

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL SESSION CASE NO. 12 OF 2011
UGANDA V EPWOSU DAVID & ACHWINYO AGNES

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused persons, Epwosu David and Achwinyo Agnes are charged with murder c/s 188 of the penal code. It is alleged that the two accused persons on 31st May 2010 at Okokoma village, Soroti district with malice aforethought unlawfully caused the death of Olinga Nicholas.

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

Ingredients of murder are provided in section 188 of the penal code. Malice aforethought is defined therein as the intention to cause death of a person or an act or omission with knowledge that it might cause death accompanied with indifference whether death occurs.

The burden of proof is on the prosecution to prove beyond reasonable doubt that the accused persons caused the death of the deceased with malice aforethought.

Proof of unlawful death

It is not disputed that Nicholas Opio described in the post mortem report dated 10th June 2010 as aged 8 years died as a result of strangulation of the neck and injuries to the cervical spine. The post mortem report was admitted by consent of both counsel. I therefore make a finding that the deceased's death was unlawfully caused.

Participation of accused persons

Prosecution called three witnesses. The key witness PW1 Ocuku John, LC1 Chairman of Okokoma village received the deceased Olinga from group of women on 31.5.2010. Olinga had followed the women to Pingire and on their return, they handed the boy to the LC1 chairman, PW1 who in turn handed the boy to his father, A1. PW1, whom, I believed, testified that at that point, A1 showed animosity to the boy by throwing a shoe at him whereupon the boy ran back to the arms of the witness. PW1 then handed the boy a second time to A1 as the boy cried.

On 2.6.2010, PW1 received information that Olinga was missing and on 3.6.2010, A1 reported to PW1 that Olinga was missing. On 6.6.2010, PW1 asked A1 to accompany him in the search for the missing boy but A1 declined.

PW1 reported the matter to LC III Chairman and police was subsequently informed. The body of Olinga was recovered from a swamp at Okokoma and PW1 was present when the discovery was made. The body was found close to where clothes were buried and among the clothes buried, was a shirt PExh. 3 which A1 had worn the day PW1 handed the boy to him, i.e, and 31.5.2010. Also found were the young boy's clothes marked Pex. 4 collectively.

PW2 Det. AIP Okello Moses corroborated PW1 on the discovery of the body of the deceased in a swamp and A1's shirt among the clothes buried close to where the body of the deceased was found.

After reviewing the evidence, I believed the two prosecution witnesses.

In his unsworn statement, A1 said he had given the shirt to the boy on 31.5.2010 as the boy's clothes were smelling. He denied responsibility for the death of the deceased.

In a case where evidence is mostly circumstantial, as in this one, the court must be satisfied that the inculpatory facts are incompatible with the innocence of the accused, and incapable of no explanation than guilt of accused. **(Simoni Musoke V 1958 EA 715.)**

I am satisfied with the testimony of PW1 with regard to the hostility with which A1 received the boy on 31.5.2010; the fact that he had custody of the deceased

child from that moment as the father of the boy; I am satisfied that A1 was wearing Pxeh. 3, a shirt that was found buried close to the body on 9.6.2010 some nine days after A1 took custody of the boy. These facts point to an inference that A1 unlawfully caused the death of the deceased with malice aforethought. The malice is inferred from the manner of death. The deceased was strangled and his cervical spine cut. This was a brutal and intentional death for an eight year old child.

The two assessors were in agreement that A1 be found guilty of the murder.

In the premises, the prosecution has proved its case beyond reasonable doubt that A1 Epwosu caused the death of Olinga Nicholas with malice aforethought and he is convicted as charged.

With regard to A2 Acwinyo Agnes, the only evidence against her was the testimony of PW2 Det. Okello who said he arrested her because she was the one who lived with the child. A mere scintilla of evidence was insufficient to put the accused on her defense and it was for that reason that she was acquitted under section 73 (1) of the TIA.

DATED AT SOROTI THIS 01st DAY OF NOVEMBER 2013.

HON. LADY JUSTICE H. WOLAYO