

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
CRIMINAL SESSION CASE NO. 59 OF 2013

UGANDA:.....PROSECUTION

VERSUS

NAKIMBUGGWE ALLEN:.....ACCUSED

BEFORE: HON. MR. JUSTICE WILSON MASALU MUSENE

RULING

The accused, Nakimbuggwe Allen was indicted on three counts of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars were that in count I, the accused on the 16th day of February, 2011 at Kasimbiri village in Wakiso Town Council, Wakiso District, murdered Kayesu Janet. In Count II, the particulars were that Nakimbuggwe Allen on the same date of 16/02/2011 at Kisimbiri village, Wakiso Town Council, in Wakiso District, murdered Nakajubi Annet. In count III, the particulars were that the accused on the same date, same place in Wakiso District, murdered Nabagesera Olivia.

The accused pleaded not guilty to all the three counts. The Prosecution in a bid to prove the cases against the accused called one witness, PW1, No. 23038 D/sgt Ojambo Aloysius. Earlier on the post-mortem report in respect of all the three deceased persons were tendered in and marked P1, P2 and P3 respectively under S.66 of the Trial on Indictment Act.

PW1 testified that at the time of the commission of the offences in question, he was working at Wakiso Police Post as in-charge the criminal investigation Department, and that he had known the accused as a resident of Wakiso Town Council.

PW1's testimony was that when a case of Arson was reported, he was detailed to proceed to the scene of crime together with another police officer called Olupet. And that the scene was within

Wakiso Town Council where they reached on that date of 16/02/2011 at 8:00 p.m. His testimony was that he found Nabagesera and the other two children of hers already taken to Hospital. He added that he found properties in the house burnt and interviewed some people who were at the scene of crime. PW1 stated that those interviewed and whose names he did not recall, pointed accusing fingers to the accused, a co-wife of the late Nabagesera as having set fire to the house. And that the accused was not around at the time. PW1 added that he traced the husband of accused and late Nabagesera called John, and who confirmed that accused and the deceased co-wife were not living on good terms.

He added that accused was arrested after some days by police officers from Kakiri and that when he interviewed her, she denied the allegations, but he never the less suspected her as she did not check at the scene of incident. PW1 added that when he visited Mulago where the deceased Nabagesera was admitted, the deceased who was burnt all over the body and in bandages suspected the accused, a co-wife, with whom they had grudges over the husband. PW1 went on to testify that the burning was very severe and as a result, Nabagesera and her deceased children, died at Mulago Hospital. And that at the scene of crime was a yellow jerrican which was exhibited at police but not taken to a government analyst. In a charge of murder, the Prosecution has to prove beyond reasonable doubt the following ingredients:-

- 1) The death of the deceased persons.
- 2) That the death was as a result of unlawful Act.
- 3) That whoever killed the deceased persons did so out of malice aforethought.
- 4) That it was the accused who killed the deceased persons.

In the circumstances of the present case, this court finds and holds that the first and second ingredients of the offence have been proved beyond reasonable doubt. The evidence of PW1 and the post-mortem reports in respect of the three deceased persons Kayesu Janet, Nakajubi Annet and Nakimbuggwe Allen all confirm the fact of death. Secondly, that such death was unlawfully caused was confirmed from the post-mortem report which revealed that it was Hypovolaemic shock and sepsis following the burns. So all the deceased persons did not die out of natural causes. The problem, however, is with regard to the third and fourth ingredients of the offence. Apart from suspecting the accused, a co-wife to the deceased Nabagesera, who was said not to have been on good terms due to quarrels over the husband, there was no direct or other

incriminating evidence to prove malice aforethought or identification of the accused as having committed the offences in question.

Whereas prove of malice afore thought and identification of accused would have been borne out of circumstantial evidence, such circumstantial evidence was totally lacking. For example John, the husband of both deceased and Nabagesera and accused was not called to tell this court the circumstances under which the deceased persons died, and whether it was true or not that accused had grudges with the co-wife. Secondly, PW1 testified that he interviewed the people around as an investigating officer, they pointed at the accused as a suspect.

However, PW1 could not even tell this court a single name of the people he interviewed and even none was called as a prosecution witness. Not only that, none of the arresting officers was called as a prosecution witness to tell this court the circumstances under which the accused was arrested, whether she was in hiding or not, so as to gauge the motive of the said murder. In the absence of the above, this court holds and finds that the third and fourth ingredients of murder have not been proved by the prosecution beyond reasonable doubt. And needless to emphasize, the law and practice is that once all the ingredients of the offence have not been proved, then an accused person has no case to answer. And that is the finding of this court in this case. The conclusion therefore is that on the basis of the evidence on record and the relevant principles of the law, the accused now in the dock, Nakimbuggwe Allen, has no case to answer.

I accordingly find her not guilty and do hereby acquit her under the provisions of Section 73(1) of the Trial on Indictment Act.

.....

WILSON MASALU MUSENE

JUDGE

21/10/2013

