

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0103 OF 2015

UGANDA **PROSECUTOR**

5 **VERSUS**

ANGOLERE DAVID **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*
10 *Act*. It is alleged that the accused on the 26th day of March 2015 at Lobok village, Kikipurat
Parish, Lorengechora sub-county in Napak District murdered one Lochan Juliana.

The events leading to the prosecution of the accused as narrated by the prosecution witnesses are
briefly that on the fateful afternoon the deceased, who was aged six years, returned from school
in the company of three other older children including P.W.5 Lorot Peter. The four of them
15 passed by the home of the accused and saw that he was alone at his home. They branched to the
home of P.W.5 Lorot Peter but found that his mother, Nakure, had not prepared any lunch for
them. Lorot Peter decided to go out and play football with other boys and he saw the deceased
follow him for a short distance before she took the path leading to the home of the accused. That
was the last time the deceased was seen alive. Concerned that the deceased had not returned to
20 her home for the night, the following morning her parents mounted a search for her. Her mother
P.W.4 Nachugai Maria went to the home of the accused at around 8.00 am and found him with
his wife who was digging near their house while the accused was seated at the veranda. When
Nachugai Maria asked the accused about her missing daughter, the accused bowed his head,
began shedding tears and denied having seen her. Later at around 2.00 pm children who were out
25 grazing calves saw the body of the deceased in a dry pond and alerted her parents. They went to
the scene, stopped people from reaching it and called the police. On arrival of the police, a pair
of shoeprints of an adult were tracked leading to and from the dry pond. These were identified as
those of the accused. Another set of footprints of a child were seen leading from the home of
Nakure leading to that of the accused and did not continue anywhere else. Both Nakure and the

accused were arrested as investigations continued. Eventually the accused was charged with murder which he denied in his defence. He stated that he had spent the day the child went missing at the home of his parents where he was asked by his father to assist some children to water bulls although he admitted having spent that night alone at his home.

5

Since the accused in this case pleaded not guilty, like in all criminal cases the prosecution has the burden of proving the case against him beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (see *Ssekitoleko v. Uganda [1967] EA 531*). The accused does not have any obligation to prove his innocence. By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove each of the ingredients beyond reasonable doubt before it can secure his conviction. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see *Miller v. Minister of Pensions [1947] 2 ALL ER 372*).

10
15

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

20

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.

25

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. In the instant case the prosecution did not adduce any post mortem report. According to P.W.6 No. 45895 D/Cpl Nairumbwe Christine, the body of the deceased was not taken for a post mortem due to lack of transport. The prosecution relies instead on the testimony of witnesses who saw the body and they include; P.W.3 Akwang Peter, the father of the deceased, who saw the body at the scene. P.W.4 Nachugai Maria, the mother of the deceased, too saw the body at the scene. P.W.5 Lorot Peter, who was the last person to see the deceased alive and one of those who first discovered the body and P.W.6 the Investigating Officer. In his defence, the accused admitted having proceeded

30

to the scene after the body was discovered and seeing the body although he said it was that of Lochan Pia and not Lochan Juliana. D.W.2 Lotee James, the father of the accused, testified that by the time he returned to the village, the body had been taken from the scene to the home of P.W.3. Lastly D.W.3 Epur Teddy, the mother of the accused testified that she saw the body at the scene and it was that of Lochan Juliana also known as Pia. Defence Counsel did not contest this element. Having considered the evidence as a whole, and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that Lochan Juliana also known as Pia is dead.

10 The prosecution had to prove further that the death of Lochan Juliana was unlawfully caused. It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law (see *R v. Gusambizi s/o Wesonga (1948) 15 EACA 65*). According to P.W.6 No. 45895 D/Cpl Nairumbwe Christine, the body of the deceased was not taken for a post mortem due to lack of transport. She invited a local medical personnel to examine the body and form an opinion as regards the cause of death but that witness did not testify. The prosecution relies on the testimony of witnesses who saw the body and they include; P.W.5 Lorot Peter, who was the last person to see the deceased alive when they returned together from school during the afternoon of Thursday 26th March 2015 and one of those who first discovered the body around 2.00 pm the following day Friday 27th March 2015. P.W.3 Akwang Peter, the father of the deceased, who saw the body at the scene. To him, the girl appeared to have been strangled. Blood was oozing from the mouth and nose and the neck was loose. P.W.4 Nachugai Maria the mother of the deceased, saw the body at the scene. The head was swollen and dark. The neck was loose and there was blood oozing from the nose and mouth. It appeared to her that the girl had been strangled. P.W.6 (No. 45895 D/Cpl Nairumbwe Christine the Investigating Officer, checked the body but did not see any physical injury although she saw blood coming from the nose and the mouth. D.W.3 Epur Teddy the mother of the accused testified that she saw the body at the scene and the child had vomited something which looked like cassava. The neck was normal and not swollen.

30 In absence of a medical examination of the body, I have considered the evidence of observations made by the various witnesses who saw the body. My conclusion is that this was neither a

suicide nor an accidental nor natural death. There were no footprints of a child leading to and from the dry pond where her body was found. This is suggestive of the fact that she died elsewhere and someone carried her body to the place where her body was found. The loose neck, blood oozing from the nose and mouth and the manner of disposal of her body are consistent with a violent death, most probably by strangulation, than a natural, accidental or suicidal death. Having ruled out a natural, suicidal or accidental death, I find that Lochan Juliana's death was a homicide. Not having found any lawful justification for the act of strangulation that caused her death, I agree with the assessors that the prosecution has proved beyond reasonable doubt that her death was unlawfully caused.

10

Thirdly, the prosecution was required to prove that the cause of death 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. This may be deduced from circumstantial evidence (see *R v. Tubere s/o Ochen (1945) 12 EACA 63*).

15

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. There is no direct evidence of intention. Malice aforethought is a mental element that is difficult to prove by direct evidence. Intention is based only on circumstantial evidence. In situations where no weapon is used, for a court to infer that the deceased was killed with malice aforethought, it must consider if 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. The court should consider; (i) whether the relevant consequence which must be proved (death), was a natural consequence of the assailant's voluntary act and (ii) whether the assailant foresaw that it would be a natural consequence of his act, and if so, then it is proper for court to draw the inference that the accused intended that consequence.

20

25

30

Having come to the conclusion that the cause of death as strangulation, I find that death is a natural consequence of squeezing the neck with such force as cuts off supply of air to the lungs and / or results in breaking the neck bones as was the case here. Whoever engaged in that conduct must have foreseen death as a natural consequence of the act. Having found this to have
5 been a homicide, the prosecution has consequently proved beyond reasonable doubt that Lochan Juliana's death was caused with malice aforethought.

Lastly, there should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence. The accused denied any
10 participation. The prosecution relies entirely on circumstantial evidence, woven together by the following strands; P.W.5 Lorot Peter, who was the last person to see the deceased alive when they returned together from school during the afternoon of Thursday 26th March 2015. When they parted, he saw the deceased take the direction of the home of the accused. The two children together with two others had on their way back from school gone past the home of the accused
15 and he was alone at his home. While searching for the missing child the following morning, P.W.4 Nachugai Maria the mother of the deceased, found the accused at his home with his wife. He asked the accused the whereabouts of the child. The accused bowed his head and began shedding tears. P.W.4 and P.W.6 saw footprints of a child leading from the home of Nakure, the mother of P.W.5 which ended at the home of the accused. There is only one path leading from
20 the home of the accused to the main road. P.W.5 was playing at a football field near the main road but did not see the deceased rejoin the main road to proceed to her home after he last saw her walk in the direction of the home of the accused. When the body was discovered, shoeprints were tracked by P.W.6 with the assistance of elders and in the presence of P.W.3, P.W.4 and D.W.3. They were two sets of prints; one leading to the scene of discovery of the body and the
25 other from that scene and they all ended at the home of the accused. There were no footprints of a child leading from or to the scene where the body of the child was discovered. The shoeprints were identified as those of the accused. According to P.W.3. when D.W.3. came to the scene he claimed the accused had been sickly yet when the two, the accused and his mother testified in defence none of this detail emerged. The defence indicates instead that on the fateful day, the
30 accused had been active; digging, shelling nuts and watering bulls.

There are other unexplained contradictions and inconsistencies in the defence of the accused including his claim that his father was at home when he went there yet both P.W.2 and D.W.3 stated that he was not. The accused claimed that his father sent him to water bulls yet both D.W.2 and D.W.3 testified they never owned any and D.W.3 stated that there was no need for the accused to help other people to water their bulls that day because when he arrived the bulls had already been watered and he was exhausted from digging in the morning.

In his final submissions, defence counsel contested this element arguing that this is weak circumstantial evidence. I however find that the alibi of the accused has been effectively disproved by the prosecution and the distressed condition of the accused the morning after the child went missing is consistent with deep emotional turmoil resulting from a guilty conscience as opposed to fatigue as suggested by his counsel. I have not found any part of that circumstantial evidence to be consistent with his innocence. None of it can be explained on any other reasonable hypothesis other than his guilt. I have not found any coexistent circumstances that would weaken the inference of his guilt. The circumstances taken as a whole point irresistibly to his guilt and the conclusion that he is the perpetrator of the offence is inescapable. In agreement with the assessors, I find that the defence of the accused has been disproved and that the prosecution has proved beyond reasonable doubt that he is the perpetrator of the offence.

In the final result, I find that the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt and I hereby find the accused guilty and convict him accordingly for the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Moroto this 26th day of September, 2017.

25

.....
Stephen Mubiru
Judge.
26th September, 2017.