

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT LUWEERO

HIGH COURT CRIMINAL SESSION CASE NO. 078 OF 2013

**(Arising from the Chief magistrate's Court of Luweero Criminal case 003
of 2013 which also arises from Nksk/CRB 1284/2008**

UGANDA ::: PROSECUTOR

VERSUS

SEMUGOMA MARISELI ::: ACCUSED

BEFORE: HON. MR. JUSTICE JOSEPH MURANGIRA

JUDGMENT

1. Introduction

1.1 Representation

The prosecution is represented by Ms. Nakafeero Fatinah, Senior State Attorney, Resident State Attorney at Nakaseke District. Whereas the Accused is represented by Mr. Wameli Anthony of M/S Wameli Co. Advocates, Kampala on state brief.

1.2 The Assessors in this case are:

1. Mr. Ddamulira Christopher
2. Mr. Kiwalabye Issah

2. Facts of the Case:

On 31st July, 2008 at Kiziba village, Nakaseke sub. County in the Nakaseke District, the Accused Semugoma Mariseli caused the death of Nansamba Sarah. The deceased was the wife of the accused. The matter was reported to the

police. Later the Accused was arrested and charged with murder. Somehow, somewhere, the Accused was granted a police bond. The accused never reported back to police in answer of the police bond. Then this Criminal case lost position. The Accused was re-arrested in 2013. He was taken to Court to answer this charge of murder. The Accused denied this charge of murder in total. Hence this trial.

3. The Indictment:

The Accused, Semugoma Mariseli, was indicted with murder contrary to sections 188 and 189 of the Penal Code Act, Cap.120, Laws of Uganda.

4. The Ingredients of the Charged Offence of murder are:

1. The person named in the indictment is dead.
2. The death was unlawfully caused.
3. The death was caused with malice aforethought.
4. The Accused participated in the death of the deceased.

5. Burden of Proof

In all Criminal cases, except in a few statutory offences, the prosecution bears the burden of proof to prove all the ingredients of the charged offence against the accused. The standard of proof is proof beyond reasonable doubt. This burden of proof does not shift to the Accused to prove his innocence. This burden of proof always rests on the prosecution. If there is a doubt created in the prosecution case, that doubt must be resolved in favour of the Accused. See the case of **Woolmington Vs. DPP [1935] AC 462**. See also Article 28(3) (a) of the Constitution of the Republic of Uganda, 1995, and Section 101 of the Evidence Act, Cap. 6 Laws of Uganda.

6. Witnesses in the case:

6.1 In order to prove its case, the prosecution called the following witnesses:

1. Naddunga Lillian, PW1
2. Mr. Sebastian Ddamuzungu PW2
- 3 D/AIP Wakubariho Herbert Police Officer, PW3.

6.2 The defence called the following witnesses in support of its case:

1. The Accused, Semugoma Mariseri DW1.
2. Luboyera Vincent, the son of the Accused and the Deceased DW2.
3. Namulondo Berna, the daughter of the Accused and the deceased DW3.

7. Exhibits in the Case:

1. PF. 48 C, the Post-Mortem Report in respect of the deceased Exh. P1.
2. The Sketch plan of the scene of crime, Exh. P2.

8. Resolution of the Case by Court:

8.1 In their respective submissions, both counsel for the parties and the Assessors in their joint opinion agreed that the prosecution proved the 1st, 2nd and 3rd ingredients of the charged offence. The defence is only contesting the 4th ingredient of the offence of murder.

8.2 On the 1st ingredient: the Person named in the indictment is dead.

The Prosecution adduced evidence from PW1, PW2 and PW3, who all stated that Nansamba Sarah, the one in the indictment is dead. This evidence is

corroborated by PF 48 C (Exh. P1.) the post-mortem report which indicated that Nansamba Sarah is dead. More to that, DW1, the accused and husband of Nansamba Sarah, DW2, Luboyera Vincent, the son of Nansamba Sarah and DW3 Namulondo Berna, the daughter of Nansamba Sarah in their respective evidence all confirmed that Nansamba Sarah is dead. Therefore in agreement with both counsel for parties and the two gentlemen Assessors, I hold that the prosecution proved this 1st ingredient of the charged offence of murder beyond reasonable doubt.

