

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL SESSION CASE. NO. 12 OF 2012.
UGANDA V A1-IJAKORIT, A2-AKORI ANGELLA

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

In this case, the accused persons are jointly indicted with murder c/s 188 and 189 of the penal code. It is alleged that the two accused persons on 22nd November 2010 at Amiria village, Katakwi district murdered Arwaileng Augustine.

Prosecution had a duty to prove beyond reasonable doubt that the accused persons with malice aforethought caused the death of the deceased.

Malice aforethought is proved when there is evidence of intention to cause death; or knowledge that the act or omission will cause death accompanied with indifference whether death occurs.

Prosecution was led by Mr. Noah Kunya while the accused persons were represented on state brief by Mr. Ogire.

Assessors were Ocole Joshua and Amoding Florence.

Proof of death

It is not in dispute that the deceased Arwaileng Augustine was confirmed dead by Mr. Okiror clinical officer, Katakwi health centre IV on 23.1.2010 when he carried out a post mortem on the body. Pexh. 1 the post mortem report was admitted by consent as evidence of proof of death.

Whether the death was unlawfully caused.

Prosecution relied on a laboratory report on vomit and blood samples taken from the deceased by Mr. Okiror clinical officer and handed to AIP Alupo Grace PW1 who then took the samples to the Government Analytical laboratory.

This report, admitted as Pexh. 2 shows that samples of vomit and blood were received on 15.12.2010. The samples were analysed and found to contain cypermethrin, a pesticide that is highly hazardous and may kill once ingested.

On the basis of this report, the death of the deceased was unlawfully caused.

Participation of the accused persons

Prosecution relied on evidence of PW2 Okwangol Venancio which shows that on 23.11.2010, in the evening, he went to A1's home to drink enguli. On arrival he found A1 drinking enguli with the deceased. As the stock had run out, the witness was informed by A2, wife to A1, that more was being brewed. According to this witness, the deceased left while staggering at about 5 p.m, leaving him at the drinking place. The witness was later served with enguli by A2.

In the night, the witness received a report that the deceased, his paternal uncle, had died. He proceeded to the spot where the body lay, located about 1 km from the home of the deceased.

In defence, A1 made a sworn statement in which he denied taking alcohol with the deceased but says he drank with PW2 Okwangoli. A2 admits serving the deceased alcohol but that A1 was not there when she served the deceased. She denied adding poison to the drink.

The question that arises from the evidence is whether, the accused persons jointly or individually served the deceased with alcohol laced with a pesticide.

The key evidence on participation of the accused persons is that of PW2 Okwangori. This witness found A1 taking alcohol with the deceased. The witness was later served by A2. A1 and A2 are a couple. The deceased left at about 5 p.m and in the night, PW2 was informed the deceased had died but could tell the time he was informed because he had no watch. Samples of vomit and blood taken from the deceased by a medical personnel in the presence of PW1 Alupo and taken to the Government Analytical Laboratory which found presence of a pesticide that kills.

The circumstantial evidence of deceased taking alcohol at the home of the accused persons and then being found dead hours later might lead to the suspicion that the pesticide was administered at the home of the accused persons because he was seen there by PW2 during the day up to 5 p.m.

However, apart from the fact that the deceased consumed alcohol at the home of the accused person in a glass shared with A1, there is no evidence tending to show that the two accused or one of them placed a pesticide in the drink. Secondly, the defence suggested a third person, Matilda, consumed alcohol with the deceased that day at the home of the accused persons. This raises considerable doubt on the identity of the person who poisoned the deceased.

Thirdly the time of death is not known. The prosecution does not rule out intervening factors between 5 p.m when the deceased left the home of the accused person, and when he died which time is unknown.

Lastly, PW2, the only witness at the drinking place did not say he saw the accused persons act suspiciously or lace the alcohol with a pesticide.

In the absence of direct evidence tending to show that the two accused persons laced the alcohol consumed by the deceased with a pesticide, i find that the circumstantial evidence adduced does not irresistibly lead to the conclusion of guilt on the part of the accused persons.

I am in agreement with the assessors that A2 is not guilty of the offence charged. I disagree with the two assessors on the guilt of A1 for the reasons i have given.

I find that the prosecution has not proved beyond reasonable doubt the offence charged. Both accused persons are accordingly acquitted and discharged forthwith unless held in connection with some other offence.

DATED AT SOROTI THIS 20TH DAY OF JUNE 2014.

HON. LADY JUSTICE H. WOLAYO