

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA**

CRIMINAL SESSION NO. 04 OF 2008

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**UGANDA.....PROSECUTO
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VERSUS

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TIZOMU KARIM ORONI.....ACCUSED

BEFORE: THE HON. LADY JUSTICE FLAVIA SENOGA ANGLIN

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JUDGMENT

The accused person TIZOMU KARIM ORONI was indicted for Murder c/s 188 and 189 of the Penal Code Act.

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The prosecution case was that the accused and others still at large on 10.02.05 at Kitovu village in Mayuge District murdered one Baligeya Henry.

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The accused denied the offence stating that though he answered the alarm, he never participated in the assault of the deceased that resulted in his death.

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The prosecution case was based on the evidence of 6 witnesses one of whom was declared a hostile witness - PW6.

The medical examination report in respect of the accused person was admitted in evidence under Section 66 T.I.A as Exhibit P₁.

To prove the indictment of murder the prosecution had to prove the following ingredients of the offence:

(1) Death of a person.

(2) The death was unlawful.

(3) The death was caused with malice aforethought.

(4) The accused killed the deceased or participated in causing the death of the deceased.

To prove the first ingredient of death, the prosecution relied upon the evidence of the medical officer PW3 Bazibu Musa who identified the Post Mortem Report that was done by one Dr. Bakaki. The said doctor had examined the body of the deceased on 06.04.05. Cause of death was multiple wounds on the intestines leading to chronic ill health and eventual death.

PW2 Sooka Daudi confirmed that the deceased passed away 2-3 weeks was after undergoing an operation at Jinja Hospital.

The defence did not dispute the death of the deceased. And indeed all evidence available points to the fact that the deceased passed away. Court therefore finds that this ingredient was proved by the prosecution beyond all reasonable doubt.

As to whether the death was unlawful – the presumption of the law is that **“All homicides are unlawful unless they are accidents or they are excused by the law” - Gusambizi Wesonga vs. R. (1948)15 EACA 65 and Uganda vs. Okello [1992-93] HCB 68.**

The prosecution evidence in this respect was that the deceased sustained injuries in his abdomen as a result of an assault, that resulted into complications. The deceased was operated on at the hospital and he
5 passed away thereafter as already mentioned herein.

According to PW4 D/W CPL. Apolot Agnes Vicky, an assault case was reported at Jinja C.P.S under SD 38/14.05.05. When the deceased passed away the matter was reported to Mayuge Police station as a murder.

10 The prosecution insisted that it was assault that resulted into the injuries that necessitated the operation and led to the death of the deceased. And that since the assault was neither an accident or excusable nor authorized by the law, the death was unlawful, more so as it occurred within less than a year of the assault.

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The above ingredient was combined with the 3rd ingredient of malice aforethought. The prosecution argued that malice aforethought could be discerned from the part of the body of the deceased that was injured the stomach which is a vulnerable part of the body. And also the conduct of
20 the accused person before and after the incident. It was pointed out that, whoever assaulted the deceased and inflicted the grievous injuries intended to kill him or knew that such assault would cause death.

The defence counsel disputed that the death was unlawful or that it was
25 caused with malice aforethought. The defence insists that the other evidence PW3 - clearly indicates that death resulted from an operation on the deceased's stomach that resulted into rot and a lot of pus coming from there. It was pointed out that according to PW3 the pus in the abdomen impaired the vital functions of the deceased's body and resulted into his
30 death.

It was contended by the defence that the complications arose as a result of professional negligence. And that, even if it were to be believed that deceased was assaulted, he did not die as a result of the assault. The
5 allegations of assault were never substantiated and there was no evidence to show the nature and degree of assault. Counsel prayed court to find that the death was not unlawful and that there was no malice aforethought.

The evidence available shows that the deceased was involved in a fight
10 with one called Bumali over his wife who it is said was found red handed with Bumali. It was during the scuffle which attracted people that the deceased was kicked in the stomach and sustained injuries that led to his operation. Without any evidence that the injuries were sustained lawfully or in a situation excusable by law, then it can be rightly said that the
15 resultant death was unlawful.

