, instruments made and adapted for cutting; and when used for offensive purposes would, each, most likely cause death. Therefore I am clear in my mind that this satisfies the provision of the law as cited above, regarding the definition of the phrase *'deadly weapon'*. I am in agreement with the gentleman assessor, and do find that the prosecution has proved beyond reasonable doubt that, in furtherance of the theft, the assailants actually used an axe, and threatened to use a panga – both deadly weapons – on the victim; PW1.

As for the identity of the perpetrators of the theft, the prosecution witnesses sought to prove that it was the accused and his companion Deo Matovu, who had, after violently incapacitating PW1 and forcefully entering PW2's bedroom, made off with her money and calculator. However, in view of PW1's testimony that he had been overwhelmed and lost consciousness; and had seen nothing beyond the accused breaking the door of PW2 with a hoe; and further, in view of the account by PW2 that when she returned from church she found her bedroom had been forcefully entered into, ransacked, and her money and a calculator missing, the evidence adduced regarding the identity of whoever committed the theft of these two items was entirely circumstantial, as no one actually witnessed the actual theft.

The principle governing the treatment of evidence which is exclusively circumstantial is that the inculpatory facts against an accused must be incompatible with his or her innocence, and incapable of explanation upon any other reasonable hypothesis than that of guilt; and further, that there must be no co-existing circumstances that would negative the inference of guilt. Authorities abound in support of that proposition of law. Some such cases are: ***Simon Musoke vs. R. [1975] E.A. 715; Sharma & Kumar vs. Uganda; S.C. Crim. Appeal No. 44 of 2000;*** and ***Byaruhanga Fodori vs. Uganda, S.C. Crim. Appeal No. 18 of 2002; [2005] 1 U.L.S.R. 12.***

The evidence adduced by PW1, of the vicious attack on him showed it was done for no apparent reason. His partial witnessing, before collapsing unconscious, of the breaking of PW2's bedroom door - and this being the bedroom in which had been kept the items that went missing in the circumstance surrounding the assault on PW1 - offered quite strong and compelling circumstantial evidence. Here the last person seen in proximity of the place wherefrom property was later found to have been stolen, was so seen committing a most incriminating act having direct linkage with the theft complained of.

It is rather difficult to think of any exculpatory facts, or reasonable alternative hypothesis, or co-existing circumstances that could negative the inference of guilt of such person. It is utterly irresistible and not unreasonable at all, to draw the inference that it was those assailants who had entered the bedroom, and stolen those articles complained of. I am, here, merely applying the well known ordinary principles which a Court must follow when drawing an inference of guilt that is dependent on circumstantial evidence.

I hold the view that the weighty circumstantial evidence adduced against the assailants provides the best evidence; and leaves me with no difficulty in coming to the conclusion that it was the two assailants of PW1 who perpetrated the theft. There was neither any reasonable hypothesis advanced, nor any evidence presented before this Court, which could serve to negative that inference of guilt. That said, however, it still remains to ascertain the identity of the assailants of PW1, and finally resolve the last ingredient of the offence.

PW1, on whose evidence of identification this case is principally founded, was alone at home when the event narrated above occurred. He is therefore a single identifying witness. Owing to that, I have to approach such evidence conscious of the warning sounded, and with adherence to the rules laid down, in ***Roria vs. Republic [1967] E.A. 583;*** that basing the proof of offence charged, entirely on evidence of identification is a cause for unease.

The reason therefor is that there is greater danger of convicting an innocent person on such evidence, than can be the case with other forms of evidence. It cautioned that while the evidence of a single identifying witness can suffice to found a conviction, it is less safe to do so than is the case with multiple identification witnesses; and therefore, the Court is under duty to satisfy itself that in all the circumstances of the case, it is safe to act on such evidence of identification.

This legal proposition enunciated above was upheld by the Supreme Court of Uganda in ***Bogere Moses & Anor. vs. Uganda – S.C. Crim. Appeal No. 1 of 1997***; which cited with approval, the case of ***Nabulere vs. Uganda – Crim. Appeal No. 9 of 1978; [1979] H.C.B. 77***, in which the Court had clarified that the need for the exercise of care arises both in situations where the correctness of disputed identification depends wholly or substantially on the testimony of a single or multiple identification witnesses; and that the Court must warn itself and the assessors of the special need for caution before arriving at a conviction founded on such evidence.