On the 2nd ingredient, death **was unlawfully caused.**

Consequent to my findings on the 1st ingredient of the charged offence above, the prosecution led evidence to show that the death of the deceased was unlawfully caused. This piece of evidence was never challenged by the defence neither in cross-examination nor in the defence evidence. Under Article 22 (1) of the Constitution of the Republic of Uganda, 1995, guarantees protection of right to life. To this effect no person shall be deprived of his or her life except as is provided by law or by a sentence of death confirmed by the Supreme Court. Again in the case of **Wanda Alex & 2 Others Vs. Uganda Supreme Court, Criminal Appeal No. 42 of 1995,** it was held that.

“After the Court has properly considered all the essential elements which constitute the offence of murder, then the killing was unlawful since it was not accidental or authorised by law.”

In view of all the above, and in agreement with both counsel for the parties and the two gentlemen Assessors. I hold that the prosecution proved this 2nd ingredient of murder beyond reasonable doubt.

On the 3rd ingredient of murder; **the death was caused with malice aforethought.**

The Evidence of PW1, PW2, PW3, DW1, DW2 and DW3, described how they saw the body of Nansamba Sarah on 1st-8-2008. They found the body in a scandalous position. The PF 48 C, which is the post-mortem report, described the murder as a brutal one.

The manner in which the deceased was murdered was intentional, inhuman and degrading. To determine malice aforethought has been set out in a number of cases. In case of **Wanda Alex & 2 Others vs. Uganda (Supra)** it was held that;

“Malice aforethought could be inferred from the surrounding circumstances such as the weapon used and the part of the body on which it was used.”

Again, Section 191 of the Penal Code Act defines malice aforethought as:-

“Malice aforethought shall be deemed to be established by evidence proving either of the following circumstances:-

- (a) An intention to cause death of any person whether such person is the person actually killed or not, or**
- (b) Knowledge that the acts or omissions causing will probably cause the death of some person, whether such person is that one actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not, by a wish that it may not be caused”.**

In the premises, considering the entire evidence on record, the above cited authorities and for the fact that both counsel for the parties are in agreement, I hold that the 3rd ingredient of the murder has been proved by the prosecution beyond a reasonable doubt.

On the 4th ingredient of murder, the participation of the accused in the commission of the charged offence. Counsel for the accused Mr. Wameli Anthony, submitted that the prosecution failed to prove this case against the Accused beyond reasonable doubt. That all the three prosecution witnesses said nothing upon which this court can convict the accused for murder. That PW1, Naddunga Lillian knew nothing about who could have killed the deceased. Counsel for the accused heavily criticised the evidence of PW2, Damuzungu Sebastian. That PW2 told court nothing but only hearsay evidence. That for these facts that were within his knowledge were either exaggerated, imaginary or were gravely contradicted, by PW1 and PW3. He submitted that PW2 stating that the accused was re-arrested by his children is wrong. That the accused never went to see the body of his wife at the scene of crime is wrong. That according to the evidence of PW1, DW1 and other defence witnesses, that the accused went to the scene of crime and saw the body of his wife. That whatever PW2 told court was not true. That his evidence was sharply contradicted by PW3's (Wakubariho Herbert) evidence.

Again, counsel for the accused further submitted that the evidence of PW3 was, too, full of hearsay evidence. He also submitted that the accused and his two defence witnesses gave credible evidence in defence. That all the exhibits that were mentioned by the prosecutions; the two knickers, the coat/jacket could not connect the accused with the murder of his wife. Counsel for the accused prayed to court that the accused be acquitted of the offence charged.

On the other hand, counsel for the prosecution, Ms. Nakafeero Fatimah, in her submissions evaluated the evidence on court record as a whole. She relied on the circumstantial evidence pertaining to the conduct of the Accused on 31st July, 2008 and 1st August, 2008 was not the conduct of an innocent person. She praised the evidence of PW2 and PW3 as credible and truthful. That the circumstances that surrounded the killing of the deceased and the conduct of the accused after learning from his son, DW2, the death of his wife connects the Accused to the death of Nansamba Sarah (deceased).

