



As far as the first ingredient of the offence is concerned, this court without much a-do, finds and holds that there is no dispute that Namyalo Regina is dead. The post mortem report tendered in at the beginning of the trial **Under Section 66 of the Trial on Indictment Act** confirmed the death of the deceased and cause of death.

All the prosecution witnesses on record alluded to the fact of death of the deceased. Even the accused in his defence did not deny that the late Namyalo Regina is no more. In the premises, I find and hold that the first ingredient of the offence has been proved by the prosecution beyond reasonable doubt.

The second ingredient is whether the death of the deceased was unlawful. In that regard, death is always presumed to be unlawful unless caused by accident, or in defence of property or person or by an Act of **God .R versus Gusambizi S/O Wesonga (1948) E.A.C.A 65** is a case in point. The above presumption is rebuttable and it is upon the accused to rebut it by showing that the killing was either accidental or excusable. The standard of proof required of the accused to discharge that duty is very low. It is on a balance of probabilities see the case of **Festo Shirabu S/O Musungu Vs. R (1955) 22 EACA 954.**

In the present case, the post-mortem report tendered in at the beginning of the trial revealed external injuries of a clean cut wound on the neck transcending the trachea, aesophagus, the wound measuring 22cm long. The body was blood stained. The cause of death was described as haemorrhagic shock following trauma inflicted by a sharp object. The medical report was dully signed by Doctors Kalungi Sam and Asafu Munema, medical officers.

In such circumstances, I find and hold that the death was neither caused by accident or by an act of God. Whoever cut the

deceased on the neck leading to her death was not authorized to do so under the law. I therefore find and hold that the second ingredient of the offence has been proved beyond reasonable doubt.

I now turn to the third ingredient of malice aforethought. Malice aforethought is defined under **Section 191 Of The Penal Code Act** to mean:

1. An intention to cause death of any person, whether such person is the one actually killed or not; or
2. Knowledge that the Act or Omission causing death will probably cause death of a person whether that person is the one killed or not, though such knowledge is accompanied by indifference whether death is caused or not or by a wish that it may be caused.

Malice aforethought, being a mental element of the offence of murder is difficult to prove by direct evidence. It can be inferred from the surrounding circumstances of the offence, such as:

- a. The nature of the weapon used (lethal or not).
- b. The part of the body targeted (vulnerable or not).
- c. The manner in which the weapon was used (whether repeatedly or not).
- d. The conduct of the assailant before, during and after the attack.

The relevant authorities are:-

- **RV Tubere S/O Ochen (1954) E.A.C.A 63.**
- **Akol Patrick & Others versus Uganda, (2006) H.C.B Vol. 16.**

In the present case, the prosecution adduced evidence that the killer weapon was a knife and the part of the body targeted was a clean cut wound on the anterior aspect of the neck transecting trachea, oesophagus, blood vessels and soft tissue of the neck. According to the testimony of PW1, Matiya Kisule, upon learning of the death of his daughter, he went to the scene and found the body lifeless in a pool of blood. Pw1 added that she had wounds on the left side of the arm and that the rented room was searched in his presence. PW1 went on to testify that there was a knife inside the jerry can of water and that the police took the knife and jerrycan.

PW1's further testimony was that he recovered the knife in the presence of his son and that there he added that it was the accused who informed the police about the killer knife in the jerrycan after the arrest.

PW2 was the elder brother of the accused. His relevant testimony on the weapon used and the part of the body targeted was:-

**“But when we were coming in the vehicle, accused told policemen that he killed the wife alone. Accused told policemen that he cut her in the neck, covered her, locked the door and left. He said he used the knife to cut the deceased and that he left the knife in the jerrycan full of water. Accused said he left that very night”**

The same testimony relating to the killer weapon and the part of the body targeted was repeated by PW3, D/inspector Bazibu John and PW5, Lukyamuzi Michael, the brother/cousin of the accused.

PW3's testimony was that accused told him that he killed the deceased using a knife and that he dropped the knife in the jerrycan full of water. Pw3 arranged with the father of the

deceased to check among the deceased's properties and the father (PW1) told him he had seen the knife in the jerrycan which were brought to police. Even pw5, Lukyamuzi's testimony was that he saw the knife being brought at police.

PW6, NO.40370 D/C Olupot Emmanuel was the scene of crime officer who took eight photographs at the scene of the crime and the photographs were exhibited in court. The photograph marked A(vi) was a closer view of the cut in the neck of the deceased.

