

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CRIMINAL CASE No. 0037 OF 2014

UGANDA

PROSECUTOR

VERSUS

CHANA ABIBU

ACCUSED

Before Hon. Justice Stephen Mubiru

RULING

The accused in this case is indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that the accused on the 10th November 2012 at Rimbe Trading Centre in Yumbe District, murdered Siraji Agu Raman. The accused pleaded not guilty to the indictment. In a bid to prove the indictment against the accused, the prosecution called two witnesses and closed its case.

At the close of the prosecution case, section 73 of *The Trial on Indictments Act*, requires this court to determine whether or not the evidence adduced has established a *prima facie* case against the accused. It is only if a *prima facie* case has been made out against the accused that he should be put to his defence (see section 73 (2) of *The Trial on Indictments Act*). Where at the close of the prosecution case a *prima facie* case has not been made out, the accused would be entitled to an acquittal (See *Wabiro alias Musa v R [1960] E.A. 184 and Kadiri Kyanju and Others v Uganda [1974] HCB 215*).

A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence (See *Rananlal T. Bhatt v R. [1957] EA 332*). The evidence adduced at this stage, should be sufficient to require the accused to offer an explanation, lest he runs the risk of being convicted. It is the reason why in that case it was

decided by the Eastern Africa Court of Appeal that a *prima facie* case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited prosecution evidence. The prosecution though at this stage is not required to have proved the case beyond reasonable doubt since such a determination can only be made after hearing both the prosecution and the defence.

There are mainly two considerations justifying a finding that there is no *prima facie* case made out as stated in the Practice Note of Lord Parker which was published and reported in [1962] *ALL E.R 448* and also applied in *Uganda v Alfred Ateu* [1974] *HCB 179*, as follows:-

- a) When there has been no evidence to prove an essential ingredient in the alleged offence,
or
- b) When the evidence adduced by prosecution has been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it.

The learned State Attorney prosecuting the case opted not to make any submission on a case to answer and left it to court to make the decision. On his part, defence counsel, Mr. Ben Ikilai submitted that evidence led in the trial did not establish a *prima facie* case since the prosecution had not led evidence to prove that the accused was the perpetrator of the offence.

At this stage, I have to determine whether the prosecution has led sufficient evidence capable of proving each of the ingredients of the offence of murder, if the accused chose not to say anything in his defence, and whether such evidence has not been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it. For the accused to be required to defend himself, the prosecution must have led evidence of such a quality or standard on each of the following essential ingredients;

1. That death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

Regarding the element of proof of death of a human being, death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body of the deceased. In this case, the prosecution adduced evidence of a post mortem report prepared by PW1 (Dr. Tabu Geoffrey) which was admitted at the commencement of the trial as Exhibit P.E.1. It is dated 10th November 2012. This is a witness who saw the body of the deceased and conducted an autopsy at the scene of the crime at Rimbe Trading Centre. The body was identified to him as that of Siraji Agu Raman by a one Orodriyo Leila, the mother of the deceased. PW2 (No. 23595 D/CPL Amabwa Phillip) one of the police officers who visited the scene on 10th November 2012, saw the body as well. This evidence was not discredited as a result of cross examination, neither is it manifestly unreliable that no reasonable court could safely convict on it. I am therefore satisfied that the prosecution led sufficient evidence regarding this element capable of supporting a finding that Siraji Agu Raman is dead, if the accused chose not to say anything in his defence.

