

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT RUKUNGIRI

CRIMINAL CASE NO.80 OF 2014

UGANDA

PROSECUTOR

VERSUS

BARYAIJUKA MATHIAS alias BULI

ACCUSED

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

Baryaijuka Mathias alias Buli was arraigned for murder contrary to Sections 188 and 189 of the Penal Code Act. It is alleged that on the 2nd December 2012, the accused attacked and stabbed his grandmother Kakaikuru Efransi who later died on the 3rd December 2012.

Under section 66 of the Trial On Indictments Act, the Prosecution and Defence Counsel agreed to admit in evidence a short death certificate prepared by Dr.Okumu of Kisiizi Hospital in proof of the death of Kakaikuru Efransi.

PW1 Kagari Enock happens to be the son of the deceased with whom they stayed in the same compound. His evidence was that on the 2nd December 2012 at about 11.00pm, he heard the deceased making an alarm and saying that his grandson 'Buli' had attacked her. PW1 ran to the deceased's house with his wife following him. The door was open and they entered and found the deceased stabbed in the chest and crying that Buli had stabbed her after she had opened for him and they talked for some time but disagreed when the accused lit a cigarette and wanted to smoke in her room.

PW1 went and called other people for assistance who came and also heard the deceased saying it was Buli who had stabbed her. The deceased, Court was told maintained the accusation on the way to Kisiizi hospital from where she died on the 3rd December 2012. In cross examination the witness revealed that the deceased narrated that the accused had come with a torch and that the deceased maintained that she properly recognized the accused as her assailant.

PW1 maintained that he had last seen the accused around the village on the 1st December 2012 and that he did not attend his grandmother's burial ceremony. Court was told that the accused immediately disappeared from the village and re-surfaced in 2014 when he was arrested and arraigned for the murder of the deceased. PW1 told Court of a dispute between the accused and the deceased because the latter had planned to give land to the grand children who were looking after her but nothing to the accused.

PW2 Tukahirwa Edisa the wife of PW1 ran to help the deceased on hearing the alarm. She was sleeping in the same house with PW1 when they heard the deceased shouting that Buli had killed her. PW2 accessed the house through an open door and found the deceased sitting on her bed. That the deceased narrated to PW2 that the accused had a torch, knocked and she opened for him and he came to her room. That the deceased told the accused to go and sleep in the sitting room because he was smoking but he declined and said he had come for her. The accused then pushed the deceased on to the bed and stabbed her in the chest.

PW2 said she had last seen the accused on the 30th November 2012 at the house of the deceased and confirmed that the accused was not happy with the deceased giving land to other grand children without him getting a share. She further told Court that the accused disappeared from the village until he returned in 2014 and did not attend the burial ceremony. She further told Court that the accused had stayed with the deceased for some time.

PW3 Kimuli Anna was called by PW1 telling her that the deceased had been attacked and they went over to the house of the deceased who narrated to them how the accused had attacked her. The witness saw a spot of blood on the deceased's chest and she said it was the accused who had attacked her. She claimed not to know about the land dispute as she was not a member of the family and she told Court that she had not seen the accused for some time as her house is a distance away from where the accused stayed with his mother.

PW4 Assistant Inspector Of Police, Akol Emong Francis was the Officer in Charge at Rubabo Police Station who received the report of the death of Kakaikuru Efransi. He told Court that the family could not afford to have a postmortem on the body of the deceased carried out hence Police advised them to secure a short death certificate that was tendered in evidence by the Prosecution. PW4 further told Court that the accused went missing soon after the death and resurfaced in 2014 when he arrested him. The witness did not see the deceased before her death and was not privy to what she told other witnesses.

DW1, Baryaijuka alias Buli gave evidence on oath. He denied visiting and stabbing the deceased on the 2nd December 2012 saying he was not around the village at that time since he had left for Kyenjojo for his work as a lumber. He confirmed to Court both in his examination in chief and all through the trial that he left for Kyenjojo on the 30th November 2013 and learnt of the death of his grandmother when he returned in 2014. The accused remembered the day he left for Kyenjojo because of the meeting they had on the same day in their village group and denied any disagreement over land with the deceased.

The prosecution carries the burden of proving all ingredients of the offence if they are to secure a conviction and the burden does not shift upon the accused all through the trial. The trial Court finds a conviction on the strength of the evidence adduced by the Prosecution and not on the weakness of the evidence adduced by the Accused in all criminal cases.

