

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KUMI
CRIMINAL SESSION CASE. 69 OF 2013
UGANDA V OPERA JUSTINE

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person Opera Justine is charged with murder c/s 188 of the penal code. It is alleged that the accused person on 9th December 2012 at Akore village in Bukedea district murdered Akello Joyce.

Prosecution was led by Ms Alleluya while accused person was represented by Mr. Isodo on state brief.

Assessors were Oruka James and Adong Betty.

Prosecution had a duty to prove that accused person unlawfully caused the death of deceased with malice aforethought.

Proof of unlawful death

Medical evidence of a post mortem admitted as PExh. 1 by consent of both counsel showed that the deceased suffered open skull fracture and extensive laceration of brain tissue. Cause of death was hemorrhage and severe head injuries as a result of trauma to the head. It is therefore not disputed that Akello's death was unlawfully caused with malice aforethought.

Participation of accused person.

PW1 Asio Rose sister to the deceased lived in the same homestead with her but in different houses, some 10 meters apart. One day at night while at her home, she heard her sister complaining that Opera was flashing a torch from his phone. The witness was able to see Opera the accused person, herself as he walked away while uttering the words ' I will kill you'. This incident was reported to the clan leader Oluchu, by the deceased.

On 9. 12.12, the deceased returned home at about 8 p.m., the deceased returned from the trading centre and turned on her radio. She then came to the house of the witness Asio. As the two were seated, the radio went off air so she went to check on it and turned it on. On her return to the house of PW1, she narrated how the accused was threatening to kill her at which point the radio was turned off a second time. Again the deceased went to turn on the radio and on her return she told the witness she had seen Opera walking away. The radio was turned off a second time and again the deceased went to turn it on. The third time the radio was turned off, the deceased decided to go to sleep. The witness then heard the volume of the radio increased from time to time. The inference from this evidence is that it was the accused who was in the house with deceased that night as it was the accused whom the deceased had seen walking away when the radio was turned off the first time.

In the morning, the next day, at about 10 a.m, PW1 Asio sent her child to take porridge to the deceased. The child returned running and told the witness that the aunt was lying next to the door. On checking on her sister, PW1 found she was dead in a pool of blood. The witness raised an alarm that was answered by neighbors. And matter reported to Malera police post.

He arrived at the scene in the morning and found police had arrived.

PW4 PC Wotayide and dog handler led a sniffer dog to the scene on 10.12.2012. He found when the area had been cordoned off by police. The witness introduced the dog to the inside of the house and the body. After picking up scent, the dog led the witness and other people including PW1 Asio and PW2 Osire to a house in Kamailuku village. As the house was locked, it was forced open whereupon the police dog, Jea, jumped on the bed and sat on it. At this point, the dog stopped tracking. The owner of the house was identified as the accused by PW3 Osire. PW1 Asio was present when the dog led the police to the house of Opera, who was not at home. PW4 Wotayide then instructed the LC1 Chairman of the area to arrest Opera and hand him to police.

It was suggested by the defence in cross examination of PW4 that Jea could not differentiate the scent of accused from other people but PW4 explained that the dog could differentiate scents and that explains why it stopped tracking when it reached Opera's house. PW4 also explained that the police dog Jea is 100% efficient with five years experience and it picks the scent of the last person at the scene.

The fact that the police dog with five years experience was able to pick up Opera's scent from the house of the deceased person in the morning after the murder and track his house is strong circumstantial evidence linking the accused person to the crime.

Pw 5 Det. Adide also witnessed when the police dog, Jea, led the police Opera's home and on the next day, the accused person handed himself in to the police.

The other evidence that is relevant is the evidence of PW1 Asio and PW3 Osire with regard to the nature of the relationship between the accused person and the deceased prior to her death. According to PW1 Asio , whose testimony I accept, the accused person and Opera cohabited at the deceased's home but they had a stormy relationship and accused had previously come to their homestead and declared in the presence of the clan leader that he was no longer married to Akello, now deceased. The couple had cohabited for about 10 years. However even after the separation, the accused person continued to go to the deceased's home but she resisted his advances and she had shared with the witness that Opera would kill her one day. PW3 Osire Sam paternal cousin to the deceased corroborated testimony of PW1 Asio that the accused and deceased were in a stormy relationship and often had misunderstandings.

The circumstantial evidence of the police dog presented by PW4; the direct evidence of PW1 Asio who was told by the deceased in the evening of 9. 12.12 that Opera was near the house of the deceased and was turning off the radio; the previous threats to kill the deceased also witnessed by PW1 Asio; and the very stormy relationship between accused person and deceased which the latter was not interested in, all lead to the inference that it is the accused person who come to the home of the deceased in the night of 9.12. 12 and murdered her.

The accused made an unsworn statement in which he denied the offence and that he was at his home on the night of the murder.

However, the prosecution placed him at the scene of crime on the night of 9.12.2012.

I am in agreement with the two assessors that the accused person be found guilty of the offence charged.

I am convinced beyond reasonable doubt that the accused person with malice aforethought caused the death of Akello Joyce and he is convicted of murder as charged.

DATED AT SOROTI THIS 10th DAY OF JANUARY 2014.

HON. LADY JUSTICE H. WOLAYO