



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL SESSION NO. 0010 OF 2010**

UGANDA ::: PROSECUTOR

VERSUS

BYARUHANGA GODFREY & ANOTHER ::: ACCUSED

RULING

The prosecution called three witnesses and closed its case. The question for my consideration is whether a prima facie case has been made out.

It is trite the primary consideration on a no case to answer is whether a reasonable tribunal properly directing its mind to the law and evidence available could convict if the accused was to say nothing.

There is no doubt the deceased Besigensi Moses is dead. According to the postmortem report he died of injuries on the head that resulted into brain damage. His death was therefore unlawfully caused.

The question is whether there is evidence that tends to link the accused to the act that gave rise to the injuries that caused the deceased's death.

The only evidence on record is contained in the charge caution statement of the accused not amounting to a confession, where he admitted that he with others

assaulted the deceased. The statement goes on to say when they assaulted him the deceased ran away but fell down and they did not assault him again.

Firstly, the postmortem report states that a stone or clubs were the probable weapons used in assaulting the deceased. The charge and caution statement does not state what weapon the accused and others used to assault the deceased. No witness was called to describe the manner and weapon, if any, the accused and others had at the time.

Secondly, it is not known what happened to the deceased after he fell down. The possibility that some other person(s) set upon him and assaulted him causing the injuries on the head is not ruled out. It is not for the court to conjecture no other person(s) assaulted him other than the accused and his colleagues.

In effect, there is a gap in the prosecution evidence between the accused's act of assault and the cause of death of the deceased.

In my view, if the accused chose to remain silent, this court would find it hard to hold he was responsible for the unlawful act that resulted in the injuries that caused the deceased's death. I would therefore hold no prima facie case has been made out requiring the accused to be put on his defence.

Accordingly, I enter a finding of not guilty and do acquit him. It is ordered he be set free forthwith unless he is lawfully held on other charges.

SIGNED

BYABAKAMA MUGENYI SIMON

RESIDENT JUDGE

16TH OCTOBER 2013