

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL SESSION CASE NO. 051 OF 2010
UGANDA V ELOLU PAUL AND TWO OTHERS

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The three accused persons in this case are charged with robbery c/s 285 and 286 of the penal code. It is alleged that Eلول Paul, Opio Joseph alias Emou and Okalebo Joseph on the night of 23rd December 2009 at Okokoma village, Apapai parish, Bugondo sub-county, Soroti district robbed Ogura Jackson of cash 350,000/, two mobile phones, radio, and personal clothes and immediately after the time of the said robbery, threatened to use a deadly weapon, to wit a gun and pangas to the said Ogura Jackson.

Prosecution was led by Mr. Jonathan Okello State Attorney and accused persons were represented by Mr. Isodo on state brief. Assessors were Mr. Ocole and Ms Amoding.

The burden of proof in criminal cases is on the prosecution to prove its case and the standard of proof is beyond reasonable doubt.

Ingredients of robbery:

Section 285 defines robbery as any person who steals property and at the time of stealing or immediately before or after the stealing uses actual violence on any person commits the felony of robbery. Under section 286 (2), proof of use of a deadly weapon or causing grievous harm or death to any person during or after or immediately before the stealing is further proof of robbery.

Although PW1 Ogura Jackson did not identify the assailants, he testified that on the night of 23rd December 2009, at about 10 p.m, he was in bed when he heard commotion in the sitting room. He got up and was ordered to sit down by a man wearing trousers who began hitting him with a stick as the man demanded for money. The witness directed the man to his trouser in which there was about 350,000/ cash. The assailant also took a radio, two mobile phones and a pair of trousers. The assailant demanded for more money and the witness led him to another house at which point PW1 was followed by a second assailant holding a torch. At the second house, the assailants continued to assault the witness and he observed that one of them was wearing a red shirt. The witness managed to escape from the assailants and hid in a maize garden.

The witness was later told by his wife Akiriat Ruth that she recognised one of the assailants as Opio –A2. In light of the above, iam satisfied that a robbery took place on the fateful night, and at the time of the robbery, violence was used and property stolen.

Identification and participation of accused

With regard to identification of the assailants, the evidence of PW2 Ruth Akiriat is relevant. On 23rd December 2009 at about 10 p.m, she was performing household chores while her husband was indoors. People stormed into her house and began assaulting her. She recognised one of them by help of a lamp (tadoba) as Opio- A2. Opio ordered her to lie down as he demanded for money while showing her a gun at the same time. Opio continued demanding for money her husband earns from business and threatened to kill her. PW2 Akiriat directed them to a house where they could find money and it is at this point she observed there were four assailants as they all run to the house. At this point, she made her escape and reported to LC1 Chairman.

As the robbery took place at night, conditions must be favourable for identification. I am alive to the principles on accepting evidence of a single identifying witness (**John Katuramu v U (Supreme Court Criminal Appeal No. 2 of 1998)**). PW1 spent some considerable time with Opio during the assault, first she saw him with the help of a lamp (tadoba) as soon as the attack started. It was Opio who assaulted her and showed her a gun as he demanded for money. She knew Opio previously as their neighbour. She shared with her husband in the morning that she recognised Opio. She identified a red shirt Pexh. 5 as the one Opio –A2 was wearing at the time of the robbery. The shirt was recovered from Opio’s house by PW3 Oruka Joseph, investigating officer.

A search of Opio’s house led to recovery of a metal axe, iron bar, a toy wooden gun. PW3 Oruka indentified prosecution exhibit 5- the red t-shirt, metal bar PExh. 3 and bicycle lock PExh. 4.

A2 Opio made an unsworn statement in which he denied participation.

I believe the testimony of Akiriat that she positively recognised Opio- A2 at the scene of the robbery on 23rd December 2009. Her evidence is supported by the red shirt recovered from Opio’s house.

With regard to exhibits (metal bar and bicycle lock) recovered by PW3 from A2’s house, and identified by PW2 Akiriat, i find there is a disconnect between what PW1 said was used on him during the assault and the recovered exhibits. In any case, the charge is that the violence was used against PW1 Ogura Jackson who affirms that a big stick was used to assault him. In the circumstances, i find no evidential value in the recovered exhibits save for the red shirt.

With regard to A1 Eلول and A3 Okalebo Joseph, the evidence against them is circumstantial. With regard to A , PW 3 Oruka Joseph led a team comprised of a dog handler and a sniffer dog . The sniffer dog led the team to a bar where it led the team to A3 Okalebo Joseph. The dog led the team to the house of Eلول Paul which was searched but no exhibits were recovered. Later in his testimony, Pw3 Oruka said a metal bar was recovered from A3 Okalebo's house. PW3 is supported by PW4 PC Mutibwa , the dog handler who said the dog led them to the bar owner Eلول-A2 and A3 Okalebo. This was after the dog had been taken to the scene of the robbery to sniff scents.

The evidence against A1 and A3 is mainly the sniffer dog but this cannot stand alone. In their unsworn statements, the two denied participation in the robbery.

The burden of proof is on the prosecution to prove participation of A2 and A3 in the robbery. The evidence of the team that led the sniffer dog is insufficient to form the basis of a finding that the two participated in the robbery.

I disagree with the two assessors that there is sufficient evidence to support the finding that A1 and A3 participated in the robbery for the reasons i have given above. A1 and A3 are acquitted and released from custody forthwith unless lawfully held in connection with some other charges.

I agree with the assessors that the prosecution has proved beyond reasonable doubt that A2 acting with others participated in the robbery against Ogura Jackson and he is convicted of robbery c/s 285 and 286(1) of the penal code.

DATED AT SOROTI THIS 30th DAY OF OCTOBER 2013.

HON. LADY JUSTICE H. WOLAYO