In her submissions, counsel for the state submitted that the defence of the Accused and the evidence of his two witnesses never created any doubt in the prosecution case. She prayed to this court to be pleased to find the accused guilty and convict him as indicted.

The two gentlemen Assessors, in their joint opinion evaluated the evidence on the court record and in their opinion found no evidence that could connect the Accused with the murder of his wife. They advised me to find the Accused not guilty and acquit him of the offence of murder.

I have evaluated the evidence of the prosecution witnesses and the evidence of the defence to see whether there is evidence that could lead to the conviction of the accused or to the acquittal of the accused person. I have also considered the submissions by both counsel for the parties and the joint opinion of the Assessors.

Through the evaluation of the evidence on record as a whole I noted that there is both direct evidence and circumstantial evidence that surrounds the conduct of accused immediately before and after learning that the deceased is dead.

The Accused in his defence denied participation in the commission of the charged offence. He raised an alibi that on the fateful date he spent all the day and night in his house making a report for the organisation he was leading at Nakaseke Catholic parish, called “Solidali”.

PW2 Damuzungu Sebastian in his capacity as crime preventer and a member of the LC. 1 of the area gave evidence that as soon as he got news of the death of the deceased he rushed to the scene of crime at about 8.00 .a.m. That he found so many people gathered but that the accused was not at the scene of crime. That yet the accused is the one who had lost his so called dear wife. This evidence is corroborated by the evidence of the police officer, Wakubariho Herbert.

PW3 gave evidence that when the police arrived at the scene of crime at around 8.00 am up to the time the Doctor was brought at the scene of crime to carry out a post mortem which exercise took about 30 minutes, the accused was nowhere to be seen. That the accused never came to the scene of crime to see the deceased’s body. Yet the Accused in his evidence said that the police found him at the scene of crime and that he introduced himself to the police officers.

The Accused in his evidence stated that there were many police officers at the scene of crime. Yet according to the evidence of PW1, PW2 and PW3 there were a few police officers. Besides, the way the prosecution and defence witnesses described the situation and calm people who were at the scene of crime never necessitated the deployment of many police officers. Again the evidence of PW3 on that point was neither challenged in cross-examination nor in evidence by the defence. It is the evidence of Luboyera Vincent, DW2 that after seeing the body of his deceased mother, he rushed back home and told the accused of the bad news. That he then moved around the village communicating to people of the said bad news. Besides DW2 in his evidence stated that by 8.00 am. On 1-8-2008 the accused was still in his bedroom. DW3,

Namulondo Berna on hearing the sad news from DW2, She hurriedly rushed to the scene of crime, saw the body of the deceased's mother. She was not with her father at the scene of crime. That she, too, rushed to inform Naddunga Lillian.

PW1, their immediate neighbour heard of the said sad news. That from PW1's home she rushed to the Landlady of her mother's shop and informed her of the bad news. It is still her evidence that from there she rushed to her friend's place in the neighbourhood where she moved back to her home with her friend, and she found her father still at home in his bedroom with the LC.1 chairman of the area who was asking the Accused the shirt he was putting on the previous night. That she attended to her father who was in his room and then moved to the home of Mukasa where she remained until about midday when the body of the deceased was brought from the scene of crime to their residence. From the evidence of DW2 and DW3 it is clear that their father never went to the scene of crime. To that extent, the evidence of the prosecution that the Accused never went to scene of crime was not challenged by the defence. Thus I am in agreement with counsel for the prosecution that such conduct by the accused is not compatible with his innocence.

PW2 and PW3 in their respective evidence told court that after the doctor had carried out the autopsy on the deceased's body.

