

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CRIMINAL CASE No. 0138 OF 2012

UGANDA

PROSECUTOR

VERSUS

ACIDRI NICKSON

ACCUSED

Before Hon. Justice Stephen Mubiru

JUDGMENT

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 on the 7th day of February 2012 at Kilembe village in Maracha District murdered one Ajidiru Hellen.

The events leading to the prosecution of the accused as narrated by the prosecution witnesses are briefly that

For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. 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.

The first ingredient is 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. The prosecution adduced in evidence the post mortem report

prepared by PW1 (Dr. Arije Francis) which was admitted at the commencement of the trial. Exhibit P.E.1 dated 8th February 2012. The doctor examined the body of Ajidiru Hellen identified to him by Ofeku Martha. This is corroborated by the charge and caution statement of the accused Exhibit P.E. 2B in which he admitted to have seen the body of the deceased at the spot where she fell dead. In the unsworn statement he made in his defence, the accused did not address this aspect of the case. On basis of the available evince, I am satisfied that the prosecution has proved beyond reasonable doubt that Ajidiru Hellen is dead.

The second ingredient to be proved is the fact that the death was caused by an unlawful act. It is the law that any homicide is presumed to have been caused unlawfully unless it was accidental or authorized by law. PW1 (Dr. Arije Francis) who conducted the autopsy established the cause of death to have been a ruptured spleen resulting into internal bleeding. In his view, the deceased should have been kicked or hit with a blunt object at the abdomen. Exhibit P.E.1 dated 8th February 2012 contains the details of the findings. In the charge and caution statement of the accused as recorded by PW2 (A/SP Okot Michael) and received in evidence as Exhibit P.E. 2B that the injury explained as having resulted from physical assault. There is nothing to suggest that it was accidental or inflicted in self defence. Lastly, consider the defence of the accused DW1 in his unsworn statement and determine whether this element is contested. On basis of the available evince, I am satisfied that the prosecution has proved beyond reasonable doubt that the cause of death was an unlawful act.

The next ingredient is proof that the unlawful act was actuated by 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 assaulted the deceased intended to cause death or knew that the manner and degree of assault would probably cause death. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used, the manner in which it was used and the part of the body of the victim that was targeted. PW1 (Dr. Arije Francis) who conducted the autopsy established that the rupture of the spleen was caused by a kick or assault with a blunt object on the abdomen.

In the charge and caution statement of the accused as recorded by PW2 (A/SP Okot Michael) and received in evidence as Exhibit P.E. 2B the accused contends that the injury was as a result of a

single slap to the ribs. Reading of the statement discloses the possible defence of provocation. The law is that court is required to investigate all the circumstances of the case including any possible defences even though they were not duly raised by the accused for as long as there is some evidence before the court to suggest such a defence. For a quarrel to constitute provocation in the legal sense, it must have involved an insult or act of a nature capable of causing temporary loss of self control and the reaction must have been in the heat of passion without any lapse of a period sufficient enough to allow the accused to regain his self control. Although it is the duty of the prosecution to disprove all the possible defences available to the accused and the accused does not have any obligation to prove provocation, there is no evidence of such act or insult and thus no material before me on basis of which the defence can be availed to the accused.

For self defence to be availed to the accused, there needed to be evidence that the accused was violently or feloniously attacked creating a necessity to repel force by force and if in so doing he killed the deceased that killing would be justifiable, provided there was reasonable necessity for killing or an honest belief based on reasonable grounds that it was necessary and the violence attempted by or apprehended from the attack was really serious. On the facts before me, since no violent felony was attempted on the accused, he was under an obligation to use reasonable force against the assault, and only if he was in reasonable apprehension of serious injury. In the circumstance, there ought to have been evidence provided that he did all that was necessary in the circumstances to retreat or avoid a fight or disengage from the fight. He could only have used such force, deadly force included, in the circumstances of that nature. There is no evidence to suggest that the accused was violently or feloniously attacked or if there was such an attack that the danger he apprehended from the attack was really serious. Therefore, there is no material before me on basis of which this defence too can be availed to the accused.

In light of the unclear circumstances in which the injury was inflicted, it is not possible to tell whether death was a natural consequence of the act that caused the death and whether the accused foresaw death as a natural consequence of the act. In his own admission contained in the charge and caution statement, the accused claims to have slapped the victim once. Although by that admission it is evident that the slap was a voluntary act, it is not certain that it was done with reasonable foresight that it was likely to cause death. In absence of evidence to suggest that the accused slapped the deceased with such a reckless disregard for the probability of the death

ensuing, an inference of malice aforethought cannot be made readily. Although a fatal injury inflicted on vital or vulnerable part of the body in a deliberate manner may in a proper case support an inference of malice aforethought, in the instant case the facts are not that forceful. On basis of the available evince, I am not satisfied that the prosecution has proved beyond reasonable doubt that Ajidiru Hellen's death was caused with malice aforethought.