The accused in this case claimed he was at Kyenjojo when the deceased was allegedly attacked and he is not required to justify his defence in Law but the Prosecution carries the burden to adduce substantial evidence to destroy his alibi by placing him at the scene of crime.

The prosecution in a murder case is required to prove that there was death of a human being; that the death was unlawful; caused with malice aforethought and that it was the accused who directly or indirectly participated in causing the death of the deceased.

A short death certificate dated 3rd December 2012 was admitted in evidence to prove the death of Kakaikuru Efransi. The cause of death was stated to be Cardio Pulmonary Arrest. PW1 and PW2 who are relatives to the deceased participated in the burial ceremony and DW1 himself confirms he learnt of the death belatedly in 2014. I conclude that this element of the death was proved beyond any doubt.

As to whether the death of Kakaikuru Efransi was unlawful, the Law presumes every homicide to be unlawful unless it is a death resulting from an accident or one authorized by the Law. Evidence on record is that the deceased was stabbed in the chest resulting into her death on the 3rd December 2012. This was not an accidental or authorized death hence this element of the offence was also proved beyond any doubt by the Prosecution.

Malice aforethought has been described as the intention to bring about the death of a human being and can be inferred from circumstantial evidence. Factors normally considered are the nature of the weapon used, the part or parts of the body attacked, consistency of the attacks

on the deceased and the conduct of the attacker before or after the attack. The murder weapon was not recovered in the instant case but PW3 narrated that she saw blood on the chest of the deceased. The chest is a vulnerable part of the body and whoever attacked the deceased is not reported to have tried to save her life after the attack. It is the conclusion of this Court that the death was caused with malice aforethought.

The deceased is reported to have made a dying declaration stating that it is the accused who attacked her and all Prosecution witnesses confirmed it. The deceased said she opened for the accused who had a torch and whom she knew well as a grandson who once stayed with her. The two talked for some time until they disagreed about the smoking by the accused. This story was consistently told by the deceased at her home and on the way to hospital until her death the following day. It is imperative to determine whether what was allegedly said by the deceased amounts to a dying declaration in Law.

The Black's Law Dictionary, 6th Edition defines a Dying Declaration as;

“a statement made by a person who believes he is about to die in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having caused them.”

The deceased in this case was clear about the injury on her chest and how it was caused by the accused through stabbing. She was consistent in naming the accused to all witnesses that came to her rescue. Her statements fit within the definition of a dying declaration stated above. I wish to note however that evidence of a dying declaration per se cannot form a basis for a conviction unless it is satisfactorily corroborated with other independent evidence, and I caution myself, like I cautioned the Assessors during the briefing.

See: Uganda Vs Ochieng John [1992—93] HCB 86

The accused's evidence was that he left for Kyenjojo on the 30th November 2013. PW1 told Court that he saw the accused around the village on the 1st December 2012 while PW2 last saw him on the 30th November 2012 which was two days prior to the attack on the deceased. The evidence of the Prosecution was that the accused disappeared from the village soon after the attack on the deceased and he missed the burial of his grandmother yet he had been cited around the village a few days to her attack.

I am cognizant of the position of the Law that the Accused is under no duty to justify his alibi evidence and also to the need to judicially consider both versions of evidence before believing either of the two. The version of the accused that he went to Kyenjojo in 2013, squarely places him in the village and not at Kyenjojo at the time the deceased was attacked on the 2nd December 2012. His subsequent disappearance from the village confirmed by PW1, PW2 and PW4, the Police Officer lend credence to the assertion of the deceased in the dying declaration that it was him who attacked her. I find the Prosecution evidence that he had been seen around the village more credible. One wonders what prevented him from attending the burial ceremony of his grandmother yet he went to Kyenjojo in 2013.

The above evidence not only destroys the alibi evidence put up by the accused but also corroborates the dying declaration as required by the Law of Evidence. The deceased stayed with the accused in her home for sometime as a grandson, the accused came with a torch that enabled the deceased recognize him, opened for him and talked with him before she was stabbed. I am convinced that the deceased had ample time to recognize the accused. The deceased immediately and consistently named the accused as the perpetrator of the attack which in my mind removes any possible error of identification. It is the finding of this Court that the accused attacked the deceased on the 2nd December 2012 resulting into her death on the 3rd December 2012.

As advised by the Assessors, I find sufficient corroboration of the dying declaration made by the deceased from the evidence on record and I accordingly convict the accused of murder contrary to section 188 and 189 of the Penal Code Act.

Moses Kazibwe Kawumi

Judge

23rd January 2017.