The second ingredient requires the prosecution to prove that the death was caused unlawfully. Death of a human being is a homicide if the dead person was once alive and is now dead because of the act of another human being. The law is that any homicide is presumed to have been caused unlawfully unless it was accidental or otherwise legally justified (see *Gusambizi s/o Wesonga v R. (1948) 15 E.A.C.A 63*). In the instant case, the admitted evidence of PW1 (Dr. Tabu Geoffrey) who conducted the autopsy established the cause of death to have been profuse bleeding from a head injury. In his view, the injury was caused by a sharp object or a blunt object with a sharp edge. These findings are contained in his report, Exhibit P.E.1 dated 10th November 2012. There is no eyewitness account of how those injuries were inflicted. There being no evidence to suggest that the injury was self inflicted or that it was caused in a justifiable or excusable manner and since this evidence is not manifestly unreliable that no reasonable court could safely convict on it, it is capable of proving that the death of Siraji Agu Raman was an unlawful homicide. I am therefore satisfied that the prosecution led sufficient evidence regarding this element capable of supporting a finding that his death was caused unlawfully, if the accused chose not to say anything in his defence.

The third ingredient required is that the unlawful killing of the deceased was caused with malice aforethought. Malice aforethought is defined by section 191 of the *Penal Code Act* as either an

intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever inflicted that injury on the deceased intended to cause death or knew that it would probably cause death. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider the weapon used, the manner in which it was used, and the part of the body of the victim that was targeted (see *R v Tubere s/o Ochen (1945) 12 E.A.C.A. 63*. If the weapon used to inflict the injuries from which the deceased died are lethal or deadly weapons, or if the injuries are fatal or life threatening and inflicted on vital or vulnerable parts of the body malice aforethought will readily be inferred (see *Uganda v Manuela Awacango and Another H.C. Criminal Session Case No 16 of 2006*).

In his report, Exhibit P.E.1, PW1 (Dr. Tabu Geoffrey) gave a detailed description of the extent of injuries he found on the body of the deceased. They included; a deep cut on the left occipital area measuring 10 cm with a compressed fracture of the skull, with a clean cut of the bone of the skull. The weapon used to inflict this head injury was never recovered nor exhibited in court but PW1 (Dr. Tabu Geoffrey) opined that it a sharp object or a blunt object with a sharp edge. Any object of that nature to have caused a clean cut of the skull must have been applied with considerable force. Any person who, uses a sharp object or a blunt object with a sharp edge to inflict considerable force to the head capable of fracturing the skull, must foresee that death is a probable consequence of his or her act. This object was used targeting a very vulnerable part of the body, the head. The circumstances therefore are capable of supporting an inference of malice aforethought. This evidence is not manifestly unreliable that no reasonable court could safely convict on it, it is capable of proving that the death of Siraji Agu Raman was caused with malice aforethought. I am therefore satisfied that the prosecution led sufficient evidence regarding this element capable of supporting a finding that his death was caused with malice aforethought, if the accused chose not to say anything in his defence.

The last ingredient requires proof that it is the accused who committed the unlawful act which led to the death of the deceased. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime. There is no eyewitness account of how the deceased met his death. PW2 (No. 23595 D/CPL Amabwa Phillip), while conducting his investigations, was told that it is the accused who caused the death by hitting the deceased with a

bottle on the head as a result of a fight that had erupted between him and the deceased over a shs. 5,000/= note. The bottle, or its pieces, was never recovered from the scene nor tendered in evidence. The eye witnesses to the alleged fight mentioned by this police officer as the sources of this information have not testified. His testimony regarding this fact therefore is inadmissible by virtue of section 59 (a) of the *Evidence Act* which requires that oral evidence must, in all cases whatever, be direct such that if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it. Evidence of this police officer who never saw the accused and the deceased fight has to be disregarded for that reason. As a result, there is no evidence on record placing the accused at the scene of crime at the material time. In the circumstances, there is no basis for court to make a finding that the accused caused the death of the deceased.

Having evaluated the evidence, I have formed the opinion that if the accused chose to remain silent, this court would not have evidence sufficient to hold him responsible for the unlawful act that resulted in the injuries that caused the death of the deceased. I therefore find that no prima facie case has been made out requiring the accused to be put on his defence. I accordingly, find the accused not guilty and hereby acquit him. He should be set free forthwith unless he is lawfully held on other charges.

Dated at Arua this 22nd day of August, 2016.

Stephen Mubiru
Judge.