The Court expressed wariness over such evidence, and stated that:

> *"The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one, and that even a number of such witnesses can all be mistaken. The Judge should then examine closely the circumstances in which the identification came to be made particularly the length of time, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good the danger of mistaken identity is reduced but the poorer the quality the greater the danger. ……*
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> *When the quality is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused before, a Court can safely convict even though there is no other evidence to support the identification evidence, provided the Court adequately warns itself of the special need for caution."*

In ***George William Kalyesubula vs. Uganda – S.C. Crim. Appeal No. 16 of 1997,*** the Supreme Court of Uganda further upheld this position, citing with approval the ***Roria*** case (supra), and ***Abdulla bin Wendo & Another v. R (1953) 20 E.A.C.A 166;*** restating the need for testing, with the greatest care, identification evidence especially when such identification was made under difficult and unfavourable conditions. The Court then advised that:

> *"In such circumstances what is needed is other evidence pointing to guilt from which it can reasonably be concluded that the evidence of identification can safely be accepted as free from the possibility of error."*

In ***Moses Kasana vs. Uganda – C.A. Crim. Appeal No. 12 of 1981; [1992-93] H.C.B. 47***, a decision which was cited with approval in the ***Bogere*** case (supra), the Court emphasised that where conditions favouring correct identification are poor, there is need to look for other evidence, direct or circumstantial to allay any doubt in the mind of the trial Court of any case of mistaken identity; and that this evidence may, amongst others, consist of naming the assailants to those who answered the alarm, and of fabricated alibi. In ***Yowana Sserunkuma vs. Uganda, S.C. Cr. Appeal No. 8 of 1989,*** the Court further explained that it is trite law that the evidence of a

single identifying witness at night may be accepted, but only after the most careful scrutiny; and that:

> *The court should also look for other evidence to confirm that the identification is not mistaken. (See* ***Abdullah bin Wendo vs. R. (1953) 20 E.A.C.A. 166 at 168; Roria vs. R. [1967] E.A. 583****). A careful scrutiny is not the same thing as an elaborate justification accepting dubious evidence.*
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> *A careful scrutiny means, for example, comparing a first report with evidence in court; really testing the effect of light – what type it was, where it was, and how illuminated the scene. Questioning the time, and why the witness did not see the clothing of the accused."*

The Supreme Court of Uganda pointed out in ***Isaya Bikumu vs. Uganda; S.C. Crim. Appeal No. 24 of 1989,*** and ***Remigious Kiwanuka vs. Uganda Crim Appeal No. 41 of 1995,*** that where the crime complained of is committed during broad day light, by someone fully known to the witness, the conditions for proper identification would be favourable. As this case is based on evidence of identification, the Court is guided by the case of ***Badru Mwindu vs. Uganda; C.A. Crim. Appeal No. 1 of 1997,*** which is authority for the proposition that the inculpatory evidence of identification adduced by the victim of the criminal act is the best evidence.

In the instant case before me, PW1 was the victim of the violence and use of a deadly weapon in the furtherance of the theft that day. The incident complained of took place in broad daylight; the assailants had already been known to the victim for a period of two weeks immediately prior to the assault; the assailants held an apparent cordial conversation with the victim. And as narrated by the victim, and evidenced by the mess in the sitting room and the injuries on him, he had physically struggled with one of them for quite a while before he was rendered unconscious.

Therefore, the conditions favoured correct identification. The possibility of error or mistaken identity would, in the circumstances, be minimal if not altogether nonexistent. This therefore does not fall under the category of cases envisaged in the ***Moses Kasana***, and ***Bogere*** cases (supra), as requiring supportive evidence before any conviction can be founded on.

Be that as it may, I warned the assessors nonetheless, and I am alive to this, that although Court could in the circumstance of the case found a conviction on that evidence alone, it had to exercise

caution in doing so. In the light of the direct evidence of PW1 if there was need for evidence to bolster up that evidence of identification, the circumstantial evidence adduced by PW2 and PW3 would not only be relevant but of useful evidential value.

Furthermore, the prosecution case, here, is not anchored exclusively on circumstantial evidence; hence this is an exception to the situation governed by the principle regarding circumstantial evidence; enunciated above. In ***Barland Singh v. Reginam (1954) 21 E.A.C.A. 209;*** the Court held that where circumstantial evidence stands alongside some other evidence, then albeit such circumstantial evidence not being wholly inconsistent with the innocence of an accused, it may corroborate the other evidence; and that only when circumstantial evidence stands alone, must it be inconsistent with any other hypothesis other than guilt.

The ***Bogere*** case (supra), qualified the phrase 'other evidence' as follows:-

> *"We have to point out that the supportive evidence required need not be that type of independent corroboration such as is required for accomplice evidence or for proving sexual offences (See **George William Kalyesubula vs. Uganda** (supra)). Subject to the circumstances of each case, any admissible evidence which tends to confirm or show that the identification by an eye witness is credible, even if it emanates from the witness himself, will suffice as supportive evidence for the purpose."*

I find support for this contention in the very befitting observation made by the Court, in the ***Abudalla Nabulere*** case (supra), as follows:-

> *"If a more stringent rule were to be imposed by the courts, for example if corroboration were required in every case of identification, affronts to justice would frequently occur and the maintenance of law and order greatly hampered."*

Against the prosecution evidence is the sworn testimony of the accused, setting up an alibi; that on the Easter Sunday in issue, he was nowhere near the scene of the crime, but in Mubende district; having gone there on Good Friday - two days prior to the date of the alleged commission of the crime charged. It is the duty of this Court to weigh this piece of evidence in the light of and alongside that of the prosecution. The accused was under no duty to prove his alibi, as this would have amounted to a shift of the burden of proof to him from the prosecution.

