

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0164 OF 2015

UGANDA **PROSECUTOR**

5 **VERSUS**

LOKIRU ONGOLE **ACCUSED**

Before Hon. Justice Stephen Mubiru

JUDGMENT

The accused in this case was initially indicted with one count of Murder c/s 188 and 189 of the
10 *Penal Code Act*. It was subsequently mid-trial amended to that of Manslaughter c/s. 187 and 190
of the *Penal Code Act*. It is alleged that the accused on the 2nd day of May 2015 at Musupo
village in Moroto District unlawfully killed a one Nangiro Night.

The events leading to the prosecution of the accused as narrated by the prosecution witnesses are
15 briefly that on the fateful evening the accused, which was husband of the deceased, asked her
sister P.W.4 Nakut Lucia to take shs. 2000/= from her own money and buy monkey meat. A
monkey had been trapped in the neighbourhood earlier in the day. P.W.4. bought half A
kilogram of monkey meat from those who had trapped the monkey. On returning home, she gave
it to one of the children, Agan, to take it inside the house and she took it inside the house but a
20 dog ate it. A quarrel erupted between the accused and P.W.4 when on his return at around 8.00
pm he was told the dog had eaten the meat. The accused started fighting P.W.4. The deceased
attempted to intervene. The accused kicked backwards while pinning P.W.4. to the wooden
fence. The kick struck the deceased near the heart. She fell down and died instantly after
screaming "oh I have died." The accused picked a skirt of the deceased from the house and put it
25 on. He was arrested and taken to the police while still wearing that skirt. The police came with a
doctor and examined the body of the deceased on 3rd May 2015 whereupon he found that on the
viscera there was 6 x 6 cm liver Capsula hematoma. The cause of death was " a liver injury by
reason of assault." the accused chose to remain silent in his defence.

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).

For the accused to be convicted of Aggravated Defilement, 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; and lastly
3. That it was the accused who caused the unlawful death.

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 adduced a post mortem report dated 3rd May 2015 prepared by P.W.1 Dr. Okwi Moses a Medical Officer of Moroto Regional Referral Hospital, which was admitted during the preliminary hearing and marked as exhibit P.Ex.1. The body was identified to him by a one Lomilo Paul as that of Nangiro Night. It is corroborated by the testimony of P.W.4 Nakut Lucia, a sister of the deceased, who saw the body at the scene. The accused opted to remain silent in his defence and hence did not offer any evidence on this element. Defence Counsel did not contest this element in his final submissions. Having considered the evidence as a whole, and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that Nangiro Night died on 2nd May 2015.

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The prosecution had to prove further that the death of Nangiyo Night 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*). P.W.1 who conducted the autopsy established the cause of death as “a liver injury by reason of assault.” Exhibit P.Ex.1 dated 3rd May 2015 contains the details of his other findings which include a “Liver Capsular. Haematoma on the left lobe approximately 6 x 6 cms.” P.W.4 (Nakut Lucia), a sister of the deceased, testified that the injury was inflicted by kicking the deceased around the chest region, she screamed out once and dropped dead almost instantly. The accused opted to remain silent in his defence and hence did not offer any evidence on this element. Defence Counsel did not contest this element in his final submissions. Having considered the evidence as a whole regarding this ingredient, my conclusion is that this was neither a suicide nor an accidental nor natural death. Having ruled out a natural, suicidal or accidental death, I find that Nangiyo Night’s death was a homicide. Not having found any lawful justification for the kick which caused her death, I agree with the assessor that the prosecution has proved beyond reasonable doubt that her death was unlawfully caused.

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 prosecution relies entirely on P.W.4 (Nakut Lucia), a sister of the deceased, testified that the injury was inflicted by the accused who kicked the deceased around the chest region, she screamed out once and dropped dead almost instantly. The accused opted to remain silent in his defence and hence did not offer any evidence on this element. Defence Counsel contested this element. This being evidence of visual identification which took place at night, the question to be determined is whether the identifying witnesses were able to recognise the accused and his actions. In circumstances of this nature, the court is required to first warn itself of likely dangers of acting on such evidence and only do so after being satisfied that correct identification was made which is free of error or mistake (see *Abdalla Bin Wendo v. R (1953) 20 EACA 106*; *Roria v. R [1967] EA 583* and *Abdalla Nabulere and two others v. Uganda [1975] HCB 77*). In doing so, the court considers; whether the witnesses were familiar with the accused, whether there was light to aid visual identification, the length of time taken by the witnesses to observe and identify the accused and the proximity of the witnesses to the accused at the time of observing the accused.

P.W.4 knew the accused very well as she lived with him as the husband of her elder sister. Before kicking out, there had been a quarrel between her and the accused and in fact the accused had pinned her to the wooden fence with his hands and he was therefore in very close physical proximity to this witness. The witness heard the deceased cry out in reaction to the back-kick of the accused and she dropped dead almost instantly. In the circumstances, I am satisfied that there is no possibility of error or mistaken identification. In agreement with the assessor, I find 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 Manslaughter c/s. 187 and 190 of the *Penal Code Act*.

Dated at Moroto this 22nd day of September, 2017.

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Stephen Mubiru
Judge.
22nd September, 2017.

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