In the premises, in view of the summarized testimonies of pw1, pw2, pw3, pw5 and pw6, this court finds and holds that the killer knife was a lethal or dangerous weapon applied on a very delicate and vulnerable part of the body, the neck. Indeed it caused severe injuries which lead to the death of the deceased as established by the post-mortem report. Whoever used the knife on the neck, one of the most vulnerable parts of the body clearly had the necessary intention of killing the deceased. And the deceased indeed died there and then. For the above reasons, I do conclude that the third ingredient of malice aforethought has been proved by the prosecution beyond reasonable doubt.

The last ingredient of the offence is whether it was the accused who directly caused the death of the deceased. The prosecution mainly relied on the testimonies of PW1, PW2, PW3, PW4 and PW5.

PW1, Matiya Kisule the father of the deceased knew the accused as his son in law and that he had been introduced to him by his deceased daughter. Pw1's further testimony while crying in open court, was that although he did not witness accused killing his daughter, that they trucked the phone of the deceased with the accused and that the second phone belonging to the accused was recovered at the scene of crime. He concluded that the accused,

Dickson Lubowa was living in the same room together with his daughter (now deceased).

PW2, Ssekide Verisi clearly told this court that the accused Kintu Didas alias Dickson Lubowa was his younger brother. It was PW2 who, through Lukyamuzi who assisted the police in tracing the accused at his hideout in Kyegegwa. PW2 was present in the vehicle that brought accused from Kyegegwa to Kampala and testified in court that while on the way, accused told policemen that he killed deceased with the knife which he dropped in a jerrycan of water.

PW3, the investigating officer, was among the police officers who arrested accused on 3/7/2011 in the hideout of Kyegegwa. He testified in this court how upon discovering that the murderer had taken the telephone of the deceased, took the serial number of the telephone to MTN and got a printout. PW3 found out that the accused had inserted his simcard in that telephone immediately after the murder and was calling himself as Dick Lubowa.

PW3 added that it was Nakafero Margaret a woman friend of the accused who led him to Lukyamuzi Michael, a cousin of accused (pw5) and that it was Lukyamuzi who led him to the real brother of the accused, Ssekide Verisi, (PW2). Pw3's testimony was a detailed narrative of how they went to Mityana with Lukyamuzi (PW5) and how they found pw2 who led them to Kyegegwa where accused was hiding. PW3 added that upon the arrest of the accused, he found him with the cellphone of the deceased, a 2-line phone and he also had 2 simcards of the deceased. Accused also admitted to having killed his wife to pw3 while on the way from Kyegegwa to Nsangi. And that after slaughtering deceased, he locked the body inside the house, dropped the key in the room and left for Kyegegwa where he was traced.

PW3's narrative/testimony was punctuated by sad stories as he stated that accused told him that they first went to Natete to booze with the deceased, returned at mid-night when they were drunk and played sexual intercourse with deceased before accused killed her thereafter. Accused also admitted having left his faulty phone behind to PW3. PW3's further testimony was that when he got a printout of the phone left behind, he discovered it was accused's real phone and that the accused admitted voluntarily in the presence of his brother, PW2. PW3 added that the printout he got showed the deceased's number as 0785-627-412 and that after removal of the simcard, accused's number 0789-717-637 was inserted.

PW3 gave the serial number of deceased's phone, recovered with accused in the hideout as 353237049106498. And that the serial number of the second phone was 357562019717113. The 2 telephones, their simcards and printouts were all tendered in court as part of prosecution evidence.

During cross-examination by defence Counsel, PW3 stated that he was not present when accused took the charge and caution statement but that accused admitted having killed his wife before him on the way between Kyegegwa and Nsangi in the presence of his brother, PW2.

PW3 concluded that the accused was connected with the crime because accused and deceased were last seen together and were only 2 in the room before the death, and also because of accused's admission and lastly the telephone printout. The other piece of circumstantial evidence connecting the accused with the crime in question was the testimony of PW4, Mivule Abraham, the landlord of both accused and deceased.

Pw4's testimony was that on a none Saturday before he learnt about the death of the deceased, accused found him in the

compound, greeted him (pw4) and knocked on their house but no response. Pw4 added that accused left a pineapple and other properties to a lady neighbour to give deceased when she woke up. Pw4 added that accused returned after 15 minutes and then disappeared completely and that the house had a padlock on.

