

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL SESSION CASE. NO. 154 OF 2013

UGANDA

V

1. LOCHORO LOMERITHIYA

2. LOPAAI LOMA

3. LORIKA LONGOK.

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The three accused persons are charged with aggravated robbery c/s 285 and 286(2) 3 (a) (i) of the Penal Code Act. It is alleged that the three on 18th May 2011 at Namoroukwan ward, Kotido district robbed Kokoi Apakiron of sh. 1,858, 800/ a nokia mobile phone, clothes and shoes and at or immediately after the robbery threatened to use a deadly weapon to wit a gun on the said Kokoi.

Prosecution was led by Mr. Amalo Zerald RSA Moroto while Mr. Isodo Samuel appeared for the accused persons on state brief. Assessors were Lomilo Joseph and Amina Mashaka.

Prosecution had a duty to prove its case beyond reasonable doubt the following ingredients of aggravated robbery:

Theft of property

Use of violence during the theft and

Possession of a deadly weapon during the process.

Theft of property

On theft of property, the only evidence adduced by the prosecution was that of PW1 Kokoi Apakiron who testified that on 18.5.2011 at about 8 p.m, he was close to his home in Namoruakwan on his return from Kakwati market when he met three men. A1 Lochoro grabbed him while A2 Lopaai pushed him down with a gun. He was led to a water pool where he was undressed, and robbed of cash 1,858,800/ and a phone. His evidence is that these items were taken by A1 and A3 Lorika. The phone was exhibited in court as Pexh. 3.

In the absence of contrary evidence, I find that the prosecution proved theft of property.

Whether violence was used and whether the assailants were in possession of a gun.

Prosecution relied on PW1 Kokoi's testimony to prove these two ingredients.

Being hit with a stone, being pushed and being ordered to undress are all forms of violence. That PW1 Kokoi said A2 pushed him with a gun is evidence that the three assailants were in possession of a deadly weapon. To this extent therefore, prosecution proved use of violence and possession of a deadly weapon.

Participation of accused persons

According to PW1 Kokoi, when he met the three persons that night he did not know them. He came to know their identities after their arrest one and half

months later except that during the robbery, he interacted with them for some time and hence his ability to recognize them one and half later on their arrest. At the police, Kokoi claims to have recognized the three accused persons. I find this claim suspect because he initially saw his assailants on a dark night some time back. At the police, no identification parade was held for him to point out the assailants. Secondly, while Kokoi puts date of arrest as one and half months after the robbery, PW2 Abulkai puts the time as June 2012, a year later.

It is unlikely that Kokoi recognized assailants whom he saw in the dark a year earlier. The fact that there is contradiction between Kokoi and Abulkai PW2 further damages the prosecution case in as far as their possible participation is concerned.

In view of the foregoing analysis, I am unable to rely on the evidence of Kokoi to place the three accused persons at the scene.

The other evidence relied on by the prosecution to prove participation was evidence leading to discovery of the stolen phone. In summary, PW2 Clement Abulkai testified that he was informed by Kokoi that robbers had robbed him of his phone on the night of 18.5.2011. In June 2012, a year after the said robbery, he received a call from the telephone number of Kokoi. On further inquiries, Abulkai identified the caller as Lokeke. The latter was persuaded to meet PW2 and he was detained. At police, according to PW2, Lokeke revealed that the three accused person had pledged the phone for alcohol.

It transpired during cross examination that the said Lokeke was in custody for some time until the phone was recovered.

An evaluation of PW2's testimony shows that while it is possible he interacted with Lokeke and the interaction led to the recovery of the phone through Lokeke, I cannot rely on hearsay evidence with regard to what Lokeke told Abulkai to pin the three accused persons as being in possession of stolen property. In the absence of Lokeke who claims the phone was pledged by the three accused persons, PW2's testimony remains hearsay with regard to their possession of the phone.

In the absence of evidence that the three accused persons were found in possession of the phone, prosecution has failed to link the three accused persons to the robbery.

All three accused persons made sworn statements. A2 claimed to have been arrested because of he had covered himself with a sheet and was not wearing trousers. A1 and A3 were arrested on allegation they were in possession of guns.

Although the accused persons have no burden to prove their innocence, the fact they were arrested for offences unrelated to the robbery is a relevant fact.

I am in disagreement with the two assessors that prosecution has proved its case beyond reasonable doubt for the reasons I have given.

I find that prosecution has not discharged its burden of proof and all three are acquitted of the offence charged. They are released from custody unless lawfully held in connection with some other offence.

DATED AT MOROTO THIS 1ST DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO

