

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CR – SC – 0164 OF 2015

UGANDA.....PROSECUTION

VERSUS

ORIBITUNGA DARIOS.....ACCUSED

BEFORE: HIS LORDSHIP NO. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Judgment

The accused was indicted with the offence of Murder Contrary to **Section 188** and **189** of the Penal Code Act. It is alleged that on 13th January 2015 at Benga ‘B’ Village in Kamwenge District, with malice aforethought the accused murdered Kadugala Geoffrey Batabire. The accused denied the offence and raised a defence of alibi. The accused gave a sworn statement and did not call any witnesses. The prosecution produced 4 witnesses to prove its case.

Wasswa Adam – Resident Senior State Attorney appeared for the State and Counsel Angella Batenzire represented the accused on State Brief.

Burden of proof

It is a requirement by the law that the prosecution must prove its case beyond reasonable doubt because the accused has no duty to prove, his innocence (**Article 28** of the Constitution). (See: **Woolmington versus D.P.P. [1935] AC 462. Uganda versus Joseph Lote [1978] HCB 269**).

Standard of proof

Prosecution must prove its case beyond reasonable doubt. Any doubt in the evidence shall be resolved in favour of the accused.

Prosecution must prove all the ingredients of the Offence of Murder in order to sustain a conviction thereof. In the case of **Uganda versus Bosco Okello [1992-93] HCB 68 , Uganda**

versus Muzamiru Bakubye & Anor, High Court Criminal Session No.399/2010, it was held that Prosecution must prove the following ingredients beyond reasonable doubt:-

1. That the deceased is dead;
2. That the death was caused unlawfully;
3. That there was malice aforethought; and
4. That the Accused person directly or indirectly participated in the commission of the alleged Offence. (See: **Also, Uganda versus Kalungi Constance HC Criminal case No. 443/2007** and **Mukombe Moses Bulo versus Uganda SC. Criminal Appeal 12/95.**

Whether the deceased died:

It is the evidence of PW1 that the deceased died, this was corroborated with the medical report produced by the prosecution. Therefore, there was no contention as to the death of the Kadugala Geoffrey Batabire. I find that this ingredient was proved beyond reasonable doubt.

Whether the death was caused unlawfully:

All homicides in Uganda are presumed by law to be unlawful except where such deaths are excusable by law itself. Such excuses consist of the following;

1. Death caused accidentally
2. Death occasioned in defence of life or property
3. Death which is carried out in the execution of a lawful sentence
4. Death that is occasioned as a result of extreme and immediate provocation.

The evidence of all the four prosecution witnesses convince me that the death of Kadugala Geoffrey Batabire does not fall in any of the categories of excusable homicides. I therefore find that the death was caused by an unlawful act and the prosecution has proved this ingredient beyond reasonable doubt.

Whether there was malice aforethought:

Section 191 of the Penal Code Act which lays out circumstances under which malice aforethought is deemed to be established. These are:

1. An intention to cause the death of any person, whether such person is the one actually killed or not.
2. Knowledge that the act or omission will probably cause death of same person, although such knowledge is accompanied by indifference whether death is caused or not or by a wish that it may not be caused.

In the instant case Kadugala, was cut using a panga and knife and most of his vital organs such as the tongue, throat, heart and fingers among others were found missing from the deceased's body. It is no doubt that the accused in committing the offence had malice a forethought and had the needed mens rea to carry out the offence. He had a mission and this was achieved through the killing of Kadugala Geoffrey Batabire. I find that the prosecution proved this ingredient to the satisfaction of this Court.

Whether the Accused person directly or indirectly participated in the commission of the alleged Offence:

The accused 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**).

In the case of **Kitosi Abu and another versus Uganda Criminal Appeal No. 154 of 2010** it was held that;

*“In respect of circumstantial evidence this Court knows of no principle that invariably before basing a conviction on circumstantial evidence there must be corroboration. In fact this Court of Appeal has in the recent case of **Hon. Akbar Hussein Godi Vs Uganda (Criminal Appeal No. 62 of 2011 (unreported)** made a reinstatement of the principle that when properly handled, circumstantial evidence may be the best evidence to prove a proposition. This Court stated as follows in Godi's case:-
“Thus the Appellant was convicted on circumstantial evidence. We appreciate this evidence to be in the nature of a series of circumstances leading to the inference or conclusion of guilt when direct evidence is not available. It is evidence which although not directly establishing the existence of the facts required to be proved, is admissible as making the facts in issue probable by reason of its connection with or in relation to them. It is evidence, at times*

regarded to be of a higher probative value than direct evidence, which may be perjured or mistaken. A Kenyan Court has noted that:-

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination, is capable of providing a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial. See High Court of Kenya at Nairobi Criminal Case No. 55 of 2006: Republic Vs Thomas Gilbert Chocmo Ndeley.

Though a decision of the High Court of Kenya, we find the enunciation of the principle as regards the application of circumstantial evidence in the words of the above quotation very appropriate and as representing the position of the Law on circumstantial evidence even in Uganda.”

In the instant case the accused’s bangles as stated by all the prosecution witnesses were found at the scene of crime. The said bangles were exhibited in Court. The accused also after the commission of the offence ran away from the Village and went to his auntie in Kiruhira where he was arrested from.

PW1 and PW2 also told Court that the accused had a history of being notorious in the Village for which he was arrested. The accused himself stated so in his sworn statement. Though no weapon was ever recovered or any eye witness produced, I find that the prosecution was able to prove its case beyond reasonable doubt through circumstantial evidence to place the accused at the scene of crime.

I disagree with the assessors and find the accused guilty and therefore is convicted of Murder Contrary to **Section 188** and **189** of the Penal Code Act.

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OYUKO. ANTHONY OJOK

JUDGE

18/11/16

Resident State Attorney – Wasswa Adam: the accused is a perpetual offender. Murder is a serious offence and maximum sentence is death. No value can be attached to human life. The manner in which the deceased was killed was gruesome and there is need to punish the accused for his actions. The accused should therefore be sentenced to imprisonment for life.

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OYUKO. ANTHONY OJOK

JUDGE

18/11/16

Allocutus:

Angella Batenzire: I have instructions from the accused to pray for lenience and forgiveness. The accused is a young man and capable of reform. He should at least be sentenced to 10 years so that he does not waste a way in prison but can come out and be useful to society. So, I pray.

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OYUKO. ANTHONY OJOK

JUDGE

18/11/16

Court: accused is allegedly not a first offender. He has been on remand for about 1 and 4 months. I take this period into consideration while considering the sentence to impose on

him. He is said to be still young. He has also prayed for leniency. However, he took the life of an innocent person and some vital parts for whatever reason, which he knows, I find imprisonment for life harsh but sentence him to 25 years less 1 year and 4 months making it 23 years and 6 months.

Right of appeal explained.

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OYUKO. ANTHONY OJOK

JUDGE

18/11/16