

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL SESSION CASE. NO. 135 OF 2013

UGANDA V LOPUWA LUCIA

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person is charged with murder c/s 188 of the Penal Code Act. It is alleged that the accused person on 7th December 2012 at Nakaal village, Panyangara sub-county, Kotido district unlawfully caused the death of Lokiru Maria.

Prosecution was led by Mr. Lomuria Thomas RSA Kotido while accused person was represented by Mr. Jonathan Tiyo on state brief.

Assessors were Arap Daniel and Adupa Dinah.

The prosecution has a duty to prove its case beyond reasonable doubt.

The key ingredient of murder is:

Causing death with malice aforethought. This means intentionally causing death or not caring if acts or omissions will lead to the death of the deceased.

Proof of death.

On proof of death, in the absence of a post mortem report, prosecution relied on oral evidence of witnesses to prove that death of Lokiru Maria occurred on or about 7.12. 2012.

It was not disputed that the deceased child died in the month of December 2012. PW1 Lokadong Paul, father of the deceased testified that on 7.12. 2012, his daughter passed on. This evidence was confirmed by PW2 Dodoit Acun mother of the deceased and PW3 Nakuti Veronica sister of PW2. While the actual date of death is not clear, it occurred between 8th December 2012 and 9th December 2012. This is because PW1 Lokadong said the child was taken ill on 7.12.2012, he took her to hospital the next day when she died. While PW3 Nakuti said the child died after being admitted in hospital for three days. In the absence of a post mortem report, it is safe to conclude the child died in December 2012.

Cause of death and participation of the accused person.

What is in contention is the cause of death. The evidence of PW2 Dodoit mother of the deceased is that on 7.12.2012, she was performing household chores when a quarrel broke out between her and the accused person who lived in the same village. After the quarrel, the accused walked away with her dog.

According to this witness, she was informed by the accused after the death of Lokiru that while on the way to her parents' home on 7.12.2012, she (the accused) was bitten by her own dog. Whereupon, she went to a traditional healer forherbs and was given a herb called erogorogoet. That the accused then returned to the compound of PW2 Dodoit, mixed the herb in a calabash and gave to Lokiru to drink.

It was at this point that PW2 who was molding her hut saw her child go the house of the accused person. The child then emerged from the hut of the accused

person breathing heavily and informed her that the accused person had given her water to drink.

On the way to Kanawati health centre, the child kept repeating that the accused person had given her water to drink. According to this witness, the health centre personnel failed to diagnose the illness and the child died a day later after admission.

It was after the death of the child that the accused mentioned in the presence of the witness that she had given erogoroget in water to the child.

The sequence of events as testified by PW2 Dodoit is substantiated by PW1 Lokadong father of the deceased.

From the foregoing narrative, several facts emerge. First, that the accused quarreled with the mother of the deceased on 7.12.2012. Second, by her own admission to PW1 and PW2, the parents of the deceased, she administered erogoroget in a calabash to the child the same date.

Third, on taking this herb, the child fell ill and ran to her mother while complaining that the accused had given her water to drink.

Fifth, the child told her mother, in a dying declaration, that the accused had given her water to drink. At five years old, the child was too young to know that the water was laced with poison.

Sixth, the child died a day later in hospital.

I had no reason to disbelieve PW1 Lokadong who testified that the child was not ill prior to drinking the herb and the child had not been ill since she was two months old and was five years old at the time of her death.

According to PW3 Nakuti, during their stay in hospital, the child had wanted to vomit but each time she failed to throw up.

Proof of death can be proved by oral testimony, in the absence of medical evidence. **Baguma Fred v U Supreme Court criminal Appeal 7 of 2004** refers. In this case, the Supreme Court confirmed the decision of the trial court in disregarding the medical evidence in an aggravated defilement case and relying on witness accounts.

From the foregoing, it is clear that the child died as a result of what was given by the accused person.

The issue to be resolved, in the absence of a post mortem report, is whether the herb administered by the accused was poisonous and caused the child's death.

According to PW1, Lokadong, the herb erogorogoet is extremely lethal and is a killer. He made a report to the LC 1 Chairman after the death of the child.

PW2 Dodoit confirms that the herb is well known in the community as poisonous.

She went on to state that women take it to commit suicide when forced marry a man not of their choice.

From the admission to PW1 and PW2, It was suggested by the accused person she may not have known the herb was poisonous as it was given to her by a

traditional healer as an antidote for a dog bite. I disbelieve this aspect of the defence case because it was clearly an attempt to escape criminal liability by alleging ignorance of the herb's potency on the grounds it was given to her by someone else.

I am convinced the accused person purposely went to collect Erogoroget after quarreling with Dodoit mother of the deceased, and intentionally administered it to the child well knowing it was lethal. I am grateful to the assessors for their guidance in confirming that among the Karamojong, Erogoroget is a lethal poison.

The accused person made an unsworn statement in which she denied poisoning the child.

However, I am in agreement with the two assessors that prosecution has proved its case beyond reasonable doubt. Accused person is accordingly convicted of murder c/s 188 of the penal code as charged.

Before I take leave of this case, it is imperative that State Attorneys insist on post mortem reports as a matter of course in murder cases prior to committal, and laboratory report where poisoning is alleged. The right to a fair trial demands no effort be spared to secure all material evidence.

DATED AT MOROTO THIS 29TH DAY OF SEPTEMBER 2014.

HON. LADY JUSTICE H. WOLAYO

