

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KUMI
CRIMINAL SESSION CASE. 62 OF 2012
UGANDA V EMORUT LAWRENCE, AKOL SILVER AND IGUNE JOHN

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The three accused persons are charged with murder c/s 188 of the penal code. It is alleged that on 9th May 2011 at Opetei village, Kajamaka sub-county, the accused persons murdered Amongin Elizabeth.

The prosecution was led by Ms Alleluya while the accused persons were represented by Mr. Tiyo on state brief. I have given due consideration to submissions of both counsel.

Assessors were Okiror Joseph and Oruka James.

The prosecution had a duty to prove beyond reasonable doubt that the accused persons caused the unlawful death of the deceased.

It is not in dispute that the deceased died unlawfully as a result of asphyxia and strangulation. Pexh. 2, the post mortem report was admitted by consent of both counsel and it establishes cause of death as asphyxia and strangulation. The body was also found to have bruises on the leg and neck.

What this court needs to determine is the element of participation of the three accused persons either jointly or individually.

The prosecution case revolves on the evidence of a single identifying witness at night; possible motive based on a land dispute between A1 Emorut and PW1 Igune Tedero, and threats allegedly made by A1 and A2 a few days prior to the murder of the deceased.

Participation of accused persons

In this case, PW1 Tedero was alone in the house with his wife in the evening of 8.5.2011 at about 9 p.m listening to the radio when the door was opened as it had not been locked. According to this witness, the three accused persons entered the house unarmed, blew out the todoba, and began assaulting him. When he fall down they stumped him until he lost consciousness .

In spite of being in a state of unconsciousness, the witness was able to notice that a mosquito net fell on him at which point the three accused persons left him for dead, and proceeded to assault his wife.

There is a contradiction at this point because the witness was allegedly unconscious but knew that the attackers were assaulting his wife. On realizing this contradiction, the witness then said he had regained consciousness.

The witness testified that he drew from his experience as a soldier to remain quiet during the attack on his wife and could hear what was happening. According to PW1, the deceased wife said nothing throughout the period of the attack on her but what is noteworthy is the witness did not reveal in his testimony the reaction of his wife as the three accused persons allegedly attacked him.

I find this narrative suspect because although PW1 was unconscious having been assaulted and left for dead, he was able to notice the mosquito net fall on him, he was able to know that the wife was being assaulted , and was able to know that the wife said nothing during the attack. On realizing this apparent contradiction, the witness informed court that he regained consciousness but did not say at what point.

PW1 was able to know that the wife was killed and then hanged from the roof of their house. He was specific that he heard the attackers puling a rope as they hung her in the house. Yet DW 10 Dr, Rubanza the police surgeon was explicit that the short cloth that was brought to court during defence case could not have acted as a pulley to pull the body as it was too short for that purpose.

According to PW1, after the fatal attack on the wife, the attackers left and PW1 remained in the same position until morning when his sister PW 5 Anna Grace

Akot came by, pushed the door open and found him inside very weak. Yet PW5 contradicted her police statement where she said it was PW1 who opened the door for her as it was locked when she arrived in the morning of 9.5.2011.

Identification

The principle with regard to a single identifying witness at night is that the conditions must be favourable to identification such as familiarity between the witness and the accused person, and adequate light. I agree with the exposition of the law by Ms Alleluya for the state on this point when she cited **Kifamuntu Henry v Uganda Supreme Court Criminal Appeal 1 of 1997**.

PW1 states that when the three who are his cousins entered the house, they spoke in unison that his time for dying had come. A contradiction is introduced at this point when PW1 says the three kicked the todoba yet earlier he had said they blew out the todoba.

The witness maintained he identified the three from the todoba light which was blown out or kicked and it went off as soon as the three entered the house but his testimony is very suspect in view of some of the contradiction raised above. For instance, in his evidence in cross examination, he states he was unconscious for 30 minutes after the attack. Yet that was the time he said the attack lasted during which time he witnessed the killing of his wife the manner of which he does not explain yet he was certain she died before the hanging.

Another point that makes the testimony of the witness suspect is that the three accused persons who came principally to kill him were not armed. Secondly, the injuries he suffered were classified as 'harm' by the examining doctor, yet he claimed to have been assaulted and left for dead and lost consciousness for an unclear period for anytime up to 30 minutes.

PW5, Akot continued with the farce (lies) that the witness was unconscious in hospital even after the glaring evidence by the examining officer that he had

swellings on his back inflicted by a blunt object a fact that is missing from Tedero's testimony.

In view of the unbelievable testimony of the witness that he was unconscious yet he heard without explaining what he heard the things happening to the deceased; the unlikely fact that persons who went to kill him were unarmed ; the very minor injuries found on the witness yet he said he was stumped , assaulted by three men and left for dead; the fact that he knew she was killed before she was hanged a fact that could only be confirmed by a medical expert; the very fact that he could not even describe what the attackers wore or what any of them wore; the fact that the wife said nothing as he was being assaulted and as she was being attacked, the fact that PW1 remained quiet even at day break and did not bother to raise an alarm casts major doubts on his evidence. Indeed it is PW1 who is at the scene of crime from the time when his wife was alive until the time she was found dead in the morning by PW5 Akot who said she pushed the door open and found PW1 lying in the house with the body of the deceased.

Evidence of possible motive

With regard to the prosecution case that the three accused persons had a possible motive, even if it were true the three had a grudge against PW1, it is PW1 who was supposed to be their target. Secondly, the land dispute, according to PW 3 Okwii Fred, LC II Chairman who testified, the dispute between Tedero and A1 Emorut was resolved on 3.4.2010 in favour of Tedero and A1 swore never to litigate again. Indeed DW 8 Ikonyeru Ibrahim clan leader also testified that the dispute was resolved in favour of Tedero and a party was held at A1's home attended by kinsmen including Tedero and A1's son appointed customary heir to Tedero who was childless.

It is unbelievable that a dispute that was resolved amicably would motivate A1 to unsuccessfully attempt to kill PW1 let alone kill Tedero's wife. Motive is not evidence in law of intention to cause death and in view of the very unreliable and incredulous testimony of PW1, the prosecution has failed to link previous land

dispute as a motive to A1 let alone the two accused persons who were not involved in the dispute in 2010.

Evidence of threats

The third aspect of the prosecution case is the alleged incident on 7.5.2012 when A1 and A2 are supposed to have verbally attacked Tedero in the garden which was the subject of previous dispute, and armed with pangas threatened to kill him. This aspect of the prosecution case was presented by PW4 Pastor Francis Okwii and PW1 Tedero. PW4 's testimony is suspect because he states all three accused persons and PW1 are his immediate neighbours yet only A1 Emorut is a neighbor to Tedero and PW4 and residents of Kajamaka village while A2 Akol and A3 Igune John are residents of Akalabai . Apart from their sworn testimony, the evidence of place of residence is obvious from the addresses in the charge sheet preferred in 2011 when the three accused first appeared before the magistrate's court. I therefore find PW4's testimony with regard to the attack a pack of lies if he could lie about place of residence of A2 and A3.

Although the accused persons had no duty to prove their innocence, I believed the testimony of DW 7Kokoi Algeria who cast doubt on the testimony of PW5 Akot that Tedero was very weak and the evidence of PW1 Tedero that he could not talk in the morning when his sister Akot came by. DW 7 was firm that she responded to the alarm in the morning on 10.5.2011 and found Tedero was able to talk. Neither did Emorut A1 flee from the scene as testified to by PW 5 Akot who saw him pass by that morning as she raised the alarm.

The testimonies of A2 Akol and A3 Igune that they were dragged by a mob from their homes in Akalabai in the morning after the murder and beaten and cut is confirmed by PW2 Det. Serg. Anguria William who testified that he went to the scene of crime on 10.5.2011 and found two men badly beaten. PEx. 7 are photographs taken at the scene and in one of the photographs; two men are seen lying side by side.

I am in agreement with the assessors' opinion that the prosecution case raises doubts that should be resolved in favour of the three accused persons.

I find that major doubts have been cast on the prosecution case and the three accused persons are acquitted of the offence charged.

They are released from custody forthwith unless lawfully held in connection with some other offence.

DATED AT SOROTI THIS 17th DAY OF DECEMBER 2013.

HON. LADY JUSTICE H. WOLAYO