

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT RUKUNGIRI

CRIMINAL SESSION CASE NO.0074 OF 2015

UGANDA

PROSECUTOR

VERSUS

BARAMYE ABDALLAH

ACCUSED

BEFROFE HON.JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The accused person was indicted for murder contrary to Sections 188 and 189 of the Penal Code Act. It is the case for the Prosecution that on the 7th August 2014 at Kempungu Village, Kanungu District the accused murdered Tumuhairwe Peace. The accused denied the charge and the Prosecution was therefore bound to prove all ingredients of the offence.

At the commencement of the trial the Prosecution and defence Counsel agreed to the admission in evidence of the Postmortem report on the body of the deceased prepared by Dr.Mbiine Ronald of Karoli Lwanga Hospital Nyakibare on the 8th August 2014 and the Medical Examination report in respect of the deceased prepared by Dr Musiimenta Emmanuel on the 18th September 2014.

The Prosecution called five witnesses in support of the charge.

PW1 Kameraho Charles is the Local Council Chairman of Kempungu Village who told Court that he knows the accused as a person from Mitooma District who had once rented a house at Kempungu Village. On the 7th August 2014 ,PW1 was told by a one Musoke that there was a dead body in a paddock at a farm in the village.PW1 and Musoke went to where the body was and they realized it was Peace Tumuhairwe . The body had deep cuts on the head and neck . They informed other village mates who joined them. Police Officers at Buhunga Police Post were informed about the death and they instructed the residents to guard the crime scene until Police Officers from Rukungiri came and took over the case investigation.

PW2 Agume Martin is the son of the deceased His evidence was that on the 6th August 2014 at about 6.30 pm, the deceased told them that she was expecting visitors who had called her on phone. The deceased left for Kalisizo Trading Centre where she was to meet the visitors but she did not come back home. The witness and others at home learnt of her death the following morning. The witness told Court he did not know who killed his mother and that she did not tell them who were the visitors who had called the deceased before she left for Kalisizo Trading Centre.

PW3 Kengongi Juliet runs a Restaurant at Rusheshe Trading Centre. Her evidence was that on the 29th July 2014, Tumusiime Allen and Twinomugisha Scovia came for lunch at her eatery. She heard them discussing how a one Peace was bewitching Tumusiime Allen and that she was contemplating killing her before poisoning herself. PW3 heard Twinomugisha saying that she has a relative who can kill Peace without leaving any trace if money was availed by Tumusiime Allen. She did not mention the name of the relative. PW3 did not know the Person they were talking about and she did not know the names of Tumusiime and Twinomugisha at the time.

PW3 heard of the death about a week after she heard Tumusiime and Twinomugisha conversing in her restaurant. She then learnt that the deceased was a sister to Ahumuza Enid a member of a community group in which she was also a member. She saw Tumusiime and Twinomugisha at the burial ceremony and later informed the husband to the deceased to ask the two whether they knew about how her death occurred. PW3 did not know who committed the murder and how Tumusiime and Twinomugisha were later arrested but heard of a plot to kill a one Peace whom she did not know.

PW4 D/AIP Magara Richard recorded a Charge and Caution Statement from the accused on the 13th September 2014 at Rukungiri Police Station. The accused was brought to the witness by Detective Seargent Turamye Frank the case Investigating Officer. The admission of the Statement was not contested by Counsel for the Accused and it was allowed in evidence as an exhibit for the Prosecution. In the statement the accused narrated how he was approached by a one Bashir claiming he had been offered 2,000,000/- to kill the deceased. The Accused told Bashir that he could not participate in the killing because the deceased was his friend. The Accused narrated to PW4 that Bashir then offered him 500,000/= if he could lure the deceased to a place convenient for him to execute the mission to which the accused agreed and they planned to do it on the 7th August 2014. The accused called the deceased and

convinced her to come to the Catholic Church to meet visitors and as she got nearer, Bashir went and killed her. The accused later asked Bashir the name of the person he had killed the deceased with and he named a one Byron. Bashir also named Tumusiime, Twinomugisha, Besigye and others as people who wanted the deceased killed.

The accused further confessed that Bashir confiscated the phone from him and went away after killing the deceased.

PW5 D/AIP Turamye Frank was the case Investigating Officer who visited the crime scene on the 8th August 2014 and received information that the deceased had received numerous phone calls on the evening she did not return home and that she had left home to go and meet visitors. PW5 got the phone number of the deceased which he used to obtain a Court order to get subscriber call data records from MTN the service provider. PW5 scrutinized the call data print out and noticed phone number 0771228619 which was owned by the accused had been used to call the deceased on the 7th August 2014 between 7.05pm and 8.29pm when the sim card was destroyed.

PW5 identified the calls as originating from a mast in Mitooma which also transmits to some areas in Rukungiri District. PW5 identified one of the numbers on the call log sheets that was commonly used to call the accused on number 0771228619. The number happened to be that of the accused's girl friend who unknowingly linked him to the accused. He set up an appointment and met the accused at Mitooma from where he arrested him. The witness told Court that the accused conceded to participation in the crime on arrest and that he was found with a sim card pack for MTN number 0771 228619 which had been used to call the deceased.