PW4's further testimony was that it took 3 days to discover the dead body of the deceased and that the accused disappeared completely. The act of disappearance of the accused into hiding was therefore another vital piece of circumstantial evidence pinning the accused with the crime in question. And even PW5, Michael Lukyamuzi, who linked the policemen to PW2, Ssekide, accused's brother also testified that accused told him that he passed via deceased's home before going to his brother Ssekide (PW2). All the above pieces of circumstantial evidence lead to no other conclusion other than it was the accused who killed the deceased.

The principles governing cases depending mainly on circumstantial evidence have long been settled and applied in many cases including **Teper V.R (1952) 2 ALLER 447**. The same were followed nearer home in **Simon Musoke V.R (1958) E.A715**. It was held inter alia that in a case depending exclusively upon circumstantial evidence, the court must before deciding upon a conviction find that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. In the present case, the circumstantial evidence was so overwhelming that it irresistably pointed to the accused as the culprit.

Firstly, PW3's testimony was that the accused and deceased were last together drinking at Natete before the incident. Pw1 and pw4's evidence was that indeed the accused and deceased were staying together. PW4 and pw3's evidence was that the accused



disappeared and went into hiding after the death of the deceased. The accused was traced in the hideout through MTN telephone printout by police (PW3) and with the assistance of accused's brothers PW2 and PW5. The telephone of the deceased was found with the accused in the hideout and accused had removed deceased's sim cards and inserted his. All those actions were not actions of an innocent person. The accused in his defence did not deny staying together with the deceased as his wife. He only purported that he took his wife's phone for repairs but on a date he did not know and he did not know the fault with the phone.

One wonders how accused could take his wife's phone for repair on a date he did not remember? But the bigger question is why he did not return it to his wife (deceased) after the so called repair? Why did the accused disappear with deceased's phone if at all she had given it to him for repairs till the phone was tracked after getting print out by police officers from MTN. And why was accused in hiding. All those issues are circumstances which point to the guilt of the accused. The absence of fingerprints as submitted by the gentlemen Assessors does not absolve the accused from the crime in question.

So I disagree with the gentlemen Assessors that the accused should be given a benefit of doubt. This is because the circumstances as outlined above based on the prosecution evidence pin the accused at the scene of crime.

The fourth ingredient of the offence has therefore been proved by the prosecution beyond reasonable doubt. Having found and held that the prosecution has proved all the ingredients of the offence beyond reasonable doubt, I do hereby convict the accused of murder contrary to **Section 188 and 189 of the Penal Code Act.**

Signed by: .....  
**WILSON MASALU MUSENE**  
**JUDGE**

**PROSECUTION; (CATE BASUTTE)**

The convict before court committed a serious offence of murder. He took the law in his hands. The deceased left behind a child. She was too young to die. I pray for a deterrent sentence to teach him a lesson.

Signed by:  
**WILSON MASALU MUSENE**  
**JUDGE**

**MR. OKWADO;**

The convict is a first offender in his youth. The convict is remorseful. He confessed to this court his love for deceased. I pray that he is not given a maximum sentence.

Signed by: .....  
**WILSON MASALU MUSENE**  
**JUDGE**  
22/01/2014

**22/01/2014;**

Accused present

Mbaine holding brief for Basutte Cate for state

Okwado for accused.

Assessors present

Betty Lunkuse, Court Clerk present

**Court:** judgment read out in open court on the 22<sup>nd</sup> day of January, 2014.

Signed by:

**WILSON MASALU MUSENE  
JUDGE**

**SENTENCING AND REASONS:**

The circumstances under which the convict murdered the deceased were nasty and appalling. It is unbelievable that convict murdered the deceased even after playing sexual intercourse with her. Such an action is unbelievable and an act of terror of the highest order. The best way to describe it is that it was barbaric, uncivilized, crude and very cruel. The convict in such circumstances would not deserve any leniency.

I have considered the submissions by Mr. Okwado that convict is remorseful and a first offender. However, on the other hand, I agree with the submissions of counsel for state that such offences involving loss of life are rampant.

A deterrent sentence is therefore called for and while it may not be the maximum, but a precedent has already been set by this court in sentencing previous convicts on similar offences during this session. Such dangerous persons like convict must be kept out of society for long enough so that they don't repeat similar offences to other young unsuspecting women in our society. It should also be a lesson to the public that nobody should take away another person's life unlawfully.

So after subtracting the 2 years of remand, I do hereby sentence you to serve 27 years imprisonment.

Signed by:

.....  
**WILSON MASALU MUSENE**  
JUDGE  
22/01/2014