

IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL APPEAL 22 OF 2013

ARISING FROM NGORA CRIMINAL CASE .135 OF 2013

ISALE PAUL AND OLUKA MILTON.....APPELLANTS

V

UGANDA

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The appellant in this appeal through Madabo & Nabende advocates appealed the decision of HW Okumu Jude magistrate grade one dated 13th August 2013 sitting at Ngora on two grounds that I will refer to later in the judgment.

Both parties were required to file written submissions before 30.5.2014 but none has complied.

The duty of an appellate court is to re-evaluate the evidence adduced in the trial court and arrive at its own conclusions bearing in mind that the trial magistrate had an opportunity to observe the demeanour of the witnesses.

The appellants were jointly charged and convicted of causing grievous bodily harm c/s 219 and assault occasioning actual bodily harm c/s 236 of the penal code.

The two appellants were jointly charged with the two offences because two people were injured during the course of the same incident. Therefore the question of misjoinder of counts does not arise.

The prosecution had a duty to prove ingredients of grievous harm and actual bodily harm.

I have read the judgment of the trial magistrate, studied the proceedings and found no reason to fault the trial magistrate on the convictions.

The trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

Both appellants were at Ayina's bar on the night of 22.3.2013 together with the complainants PW3 Ikilai Sharon, and PW1 Opolot Joseph and other witnesses. The two appellants attacked both PW1 Opolot and PW3 Ikilai whereby the first appellant stabbed PW1 Opolot in the abdomen and shoulder with a sharp object later identified as a pair of scissors. The second appellant also stabbed PW1 Opolot in the abdomen. According to PW2 Adong who was present during the attack, A1 stabbed PW3 Ikilai in the abdomen. According to PW3 Ikilai, she was stabbed in the right ribs.

Pexh. 1 for Ikilai shows she was injured in the back and the health officer classified it as harm. While Pexh. 2 for Opolot show he was injured in the cheek, shoulder and stomach according to the pictogram. His injuries were classified as grievous harm.

The trial magistrate correctly believed the prosecution witnesses and rejected the defence case.

The first ground of appeal is that the trial magistrate erred in law and fact when he failed to evaluate the evidence on record as a whole. I have found that the trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

The second ground is a repetition of the first ground.

Although the appellants did not appeal against sentence, this court sitting in appeal will not condone fines that are manifestly excessive.

The 1st appellant was fined 3,000,000/ on the first count and in default, a sentence of two years and six months imprisonment.

On the second count, he was fined 600,000/ or one year imprisonment in default.

Both sentences to run concurrently. He was also ordered to pay compensation of 1,000,000/ to Opolot Joseph and 600,000/ compensation to Ikilai.

I find that the fines where imposed with material irregularity. While it is legal for a court to impose fines and in the alternative imprisonment, the trial court must do so within the law. The sentencing guidelines issued under Legal Notice 8 of 2013 in the fourth schedule gives the scale for determination of fines. The scale provides that for a fine exceeding six currency points, the alternative sentence is twelve months imprisonment. By analysis,a sentence of two years and six months imprisonment attracts a fine of 300,000/.

In the premises, I substitute a fine of 300,000/ for the 3,000,000/ fine imposed on the 1st appellant for count one. The default sentence of imprisonment still stands.

With regard to count two, I substitute a sum of 120,000/ for the 600,000/ imposed on the 1st appellant. The default sentence of one year still stands.

I order that sentences of imprisonment will run concurrently in the event that the 1st appellant fails to pay the fines.

As for the 2nd appellant, I substitute a fine of 300,000/ for the fine of 3,000,000/ imposed for count one. The default sentence of two years and six months still stands.

With regard to compensation, the 1st appellant was ordered to pay a sum of 1,000,000/ to Opolot and 600,000/ to Ikilai. This sum is manifestly excessive considering that fines were imposed. I substitute a sum of 100,000/ as compensation to each of the complainants . This sum to be defrayed from the fines imposed.

The 2nd appellant was ordered pay 1,000,000/ to Opolot. I substitute it with a sum of 100,000/ to be defrayed from the fines imposed.

Should the appellants fail to pay the fines substituted, they will pay the compensation within four months after serving their sentences.

A copy of this judgment will be forwarded to the grade one magistrate Ngora for him to note.

DATED AT SOROTI THIS 27TH DAY OF AUGUST 2014.

HON. LADY JUSTICE H. WOLAYO

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