



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 113 OF 2011**

UGANDA ::: PROSECUTOR

VERSUS

LULUGA ALI::: ACCUSED

JUDGMENT

BEFORE HON. JUSTICE MR. RALPH W. OCHAN – RESIDENT JUDGE

Luluga Ali stands indicted on the charge of murder contrary to section 188 & 189 of the penal code act. It is alleged that in the night of 5th July 2010 at Kijangi Fishing Site, Buseruka Sub-county Hoima District murdered on Achirochan. The accused denied the charged hence this full trial.

Murder is an offence that comprises the following ingredients;

1. death of a human being
2. unlawfulness of the said death
3. the existence of malice aforethought in the causation of the death
4. the participation of the accused person in causing the death in issue

For court to convict the accused prosecution has to prove the four ingredients beyond reasonable doubt. There is a whole body of authorities laying down all these standards from the old English case of Woolmington versus DPP (1995) AC 463. This authority has

been consistently upheld and applied in our jurisdiction. See Andrea Obonyo ORs VR (1962) EA 542 at page 550. This standard is proof beyond reasonable doubt.

At the preliminary hearing prosecution tendered in a postmortem report as PEX1. This report was admitted in evidence unchallenged. Prosecution also tendered in PF24 medical examination report of the accused person. He was found to be 25 years of age with sound mental status. This evidence was also admitted in as PEX2 also unchallenged.

To prove the ingredients against the accused, five witnesses we summoned.

1. PW1 - Dr. Dennis Bitamazire from Hoima Hospital,
2. PW2 - Police Clinical Officer – Hoima Police Medical Services,
3. PW3 - Okumu Alfred a fisherman at Kijangi Fishing Site, Buseruka Sub-county Hoima District,
4. PW4 - Assistant Inspector of Police Angulu Douglas
5. PW5 - Sgt. Wilson Wampani.

Death of a human being; we have the evidence of Alfred Akumu, the witness told court that in the night of 5th July 2010, he received a report that Achirochan had been stabbed by her husband and she was in critical condition. The report was brought to him by the sister to the deceased. He immediately hurried to the crime scene together with the LCI Chairman, they carried Achirochan and rushed her to a nearby clinic but she died before they reached the clinic. This evidence was corroborated by the postmortem report made by Dr. Dennis Bitamazire which established that Achirochan died of severe hemorrhagic shock due to penetrating stabbed wounds. I therefore find that on the basis of the evidence of these two witnesses, that the 1st ingredient of the death of a human being has been proved beyond reasonable doubt.

On the 2nd ingredient of the unlawful nature of the death I find that on the basis of the law that excuses only four instances from the presumption that all homicides are unlawful, the death of Achirochan was caused by unlawful act. It was not caused in defence of property neither was there any proven provocation. It certainly was not accidental and it was not accessioned in the execution of a lawful sentence. I hold that this 2nd ingredient has been proved beyond reason doubt.

The 3rd ingredient of malice aforethought. In brief malice aforethought is defined as intention to cause death. This was a finding of the High Court and the Court of Appeal in the case of Uganda Versus Kassim Obura. There is overwhelming school of authority to the effect that malice aforethought being a mental element can be inferred from the circumstances surrounding the offence. In the case of RV Tubere S/O Ochen (1945) EACA, 63, the Court held that there is no hard and fast rule that can be laid down on how malice aforethought may be established, but nevertheless court listed a few inclusive factors from which court can review influences of malice aforethought and these are; the weapon used and the way in which it was applied, the part of the body targeted and the conduct of the accused after the commission of the offence.

In the case before me now, Dr. Bitamazire established that a sharp object probably a knife was used to stab the victim in the chest and abdomen both of which house sensitive organs critical to maintaining life. He found that the stabbed penetrated the victim's lungs and abdominal cavity causing bleeding leading to death. I find from the above evidence and from the accused's conduct after the event that malice aforethought is proved to the standards laid down in the law.

On the last ingredient of participation of the accused. He himself admitted being at the crime scene although he failed ignorance on what killed the victim. As for him he ran

away after he was attacked by two men whom he claimed found talking to his wife along the road. He fought the two men but they over powered him and he ran away and hid far away from the highland on L. Albert. This I dismiss as a pack of lies intended to dismiss this Court. His own admission of being at the crime scene and his subsequent conduct convince me beyond reasonable doubt that the accused was a participant in the commission of the offence.

All four ingredients having been proved beyond reasonable doubt, I find the accused guilty and accordingly convict him.

SIGNED
JUSTICE RALPH W. OCHAN
09TH SEPTEMBER 2013

ALLOCUTUS

State: We do not have past criminal record of the convict before you. The offence with which he has been convicted is a capital offence serious in nature attracting a death penalty under section 189 of the Penal Code Act. Achirochan died in her twenties while she was still useful to this country and her family. Achirochan was the convict's girlfriend who had cohabited with him for a year. As such she was entitled to her protection and care but instead the convict turned out into her own murderer. Killing is bad and should be condemned in the strongest terms. We pray the convict is given a deterring sentence that will teach him a lesson not to repeat such act and for others to learn from him. We so pray.

Defence: The convict is a first offender aged 28 years. Although he has no child, he was the sole bread winner caring for his mother and his siblings. He suffers from hernia. He has been on remand since July 20th 2010, a period of three years one months and 19 days. He regrets the incidence and it is unfortunate that he overreacted. He is remorseful and he promises to live a non violent life. At 28 years he can still be of use to the society. We pray that Court gives a sentence for reformatory purposes that is short enough to enable him rejoin society. I so pray.

Court: Sentence will be on 10th September at 9:00 O'clock in the morning.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

SENTENCE

Instead of caring for and protecting the young woman you professed to love, you instead chose to kill her, stabbing her with a knife.

You then ran away and hid on an island in Lake Edward instead of being sorry and seeking for forgiveness from your wife's family. It is an intolerable conduct. You are sentenced to 10 (ten) years imprisonment.

SIGNED

JUSTICE RALPH W. OCHAN

10TH SEPTEMBER 2013