Nevertheless, it is of value to the accused to puncture a hole in the prosecution evidence, as it were, if he can, and thereby render it as having failed to prove the case against the accused beyond reasonable doubt. The prosecution evidence, as shown above, was that the accused and his companion were known to the victim – PW1. The identification took place in broad day light when conditions favoured correct identification; and PW1 had no reason or motive to contrive falsehood against the accused, and had taken the earliest opportunity to name his assailants upon recovering from the state of unconsciousness to which he had been consigned by his attackers.

PW2 had, the previous day, positively seen the accused at the nearby trading centre where he was resident. PW3, a resident of the trading centre was emphatic that he had seen the accused at the trading centre that very Easter Sunday; after which the accused had disappeared, and his landlady was complaining of his unceremonious departure. For his part, the accused's sworn account on whether he left the trading centre where he was resident, on Friday or Saturday of the Easter period, was inconsistent with his police statement.

He was also inconsistent on the issue of his knowledge of the place where his companion Deo Matovu hailed from; and whether he had seen the latter after the Easter period. He had to be arrested by the police from Mubende after the Easter recess had already elapsed. His co – accused Deo Matovu never returned to the work site, and has never been seen since. In the light of the prosecution evidence, I find that the alibi raised by the accused is a fabrication and holds no water; and all that he has testified only goes to corroborate the evidence of identification adduced by PW1. I am satisfied that the prosecution has placed him and his companion at the scene of the crime that Easter Sunday.

The accused and his companion Deo Matovu, while having come to the scene of the crime together, played different roles in the perpetration of the crime for which he has been indicted. I am under duty to determine whether in the circumstance of this case the two were joint offenders in the crime charged; or whether the action of the companion of the accused can be said to have been independent of, and severable from that of the accused. The Penal Code Act of Uganda provides for joint offenders as follows:

"20. Joint offenders in prosecution of common purpose.

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence."

The strong element herein is that for the parties to qualify to be termed joint offenders, it must be proved that they had formed a common intention to prosecute an unlawful purpose in conjunction with one another. And in this regard, what is required is evidence tending to show that the individual accused person was in fact part of and active in a group of two or more people; sharing a common purpose, with the other or others, in the execution or perpetration of the criminal enterprise.

In ***Abdi Alli v. R (1956) 23 E.A.C.A. 573;*** the Court of Appeal held at p. 575 that:

> *"…the existence of a common intention being the sole test of joint responsibility it must be proved what the common intention was and that the common act for which the accused were to be made responsible was acted upon in furtherance of that common intention. The presumption of common intention must not be too readily applied or pushed too far.*
> ……
> *It is only when a court can, with some judicial certitude, hold that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with other in order to bring about that result that this section* [of the Penal Code] *can be applied."*

In ***R. v. John s/o Njiwa Samwedi [1962] E.A. 552*** the Court held at p. 554 [C] as follows:

> *"If two persons together steal, and one of them employs violence, …with a weapon, particularly if such a weapon is carried openly by one of the thieves, there would be grounds for holding that violence was, at lowest, contemplated, and therefore agreed to by the other thief as well."*

In ***Dafasi Magayi and Others v. Uganda [1965] E.A. 667,*** at p. 670, the Court quoted with approval, a passage from the judgment of the trial court as follows:

"The inference, from the actions of all the accused persons in taking part in this unmerciful beating, is irresistible – not only did none of the accused persons disassociate himself from the assault but they each prosecuted it with vigour…. "

In the instant case before me, both accused were active perpetrators in each of the ingredients of the offence charged. They both asked for the axe which became central in the furtherance of the criminal enterprise. Neither did the accused restrain his companion, nor dissociate himself from the action of the latter. They, each, complemented the action of, or role played by the other. Deo Matovu urged the accused to pick a panga and use it on PW1. The accused obliged and, indeed, threatened PW1 with the panga.

It is clearly manifest that the criminal purpose was prosecuted by the two in concert. It does not matter who of the two might have picked the money from the bedroom. Their joint actions, leading to that ultimate deed, were pursued as a common purpose to achieve the thievery which was the motive behind their visit to PW2's home that Easter Sunday.

Therefore, for the reasons detailed herein above, I find that the prosecution has proved beyond reasonable doubt, as against the accused, each and every element of the offence charged; and in full agreement with the gentleman assessor, but not with the lady, assessor, I convict the accused of the offence of aggravated robbery as indicted.

Chigamoy Owiny – Dollo
RESIDENT JUDGE; FORT PORTAL
27 – 03 – 2009