

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MOROTO**  
**CRIMINAL SESSIONS CASE No. 0089 OF 2015**

**UGANDA** ..... **PROSECUTOR**

5 **VERSUS**

**ONYANGA PAUL** ..... **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 11<sup>th</sup> day of July 2014 at Lokamwor village, Narisae  
Parish, Lorengedwat sub-county in Nakapiripirit District murdered one Angella Nameti Cecilia.

The events leading to the prosecution of the accused as narrated by the prosecution witnesses are  
briefly that on the fateful evening at around 7.00 pm, the accused was seen assaulting the  
deceased at their home while the deceased pleaded for mercy. The following morning, the  
15 deceased was found dead inside her house with a piece of cloth hanging from the roof near  
where the body was. Post mortem examination of the body revealed that the deceased had died  
as a result of strangulation. The prosecution argued that it is the accused who strangled his wife  
and unsuccessfully stage-managed the scene to make it look like a suicide. In his defence, the  
accused stated that his late wife committed suicide by hanging. He discovered the body the  
20 following morning and decided to report himself to the police to escape the wrath of the relatives  
of the deceased who would have killed him in reprisal.

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  
25 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).

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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.
- 10 3. That the unlawful act was actuated by malice aforethought; and lastly
4. 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  
15 prosecution adduced a post mortem report dated 12<sup>th</sup> July 2014 prepared by P.W.1 Losur Sisto a Medical Officer of Lorengedwat Health Centre III, which was admitted during the preliminary hearing and marked as exhibit P.Ex.1. The body was identified to him by the accused, Onyang Paul the husband of the deceased, as that of his wife Angella Cecilia. This report is corroborated by the testimony of P.W.4 Akol Rebecca, a sister of the deceased, who saw the body at the scene  
20 and at the funeral. In his defence, the accused admitted having found her wife dead at night inside the house when he responded to the crying of their child. 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 Angella Nameti Cecilia died on 11<sup>th</sup> July 2014.

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The prosecution had to prove further that the death of Angella Nameti Cecilia 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). In his defence, the accused stated that he found the  
30 body of the deceased in a kneeling position and stiff. He opined that the deceased committed suicide and possibly slipped to the ground in the process. Defence Counsel contested this

element arguing that there were no signs of struggle near the body which fact is suggestive of suicide rather than a homicide.

To counteract that defence, the prosecution relied on the testimony of P.W.1 who conducted the  
5 autopsy and established the cause of death as; “the neck was showing signs of strangulation in  
review of neck looseness and cracking sound around the 2<sup>nd</sup> and 3<sup>rd</sup> vertebral (cervical vertebra  
bones).” Exhibit P. Ex.1 dated 12<sup>th</sup> July 2014 contains the details of his other findings which  
include a “no other article seen near the victim which was dangerous apart from the small piece  
of cloth which was hanged near the victim. On general observation there was no evidence or  
10 signs of the victim hanging herself or suicidal signs.” P.W.4 who saw the body described the  
type of cloth as very old and that it could easily be torn with the hands.

Having considered the evidence as a whole regarding this ingredient, I find it inconsistent with  
the defence theory of a suicide. The height from which the deceased is said to have committed it  
15 cannot facilitate such a death since according to the accused, by her height she was capable of  
touching the spot where the cloth was tied without her feet leaving the ground. The accused said  
the piece of cloth was only three meters long yet he claims to have found her in a kneeling  
position without any part of that piece of cloth still tied around her neck. His suggestion that she  
could have slipped out of the noose after death and yet assume a kneeling position is implausible.  
20 He claimed in his defence that he shared supper with the deceased at around 8.00 pm only to find  
her dead less than an hour later yet he found her body stiff. This is inconsistent with the known  
periods for the setting in of rigor mortis. 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  
Angella Cecilia’s death was a homicide. Not having found any lawful justification for the act of  
25 strangulation that caused her death, I agree with the assessors that the prosecution has proved  
beyond reasonable doubt that her death was unlawfully caused.

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  
30 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*).

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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  
10 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  
15 act, and if so, then it is proper for court to draw the inference that the accused intended that  
consequence.

P.W.1 who conducted the autopsy established the cause of death as strangulation. Death is a  
natural consequence of squeezing the neck with such force as cuts off supply of air to the lungs  
20 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. The accused contended  
that the deceased committed suicide and Defence Counsel argued so in his final submissions.  
However, having earlier ruled out the possibility of a suicide, an accidental or natural death and  
found this to be a homicide, the prosecution has consequently proved beyond reasonable doubt  
25 that Angella Nameti Cecilia'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  
participation. The prosecution relies entirely on circumstantial evidence, woven together by the  
30 following strands; the accused was seen assaulting the deceased earlier that evening and the  
deceased was pleading for mercy. He testified in his defence that he parted with the deceased at

around 8.30 pm after supper only to discover her body half an hour later after she had hanged herself. He was the last person to see the deceased alive and the first one to discover the body. He touched the body and discovered that it was already stiff. He did not alert anyone about the discovery of the body that night. He reported to police the following morning for fear of reprisals from the family of the deceased. This conduct is not consistent with his innocence and cannot 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. This conduct points 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 22<sup>nd</sup> day of September, 2017.

.....  
Stephen Mubiru  
Judge.  
22<sup>nd</sup> September, 2017.