

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CRIMINAL SESSION CASE NO.0137 OF 2013

UGANDA

PROSECUTOR

VERSUS

AHIMBISIBWE ALEX KARUBEYA

ACCUSED

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The accused was charged with murder contrary to Section 188 and 189 of the Penal Code Act. It is alleged by the Prosecution that on the 24th January 2013 at Katooma Village, Kabale District, the accused murdered Mukyara Robinah.

The Prosecution called four witnesses and the accused called no witness.

PW1 was Mazimwe Wilber who is an elder brother and village mate of the accused. His evidence was that on 25th January 2013 he was digging in his garden when PW4 Kyimanizanye Mebura came and told him that the accused wanted to talk to him. He went to the accused's home and found the body of the deceased on a bed. Blood was oozing out of the mouth. He told Court that he had last seen the deceased having a drink with the accused and other people at Kyevu trading Centre at about 4.00pm of the previous day. The accused was crying and could not tell him what led to Mukyara Robina's death.

PW2 was D/AIP Tumwebaze Richard who recorded a Charge and Caution statement in which the accused is alleged to have confessed to the killing the deceased. The alleged confession is to the effect that on the 24th January 2013 the accused and the deceased went to drink bushera at Kyevu trading centre where they stayed up to 8.00pm. On the way home, the deceased became too drunk which annoyed the accused. That he used his walking stick to discipline her. They reached home and slept only to find her dead in the morning. He reported the death to his neighbors who arrested him and took him to Kabale Police Station.

The accused denied confessing as alleged in the Charge and Caution statement. And a trial within a trial was conducted and Court in its ruling agreed to the admission of the Statement as an exhibit for the Prosecution. There appeared no evidence that the accused was coerced, tortured or promised any favors in making the admission.

PW3 was Praxeda Bamutirize a Counsellor for the Batwa Community in Namiryango Parish. Her testimony was that on the 24th January 2013 she saw the deceased drunk and staggering on the road. On the 25th January 2013 PW1 came and told her that Robinah Mukyara was dead. She went to the home of the accused where she saw the body with blood

oozing from the mouth and with injuries on the head and left shoulder. The accused was arrested on the suspicion that he had killed her.

In cross examination, she told Court how the deceased had taken to serious drinking and would not eat despite the accused struggling to provide the food. She was very abusive but the accused who was a loving husband would always report her for Counselling. She told Court how they went and saw blood at a spot on the road where the accused alleged the deceased had fallen and hit her head on a stone. According to the witness the accused was a calm and composed person who loved his wife and had brought up two children. The deceased had left a three weeks old baby who was under the care of the witness despite the hostility from the Batwa Community in the area who wanted the child withdrawn from her.

PW4 was Kyimanizanye Mebura who was staying in the same house with the deceased. Her testimony was that on the 24th January 2013 the accused and the deceased went to Kyevu and came back late in the night when the witness and other children were sleeping. In the morning, they found Robinah Mukyara dead. She told Court the couple had no problems and she did not know what caused the death.

The accused testified on oath. He told Court that on the 24th January 2013, he went to Kyevu with the deceased where they received money from “donors” and started drinking. They left Kyevu at 7.00pm and on reaching the junction to Ishunga Village, the deceased fell and hit her head on a stone. The accused supported her to reach home and they both slept. He realized she was dead in the morning where upon she informed members of the Community who arrested him.

He narrated how he made the statement at Police. He denied the contents read to him and claimed that what he told the recorder of the statement in Rukiga is not what he recorded in English a language the accused does not understand. His statement in Rukiga was that the deceased had fallen and injured her head.

In cross examination, he told Court that the Officer who recorded the Charge and Caution Statement told him that he is born in the same sub county with the accused. He urged the accused to tell him everything so that he is released from Prison. He further told Court that being in a new environment, he was in fear and just told Police whatever they wanted to hear.

There was a post mortem report on the body of the deceased and a report on the examination of the accused which were not contested and admitted in evidence by consent of the Prosecution and the Counsel for the accused person.

The Offence of murder has four elements the Prosecution must prove beyond reasonable doubt in order to secure a conviction. The Prosecution must prove the death of the deceased; that the death was malicious; that it was caused with malice aforethought and that the accused person participated in causing that death.

The admitted evidence of the postmortem report prepared by Dr. Arihaazira Moses on the 4th February 2013 is sufficient proof of the death of Robinah Mukyara. This is corroborated by

the sworn evidence of the other Prosecution witnesses PW1 and PW3 who saw the body. It is the finding of this Court that death of Robinah Mukyara has been fully proved by the Prosecution beyond reasonable doubt.

The law presumes that every homicide is unlawful unless it is as a result of an accident or sanctioned by Law. Death in this case was caused by increased intracranial pressure due to intracranial haemorrhage. The body had a deep cut wound on the forehead. The report is silent on the probable cause of the injuries that led to the wound and the intracranial bleeding. This creates doubt in the mind of Court as to whether this was a result of the alleged beating in the retracted and repudiated confession or whether it was as a result of the accident narrated by the accused person which would be death resulting from an accident and not attributable to the accused.

It is the finding of this Court that this element of the offence has not been proved by the Prosecution. The same analysis applies to the element of the offence relating to whether the death was caused with malice aforethought which I also find has not been proved by the Prosecution.

The accused retracted the admission in the Charge and Caution Statement on oaths. He brought out unchallenged evidence that the recorder of the statement promised him quick release from Prison if he narrated to him what happened. This is an abuse of the procedures for recording such statements. Any confession must be given without any promise, inducement or coercion.

The accused further narrated to Court and PW2 confirmed that he recorded the statement in English although the accused was narrating to him in Rukiga language which they both speak fluently. The accused does not speak or write English. The accused claims what was read back to him is not what he told the witness to write. This in the opinion of this Court was another breach of the procedures in recording Charge and Caution statements. The recorder should have recorded the statement in Rukiga Language and then secured a translation to English. Both the statements in Rukiga and English should have been availed to Court and exhibited which was not done.

In view of the flaws observed in the recording of the Charge and Caution statement, I hereby warn myself that I cannot rely on it unless there is independent evidence to support the admission. I also warned the gentlemen assessors about the need to be cautious in basing their opinions on a retracted and repudiated confession.

The accused was alone with the deceased both on the way home from Kyevu and in their house. PW4 who was in the house was asleep and does not claim to have witnessed any fighting between the accused and the deceased. PW3 told Court how the accused was not a violent man who had brought up two children in a relationship where the deceased was a drunkard and abusive. This was not disputed by the Prosecution.

The medical report does not indicate the possible cause of the head injuries on the body of the deceased. It is thus the finding of this Court that there is no independent evidence to

corroborate the retracted Charge and Caution statement the Prosecution relies on. The evidence of the accused and that of PW3 sounds more believable.

The Prosecution has failed to prove three of the four elements of the murder charge against the accused and I have no option but to acquit him unless he is being held on any other lawful charge.

MOSES KAZIBWE KAWUMI

JUDGE.

10th October 2016.