The Police officers which included PW3, LC. Chairman of the area Mr. Kangave, the LC.1 defence Secretary, Ms. Naddunga Lillian (PW1) and PW2 moved to the home of the Accused which was about 50 metres from the scene of crime. That they found the Accused inside his bedroom in his house. PW3 emphasised in his evidence that the accused at that moment looked blank about the death of his wife. PW3 stated that the accused's conduct showed that he learnt the death of his wife from him (PW3). Even the conduct of DW2 and DW3 avoiding to be at the scene of crime with other mourners who had

gathered there casts doubt on their conduct. Their behaviour on that very morning of 1/8/2008 as narrated by them, if it was to be true, then, they too, their conduct remains suspicious. It is common knowledge that children who have lost their dear mother cannot behave the way DW2, DW3 and other children behaved. There is also a doubt that these two children ever went to the scene of crime.

From the conduct of their evidence and the way they were responding to the questions in cross-examination, I could see that they know much about the death of their mother, but they were just covering up for the sake of it to support their father. Thus, the conduct of the Accused, DW2 and DW3 cannot lead to any inference other than that of a guilty mind and cannot be construed to be of the innocent grieving husband, considering the circumstances under which the deceased died.

Further PW2 told court in his evidence what was recovered from the accused's bed room upon search by PW2, PW3, PW1 and the LC.1 Chairman, Mr. Kangave, that is a white knicker according to Damuzungu Sabastian (PW2) soaked in blood and the deceased's mobile phone, though there is a small disparity, according to PW3's evidence that the knicker that was recovered from the accused's bedroom was soaked in something like Omo. All the same this bedroom was clearly being used by the Accused and his wife (the deceased) as it was clearly put in their evidence by the defence witnesses. This ruled out any possibility of access in that room that fateful night of any other person other than the Accused.

PW3 further testified about the conduct of the accused after the death of his wife, specifically when himself, PW2, PW1 and the LC.1 Chairperson of the area went to search the accused's house. That the Accused was indifferent and that he was smoking something. PW2's evidence of what was happening in the accused's bed room appeared as if the accused was practicing witchcraft.

PW3 gave evidence that through investigations, he came to know that the relationship between the Accused and the deceased had gone sour. PW2 gave evidence that the accused used to beat up his wife, the deceased. That him as a crime preventer and a member of the LC.1 leadership in the area knew that as a fact. This piece of evidence was never challenged by the defence in cross-examination. This evidence of PW2 and PW3 is corroborated by evidence of DW1, DW2 and DW3 about how the accused neglected to pick his wife from her workplace on the fateful evening and even his refusal to find out from the neighbours and also the shop which was about 300 (three hundred metres) from his house on what could have happened on his so called dear wife. The accused also failed or/and neglected to instruct the children to go and pick their mother as they used to do from the shop. From the evidence of DW2 and DW3 it appears to me that the whole evening of 31st July, 2008 they were on tension and that they fear their father very much.

Furthermore, DW1 the accused gave evidence that PW2 and the police wanted to drug him into his house and that he resisted them for fear that the angry people who were in his house could easily kill him. This defence was watered down by DW2's evidence that when PW2, PW3 and the LC.1 chairperson came to their home, his father was inside his bedroom alone. That the said people found him in the room. And later they moved out of the house with Accused, moved around the house until they saw a jacket which was wet hanging on the old house of the pigs. That he was present when that jacket was recovered and that in the pocket of that jacket he saw the policeman removing a knicker. He further gave evidence that the people who were at their residence outside were peaceful. This evidence sharply contradicts the evidence of his father, the accused.

PW2 gave evidence that the accused brought his way at Kiwoko police station and was released on police bond in unbelievable circumstances.

PW2 gave evidence that the accused bribed his way out using his son. PW3 in his evidence expressed the same feelings and wondered why the accused could be granted police bond when he was still carrying out investigation. PW2 gave evidence that the Accused disappeared from the village after his release on the police bond. That the Accused was later in 2013 re-arrested by his children on the ground that he is the one who killed their mother. Counsel for the Accused in his submissions criticised PW2's evidence in that regard. However, there is truth in his (PW2's) evidence.