Lastly, the prosecution must prove that it is the accused who caused the unlawful death. This is done by adducing credible evidence placing the accused at the scene of the crime and implicating him as the perpetrator of the offence. There is no direct evidence of an eye witness implicating the accused. He is only implicated by his own charge and caution statement as recorded by PW2 (A/SP Okot Michael) and received in evidence as Exhibit P.E. 2B. A statement is not a confession unless it is sufficient by itself to justify the conviction of the person making it, of the offence with which he is tried. As a matter of good practice and prudence, trial courts will only act on a confession if it is corroborated in some material particular by independent evidence accepted by the court. However, such corroboration is not necessary in law and the court may act on a confession alone if it is satisfied, having due regard to all the material points and surrounding circumstances, that the confession cannot but be true.

In assessing whether a confession is true, one way of doing so is determining whether or not it discloses facts and events which only a person who was an active participant and eye witness could have been familiar with. I have not found anything in that statement to suggest that it is an untrue statement. Although in his unsworn statement made in his defence the accused contested this ingredient, I am satisfied that on basis of his confession, the prosecution has proved beyond reasonable doubt that it is the accused that caused the death of the deceased.

In the final result, having found that the prosecution did not prove that the killing was with malice aforethought, I hereby acquit the accused of the offence of Murder c/s 188 and 189 of the *Penal Code Act* and instead convict him of the offence of Manslaughter c/s. 187 and 190 of the *Penal Code Act*.

Dated at Arua this 26th day of August, 2016.

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Stephen Mubiru
Judge.

31st August 2016

3.20 pm

Attendance

Ms. Andicia Meka, Court Clerk.

Ms. Harriet Adubango, Senior Resident State Attorney, for the prosecution.

Counsel for the convict is absent.

The convict is present in Court.

SENTENCE AND REASONS FOR SENTENCE

The convict was found guilty of the offence of Manslaughter c/s. 187 and 190 of the *Penal Code Act* after a full trial. In her submissions on sentencing, the learned Senior Resident State attorney prayed for a deterrent sentence on the following grounds; the offence carries the maximum penalty of life imprisonment. Life is sacred and ought to be respected. The deceased was a young girl who should have been protected by the convict. He therefore deserves a deterrent sentence.

Counsel for the convict prayed for a lenient custodial sentence the following grounds; the convict is a first offender and a relatively young man at the age of 32 years. He did not have the intention to kill the deceased. In his *allocutus*, the convict prayed for lenience on grounds that he has young family with school going children. He suffers from Hepatitis “B”

The offence of manslaughter is punishable by the maximum penalty of life imprisonment under section 190 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of such cases. I do not consider this to be a case falling in the category of the most extreme cases of manslaughter. I have for that reason discounted life imprisonment.

The starting point in the determination of a custodial sentence for offences of manslaughter has been prescribed by Part II (under Sentencing range for manslaughter) of the Third Schedule of

The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 as 15 years' imprisonment. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In this case, there is no evidence that the convict used such a weapon. I have excluded the sentence of life imprisonment on that ground.

I have taken into account the current sentencing practices in relation to cases of this nature, I have considered the case of *Livingstone Kakooza v Uganda, S.C. Crim. Appeal No. 17 of 1993*, where the Supreme Court considered a sentence of 18 years' imprisonment to have been excessive for a convict for the offence of manslaughter who had spent two years on remand. It reduced the sentence to 10 years' imprisonment. In another case of *Ainobushobozi v Uganda, C.A. Crim. Appeal No. 242 of 2014*, the Court of Appeal considered a sentence of 18 years' imprisonment to have been excessive for a 21 year old convict for the offence of manslaughter who had spent three years on remand prior to his trial and conviction and was remorseful. It reduced the sentence to 12 years' imprisonment. Finally in the case of *Uganda v Berustya Steven H.C. Crim. Sessions Case No. 46 of 2001*, where a sentence of 8 years' imprisonment was meted out to a 31 year old man convicted of manslaughter that had spent three years on remand. He hit the deceased with a piece of firewood on the head during a fight. I have considered the single aggravating factor in the case before me being that by his assault, the convict caused severe internal injury that caused the death. Accordingly, in light of that aggravating factor, I have adopted a starting point of ten years' imprisonment.

I have considered the fact that the convict is a first offender, a relatively young man with family responsibilities and a serious health problem. A reformatory sentence would be appropriate in the circumstances. I for that reason regard the period of eight (8) years' imprisonment as suiting the purposes of a reformatory sentence in light of the mitigating factors. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict was charged on 14th February 2012 and been in custody since then. I hereby take into account and set off a period of four years and six months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of three (3) years and six (6) months, to be served starting from today.

The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Arua this 31st day of August, 2016.

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Stephen Mubiru
Judge.