Death is deemed to be caused by an assailant even though his/her act may not be immediate or sole cause of death if he/she inflicts bodily injury on another person in consequence of which that person under goes
20 surgical or medical treatment which causes death. If the treatment was employed in good faith and with common knowledge and skill.

There is no evidence to indicate that the treatment of the deceased was not in good faith or the doctor had no skill.
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Counsel for the accused's submissions in that respect must fail.

As to malice aforethought, it can be inferred from the part of the body of the deceased that was struck i.e. the abdomen. It is a vulnerable part of
30 the body. And the conduct of Bumali and deceased's wife who

disappeared soon after the assault and have never been seen up to-date. Their disappearance cannot be conduct of innocence.

5 What is left to determine is whether the accused participated in the assault that resulted into the death of the deceased.

The prosecution relied upon the evidence of PW2 who heard from the deceased that he had been assaulted by accused, Bumali and Irene. This witness also attended a meeting where the deceased handed over his wife
10 to Bumali. A day later, the deceased began complaining of stomach pains and the stomach was swollen; leading to the operation from which he never recovered. The Medical Officer PW3 confirmed the operation.

The accused is alleged to have disappeared to an unknown place
15 according to PW4 and was arrested 2 years after the incident.

PW6 one Aleti a neighbour to and Auntie of Irene the wife of the deceased was declared a hostile witness and was cross examined by the prosecution. Her credibility thereby became questionable and her
20 evidence unreliable.

The accused in his defence denied the offence and stated that he was visiting his brothers but never lived in the area. During the night in question he heard the alarm raised by the deceased and answered it. He
25 was adamant that his role was to separate the deceased, Bumali and Irene and that when those two ran away the deceased chased them.

The accused was arrested from the village where the fight took place and he said he used to go there on a weekly basis for business but his home
30 was in Kamuli where he settled after he left his father's home.

However the prosecution submitted that accused just ran away from the village and that his conduct was not of an innocent man. And that though PW6 was declared a hostile witness she had made a statement to police
5 implicating the accused.

Counsel for the defence insisted that the role the accused ever played in the saga was to separate the people fighting. The accused maintained his version of the story right from the time of his arrest when he made the
10 statement - Exhibit D₁. By the time of giving evidence, there had been a lapse of time of about 5 years and he could not recall everything clearly.

And that since he continued visiting the village where the incident occurred although he lived in Kamuli cannot be said to be conduct of a
15 guilty person.

PW4 told court that accused on interrogation told him he was in Kamuli and confirmed that she did not get any other useful information from him. He had told her he never assaulted the deceased.
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Looking at the evidence as a whole it is apparent that the only eye witness to what occurred on the night the deceased was assaulted was PW6. She is the only one who could have thrown light as to what actually transpired that night. When she made the statement to police she mentioned
25 accused as having boxed the deceased, but that the one who kicked the deceased in the stomach was Bumali who disappeared after the incident and has never been found. But as already mentioned of this Judgment, the evidence of this witness was discredited when she was declared a hostile witness and cross examined by the prosecution. Her evidence

cannot therefore be relied upon. There was need for other evidence to point to the guilt of the accused person.

5 It is trite law that an accused does not have to prove his defence. It is up to the prosecution to bring evidence to show that despite the defence, the accused was the one who committed the offence.

The accused's claim that he answered the alarm of the deceased and separated him and Bumali was not discredited. He was consistent right
10 from the time he made his statement at police - Exhibit D₁.

Bearing in mind that a conviction depends on the strength of the prosecution case and not upon the weakness of the defence, and looking at all the circumstances surrounding this case, I am more inclined to
15 believe that it was Bumali who inflicted the fatal injury that resulted into the death of the deceased.

Without any other independent evidence to link the accused to the assault, I find in agreement with the assessors that the prosecution failed
20 to prove the guilt of the accused person to the required standard.

He is therefore acquitted of the charge and should be set free forthwith unless otherwise held on other legal charges.

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Flavia Senoga Anglin
JUDGE
04.10.13

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