In defence, the Accused admitted that he was released on police bond and that he was advised by the police not to go back to Kizibi village for fear of being killed by the villagers. That later the police at Kiwoko advised him not to report again in answer for his police bond. DW3 on 11th January 2013 tricked her father that himself (Accused) and herself were needed at the police at Kiwoko to give more information that could lead to the arrest of the killers of her mother. The accused unknowingly surrendered himself to the police. And police re-arrested him and this time around charged him with murder.

Therefore from the circumstantial and some few areas of direct evidence, the prosecution managed to connect the death of the deceased with the accused. In the result, therefore, I am in agreement with the submissions by counsel for the prosecution and I hold that this 4th ingredient of the offence of murder was proved by the prosecution beyond reasonable doubt.

9. Conclusion:

In Closing and in consideration of the evidence on court record as a whole, the submissions by both counsel for the parties and the joint opinion of the gentlemen Assessors, the law applicable to this matter and my own analysis of the entire case, I find that the prosecution proved its case against the accused

beyond reasonable doubt. Wherefore, the accused is found guilty and convicted of Murder Contrary to Sections 188 and 189 of the Penal Code Act (Supra).

Dated at Luweero this 10th day of May, 2016.

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JOSEPH MURANGIRA

JUDGE

10/5/16

Ms. Nakafeero Fatinah Senior State Attorney for the state.

Mr. Wameli Anthony for the Accused on state brief absent. The Accused is in Court. The matter is coming up for judgment. As the prosecution I am ready to receive the judgment.

The 2 Assessors are in court.

Mr. Nekusa Amos the Clerk is in court.

Court: Judgment is delivered to the parties in open court. The matter is stood to 12.00 noon for mitigation of sentence.

JOSEPH MURANGIRA

JUDGE

10/5/16

11/5/16:

Ms. Getrude Apio State Attorney for state.

Mr. Wameli Anthony for the accused.

The Accused/convict is in court.

The case is for mitigation.

The 2 Assessors are in court.

Mr. Nekusa Amos the clerk is in court.

Prosecution: Allocutus

1. Convict is 1st offender.
2. The convict deprived the deceased her right to life.
3. He also deprived the deceased's children of the opportunity to live with their mother.
4. The offence of murder is rampant. We pray for a deterrence sentence.

Mr. Wameli Anthony for the Accused in mitigation.

1. The convict is a 1st offender. This means he can reform.
2. The convict has spent over 3 years on remand.
3. He has 10 children including other dependant relatives. He was their sole provider at the time.
4. The convict was a responsible man who had raised his children with fear of God. We believe that given to be with them again he can do better.
5. The convict is aged 63 years.
6. He is a sickly man as he has a dangerous hiccup.
7. The convict's children are half orphans because they lost their mother and keeping away their father shall make them full orphans.
8. The convict can easily be accepted back to his family and the community.

In the premises I pray that this Honourable Court considers the remand period to be the punishment enough.

I so pray.

Court: Sentence and reasons for the sentence.

In passing the sentence against the convict, the following facts shall be considered.

1. All the mitigating factors that were advanced by the prosecution.
2. All the mitigating factors that were advanced by counsel for the convict.
3. The convict murdered his wife and deprived their children and grand children the enjoyment of their mother/grand mothers' long life.
4. The mother figure in the home is gone.
5. The deceased was brutally murdered. And her body was publicly put to shame in her village.
6. The convict is not remorseful for the crime he committed.
7. The maximum sentence for murder is death.
8. The way the deceased was murdered puts this case in the category of the rare of the rarest cases.
9. The convict has been on remand for a period of 3 years.

Wherefore, in consideration of the above, I would have sentenced the convict to 30 years imprisonment. But I deduct the 3 years the convict has been on remand. Therefore the convict is sentenced to 27 (Twenty Seven) years imprisonment.

Dated at Luwero this 11th day of May, 2016.

JOSEPH MURANGIRA
JUDGE.

Court: Sentence is delivered in open court to the parties. Right of Appeal is explained.

JOSEPH MURANGIRA
JUDGE.
11/5/16