

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CR – SC – 83 OF 2015

UGANDA.....PROSECUTOR

VERUS

BYAMUKAMA KAHERU

KIREMERE KATEEBA

ALIGANYIRA MOSES

MUSINGUZI MATSIKO



.....ACCUSED

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Judgment

The four accused were indicted with Aggravated Robbery Contrary to **Section 285** and **286(2)** of the Penal Code Act. It is alleged that the accused on 12th October 2011 at Mirambi Village, in Kyenjojo District robbed Kahwa Naboli of Cash worth UGX 700,000/= and a mobile phone and at or before or after the said Robbery used a deadly weapon to wit a panga on the said Kahwa Naboli. The accused denied the offence and raised a defence of alibi. The four accused gave sworn evidence each. The prosecution brought 5 witnesses to in a bid to prove its case.

Sarah Bivanju – Senior State Attorney appeared for the prosecution and Counsel Ongom Ruth on State Brief for the accused.

Burden of proof

The burden of proof is always on the shoulders of the prosecution requiring them to prove all the ingredients beyond reasonable doubt. (See: **Woolmington versus DPP (1935) AC 463, Andreyo Obonyo & Others versus R (1962) EA, 550.**)

Standard of proof

It is our principle of the law that an accused person should be convicted on the strength of the case as proved by prosecution but not on the weakness of his defence. (See: **Insrail Epuku s/o Achietu versus R [1934] I 166 at page 167**).

The prosecution case against the accused person should be so strong as to leave only a remote possibility in his favour. (See: **Section 101 of the Evidence Act, Woolmington versus DPP (1935) AC 462; Miller versus Minister of Pensions**)

Section 286 (2) of the Penal Code Act provides that;

“Notwithstanding subsection (1) (b), where at the time of, or immediately before, or immediately after the time of the robbery, an offender uses or threatens to use a deadly weapon or causes death or grievous harm to any person, such offender and any other person jointly concerned in committing such robbery shall, on conviction by the High Court, be sentenced to death.”

Ingredients of the offence

The essential ingredients of the offence of aggravated robbery are the following:

1. That there was theft of property.
2. That there was use of violence or threat to use violence.
3. That the assailants used or threatened to use a deadly weapon.
4. That the accused participated in the offence.

Whether there was theft of property:

PW1 told Court that he was robbed of UGX 700,000/=, a phone, shoes, suit case and belt. PW3 told Court that a phone, panga, bag, belt and shoes were stolen. It should however be noted that at Police, PW1 only mentioned that the accused stole from him money and a mobile phone, he never mentioned the other items as he stated in Court. There is therefore a contradiction as to what the accused actually stole for PW1's and PW3's home. No stolen property was ever recovered or exhibited in Court. Thus, the prosecution failed to prove this ingredient beyond reasonable doubt.

Whether there was use or threatened use of deadly weapons:

As for the use of a deadly weapon, under **Section 286 (3) (a) (i)** of the Penal Code (Amendment) Act 2007 a deadly weapon includes any instrument made or adopted for shooting, stabbing or cutting or any imitation of such instrument.

PW1 and PW3 in their testimonies stated that the accused had a hummer, panga and sticks which they used on them. PW3 stated that she was slapped with a panga during the Robbery. PW1 told Court that he was injured on his head but could not even show Court conclusive proof of at least scars that were a result of the said use of force. He also told Court that his thumb was smashed however; the thumb he showed Court was intact with no sign of deformity.

Further, PW1's testimony in regard to the violence and use of sticks, a hummer and pangas was contradicted by PW5 who mentioned more injuries than PW1 told Court. PW5 told Court that at the time the victim came for medical examination he was critical and being carried on a stretcher yet PW1 told Court that he walked to the Hospital. To make matters worse PW5 told Court that he was paid to make the Medial Report. The evidence of PW5 carries no weight as the witness is not credible in anyway, given the fact that he was even corrupted to give false information. The evidence of PW1, PW3 and PW5 were tainted with lies and grave inconsistencies in a bid to mislead Court.

The prosecution therefore miserably failed to prove this ingredient beyond reasonable doubt.

Whether the assailants used or threatened to use a deadly weapon:

In the alleged offence it was said that the accused had sticks, pangas and a hummer, however, no weapons were exhibited in Court. PW2 said the accused were found with pangas at the time of arrest but none was ever brought to Court. A1 and A3 in their defence told Court that they had pangas at the time of their arrest because they were from their gardens as farmers. The prosecution equally failed to prove this ingredient to the satisfaction of this Court, and no weapons were ever exhibited to support the alleged commission of the offence.

Whether the accused participated in the offence:

The time the offence was committed at about 3am-4am, it was dark and the house had no light as confirmed by PW3. PW1 stated that the accused had a small torch that enabled him to identify the accused. On the other hand he told Police in his statement that identification was by voice not torch. PW3 in her testimony told Court that she identified two of the accused

persons and the other had covered his face with a sweater, which was never mentioned by PW1. PW2 the arresting Officer was also not consistent in regard to who he arrested, he instead said that he could not tell his name, yet it was simple as pointing out the person since all the accused persons were in the dock.

PW4 could not confirm to court that the accused persons had committed the alleged offence because he did not know who actually committed the offence. This particular witness told a story contrary to that of PW1 and PW3 yet he said he is the one PW1 relayed the events of the night to and he was the first at the scene of crime. PW4's testimony was clearly a concoction and full of falsehoods because he had a different narration from PW1 and PW3 all together.

There were major contradictions by the prosecution witnesses in regard to how the offence was committed not to mention the fact that the eye witnesses (PW1 and PW3) could not relay similar accounts of the event. I find that the prosecution did not prove this ingredient beyond reasonable doubt either.

The accused persons all raised a defence of Alibi and the law regarding an alibi is that where an accused person sets it up, he does not assume the burden of proving it. The burden of disproving the alibi remains on the prosecution; and the prosecution discharges that burden by leading cogent evidence that places the accused at the scene of crime at the time of the offence. **(See: Sekitoleko Versus Uganda (1967) E.A 531).**

The prosecution was however unable to place the accused persons sufficiently at the scene of crime.

In a nutshell, the prosecution failed to prove any of the ingredients of the offence of Aggravated Robbery as against the accused persons; the prosecution's evidence was massed with grave inconsistencies that could not be under looked. I agree with the assessors' opinion and therefore acquit and set free the accused persons.

Right of appeal explained.

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OYUKO. ANTHONY OJOK

JUDGE

14/11/16

Judgment delivered in open Court in the presence of;

1. Sarah Bivanju – Senior State Attorney
2. Ruth Ongom – Counsel on State Brief for the accused persons.
3. James – Court Clerk
4. Assessors

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OYUKO. ANTHONY OJOK

JUDGE

14/11/16