

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-0040 OF 2013

UGANDA..... PROSECUTOR

KALANGWA BOSCO.....ACCUSED

RULING

BEFORE: Hon. Lady Justice Margaret Tibulya.

The accused stands charged with the murder of MINANI JOHN. The state case was that Pw2 (**Kayira Joseph**) found the accused at 7:00 pm with the late MINANI'S bicycle. He asked him where he had got it and the accused said that MINANI was the one who had given it to him. Pw2 knew that bicycle since he had been riding it. A red piece of cloth had been wrapped around its seat and it had front lights. He told the accused that they should go back and confirm how the accused had got the bicycle, but the accused said that even if they went back they would not find MINANI since he had gone somewhere.

Pw2 informed his father **Ddumba Damiano** (Pw3) who went to Minani's home but found the house locked. He informed **Kabanda Semeo** (Pw5) and they kept on checking for him in vain. When they went around the house then saw the dead body under a jack fruit tree. It bore injuries on the head and cheeks and bore a striped blue piece of cloth around its neck. The bicycle was never recovered.

Around 6:00pm of the evening of the deceased's death, **Namulindwa Jesca** (Pw4) had found the deceased with the accused along the road, about 20 meters from the deceased's home.

Pw6's (**D/AIP Semanda Twaha**) evidence was that the accused was arrested because he was highly suspected to have murdered the deceased. He was the deceased's friend but he had not

attended the funeral. He had also been seen with the deceased at his home on the evening of his death.

At the close of the prosecution case Counsel for the accused submitted that the state had not adduced sufficient evidence to warrant the accused to make a defence.

A submission of no case to answer will be upheld inter-alia when a major ingredient of the offence has not been proved.

In a murder charge the state had to prove;

1. The death of a human being,
2. That the death was unlawful,
3. There was malice aforethought,
4. The participation of the accused.

THE DEATH OF A HUMAN BEING

The fact that MINANI JOHN died was not disputed by the defence and I find that this ingredient was sufficiently proved.

THAT THE DEATH WAS UNLAWFUL

It is trite law that every homicide is presumed to be unlawful unless circumstances make it excusable, see **R. Vs. Busambiza s/o Wesonga 1948 15 EACA 65** and **Akol Patrick & Others vs Uganda (2006) HCB (vol. 1) 6**. The term 'homicide' has been invariably defined as the killing of a human being by another human being, see **'Dictionary of Law', Oxford University press, 7th Edition, 2009, p.264**.

Conversely, what would amount to excusable or justifiable circumstances would include circumstances like self-defense or when authorized by law, (**Uganda vs Aggrey Kiyingi & Others Crim. Sessn. Case No. 30 of 2006**).

Excusable homicide has been defined as ‘the killing of a human being that results in no criminal liability because it took place by misadventure or an accident not involving gross negligence.’ On the other hand, *lawful* or *justifiable homicide* is deemed to occur ‘when somebody uses reasonable force in preventing a crime or in arresting an offender, in self defence or defence of others, or in defense of his property, and causes death as a result.’ See **‘Dictionary of Law’, Oxford University press, 7th Edition, 2009, pp.216, 264.**

In the present case no evidence was adduced to suggest that the deceased’s death was excusable, justifiable or accidental. The condition the deceased was found in points to the deceased having been unlawfully killed. The evidence is that a piece of cloth was found tightly tied around the neck of the deceased. There is no indication that the death was lawful and I find that the deceased’s death was unlawful.

MALICE AFORETHOUGHT

Section 191 of the Penal Code Act provides that **“Malice aforethought may be established by evidence proving either of the following circumstances:**

- (a) an intention to cause the death of any person ...**
- (b) knowledge that the act or omission causing death will probably cause the death of some person, although such act is accompanied by indifference whether death is caused or not ...”**

Malice aforethought in murder trials can be ascertained from the weapon used, (*whether it is a lethal weapon or not*); the manner in which it is used, (*whether it is used repeatedly or the number of injuries inflicted*); the part of the body that is targeted or injured, (*whether or not it is a vulnerable part*), and the conduct of the accused before, during and after the incident, (*whether there was impunity*), see **R. vs Tubere (1945) 12 EACA 63, Akol Patrick & Others vs. Uganda (supra)** and **Uganda vs. Aggrey Kiyingi & Others (supra)**.

The only pointer as to how the deceased met his death is the evidence of the presence of the piece of cloth around the neck of the dead body, and that the body bore injuries on the head and cheeks.

The head is a vulnerable part of the body which if targeted by an accused, imputes malicious intent on his part.

In Nanyonjo Harriet & Another vs. Uganda Criminal Appeal No. 24 of 2002 (SC) it was held that **“For a court to infer that an accused killed with malice aforethought it must consider if death was a natural consequence of the act that caused the death, and if the accused foresaw death as a natural consequence of the act.”**

What a trial judge has to decide, so far as the mental element of murder is concerned is whether the accused intended to kill. In order to reach that decision the judge is required to have regard to all the relevant circumstances, including what the accused said and did, see R v Nedrick (1986) 1 WLR 1025 and R v Hancock [1986] 2 WLR 357. The existence of malice aforethought is not a question of opinion but one of fact to be determined from all the available evidence, see Nandudu Grace & Another vs. Uganda Crim. Appeal No.4 of 2009 (SC) and Francis Coke vs. Uganda (1992 -93) HCB 43.

In the present case the post mortem report indicates that the victim died of **Asphyxia** due to strangulation. Undoubtedly, whoever tied the piece of cloth around the deceased’s neck did so in the full knowledge that his actions would result in death and did foresee death as a natural consequence of these actions.

The intention to kill MINANI JOHN cannot be doubted. There is sufficient proof of malicious intent from the medical evidence on the court record. I therefore find that the prosecution has proved beyond reasonable doubt that the deceased’s death was procured with malice aforethought.

THE PARTICIPATION OF THE ACCUSED

The evidence in this regard is;

- a. that of Pw2 (**Kayira Joseph**) that he found the accused ridding the deceased’s bicycle on the evening of his death, and that the accused had told him that even if they went to ask

the deceased whether he had given him the bicycle they would not get him there since he had gone somewhere.

- b. On the night of the death of the deceased, around 6:00pm Namulindwa Jessica (**Pw4**) had found the deceased sitting with the accused along the road, about 20 meters from the deceased's home.
- c. The accused did not attend the funeral of the deceased yet he was his close friend.

None of these pieces of evidence points to the participation of the accused as the killer. The fact, true or not true, that the accused was seen riding his bicycle does not provide enough basis for a decision to require him to defend himself against a charge of murder. Similarly the fact that he was seen at 6:00 Pm with the deceased or that he did not attend the funeral only raise mere suspicions which do not amount to evidence.

I did not find evidence to ground a decision to require the accused to make his defence. There is no evidence placing him at the scene for purposes of committing the offence. I accordingly uphold the submission of no case to answer and acquit the accused of the offence of murder. He be discharged forth-with.

Margaret Tibulya

JUDGE

27th April 2016