The accused confessed that Bashir Tumusiime killed the deceased and his role was to convince the deceased to come to the place she was killed. He further narrated that Bashir told him that Tumusiime, Twinomugisha, Monica and others wanted the deceased dead because she was bewitching people on the village.

Court acquitted Tumusiime, Twinomugisha and Besigye who had been charged together with the accused because the Prosecution failed to adduce substantial evidence to put them on their defence. The confession by the accused could not be used to incriminate them without independent material evidence linking them to the crime. The evidence by PW3 could not meet that criteria. The case proceeded against the Accused.

In his unsworn testimony the Accused retracted the charge and caution statement claiming the deceased was a friend he often called and did not participate in causing her death. He told Court that he was arrested on the allegations that his phone was used to call the deceased but he did not disown the number as not being his. The accused did not also contest the sim pack for the same number found on him when he was arrested. He further told Court that he did not tell PW5 to record what was claimed to be the confession to his participation in the killing of the deceased but was tortured to sign the statement. Police form 24 in respect of the accused did not indicate any torture signs and the accused did not elaborate to Court how and when he was tortured. Counsel for both the Prosecution and the Accused opted not to make any submissions.

In criminal trials the Prosecution is required to prove all ingredients of the offence charged beyond reasonable doubt. It is also the position of the Law that Court can only convict the accused on the strength of the Prosecution evidence and not on the weakness of the defence evidence adduced in Court.

See; Sekitoleko Vs Uganda{1967}EA 531

The prosecution must prove that there was death of a human being, that the death was unlawful, that the death was caused with malice aforethought and that the accused participated in causing the death.

Proof of death was through the admitted postmortem report which was admitted in evidence. PW1, PW2 and PW3 also confirmed the death of Peace Tumuhairwe and attended the burial ceremony. I am satisfied that the Prosecution proved this element of the offence beyond reasonable doubt.

The presumption of the Law is that every homicide is unlawful save when death is a result of an accident or was authorized by Law.

See. Gusambizi s/o Wesonga Vs R (1948) 15 EACA 65

The deceased in the instant case was found with deep cuts on the head and the neck. No evidence was led to suggest that her death was as a result of an accident or authorized by the Law. I find it safe to presume that the death was unlawful. This element of the offence is also proved beyond reasonable doubt by the Prosecution.

Malice aforethought is the intention to bring about the death of a human being and can be inferred from circumstantial evidence. Factors like the nature of the weapon used, the part of the body attacked and the conduct of the accused before or after the commission of the offence are factors taken into consideration.

See ;Tubere s/o Ochen Vs R (1945)12 EACA 63

The murder weapon in the instant case was not recovered but the deceased had deep cuts on the head and the neck. I have no doubt in my mind that whoever caused the death did not have any intention to see the deceased survive. This element of the offence was also proved beyond reasonable doubt by the Prosecution.

The accused retracted the Charge and Caution statement extracted by PW4 D/AIP Magara Richard .As a rule, a retracted or repudiated confession calls for great caution before it is accepted and before basing a conviction upon it. The Court must be fully satisfied in all the circumstances of the case that the confession is true .Courts will usually act on such a confession when it is corroborated in some material particulars by independent evidence accepted by the Court

See; Ibrahim Kamukolse Vs R (1956)23 EACA 521;See.Tuwamoi V Uganda [1967]EA 84;See; Uganda Vs Haji Sekyewa&Ors Crim.Case No064/2008

Prosecution adduced the evidence of subscriber data records for phone number 0771228619 that was used to call the deceased before her death and the card was destroyed soon thereafter. The call data records were admitted in evidence without any objection by the Accused person. The sim pack for the same number was found on the body of the accused on arrest and this was not also contested by the defence. The call data sheet shows that the number was used to call the deceased more than eight times between the time she left her home and 8.29 pm and the mast from which the calls originated was Mitooma which according to the testimony of PW5 transmits to the area the deceased was when she met her death.

These two pieces of evidence corroborate the evidence of PW2 that the deceased received numerous calls to go and receive visitors but she never returned home. The same evidence conforms to the confession in the retracted Charge and Caution statement that Bashir hired the accused to call the deceased to move to a place convenient for him to kill her. It is the conclusion of this Court that the retraction or repudiation of the charge and caution statement

is an afterthought designed to mislead Court about the participation of the accused in causing the death of the deceased. I am satisfied that the accused and Bashir acted in pursuit of a common purpose within the meaning of Section 22 of the Penal Code Act. They are joint offenders which makes the accused equally liable for the offence

See: Difasi Magony &Ors Vs Uganda [1965]EA 66

I was advised in the joint opinion of the assessors to convict the accused and basing on the reasons given above, I find the accused guilty of the murder of Peace Tumuhairwe contrary to sections 188 and 189 and i accordingly convict him.

Moses Kazibwe Kawumi

Judge

16th January 2017.