

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI
HCT-09-CR-SC-0062 OF 2013

UGANDA:.....PROSECUTOR

VERSUS

ATADI VINCENT:.....ACCUSED

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE

Judgment

This is a case of murder C/S 188 and 189 of the Penal Code Act. It was agreed upon that Amayo died on 23/2/2013. A post mortem was done by a doctor which revealed that the deceased had stab wounds on the neck and abdomen and had her private parts missing. Her left knee joint was dislocated and the right knee was partially dislocated. She died of severe bleeding due to the stab wounds and strangling.

The prosecution and defence agreed that her death was unlawful and that whoever caused her death did so with malice aforethought as indicated by the multiple stab wounds and mutilation of her female genitalia.

The only ingredient of murder Not agreed upon was participation in the commission of the crime by the accused.

Participation would be proved by way of direct evidence from an eye witness. There was none.

Prosecution depended on circumstantial evidence of the post mortem report and the evidence of the step daughter PW1 ACHIENG STELLA aged 18 years. She told Court that she lived together with both the deceased mother and her step father

(accused). On the fateful night her mother had a quarrel with her step father. They had a fight around 8:00pm. Then the deceased left to go and report to the LCI Chairperson death threats the accused had directed at her.

This witness told Court that her step father did not immediately follow the deceased but he followed her at around 10:00pm. He had a knife for slashing sweet potatoes into chips. That he said to her that he is following the mother but was not sure of his return. She then went to sleep. When she woke up the next day her mother was nowhere to be seen. Her step father said he did not know of her whereabouts. Later she got reports of the murder of her mother whose body had been discovered in nearby gardens.

The second witness was the LCI Chairperson Otim Nelson, Osirama village, Apapai, Kaberamaido. He spoke of a history of constant domestic violence and death threats issued to the deceased by the accused. That the accused was pestering the deceased to return his step children to their rightful father but the deceased refused. On 21/2/2013 this witness went to visit his in-laws, upon return the next day he found a report that Amayo (the deceased) had abused and talked ill of some other lady. He went looking for Amayo to summon her to his LC Court. He did not find her at her home. Her husband (the accused) had gone out grazing cattle.

Later he received a report that a dead body had been discovered at the boundary to his land. He rushed there and was able to identify the body as that of Amayo.

He looked for her husband (the accused) and arrested him as a suspect but much more for his safe custody because Amayo's father had named the accused as the first suspect. He took him to police for safe custody.

In his defence the accused swore that he never murdered his wife. He admitted that they had a misunderstanding over the custody and upbringing of the step children but that did not amount to anything to cause him to kill his wife.

He told Court that on the fateful night he came back from grazing his cattle when he was tired. He did not find his wife at home. He thought she had gone out drinking alcohol with her friends as usual. For him, he took his drugs and went to sleep till morning. In the morning he went to Juba trading centre looking for his wife from her drinking joints but did not find her. He went to the LCI Chairperson

but did not find him home to report the disappearance of his wife. Later he took out his cattle to graze. He learnt from the LCI Chairperson that his wife had been found murdered. He met him in a cassava garden. He asked the LCI Chairperson to lead him to the dead body but instead he arrested him and took him to police. He has since been in detention.

In cross examination the accused said that both himself and the deceased were found to be living with AIDS. They were on HIV drugs and had been counseled in positive living. That he was not a bitter man. That the only misunderstanding he had with the wife was over the step children. They were growing old and he feared that they would demand for a share of his land. He denied having quarreled or fought his wife on the fateful night. Asked why he did not take it upon himself to look for the missing wife he replied that he tried to in the morning but failed. In the afternoon he had a duty to graze his cattle which kept him busy. He did not know of any reason why his daughter PW1 would tell a lie to implicate him in the murder of his wife.

In the final submissions on circumstantial evidence Counsel Ogire submitted that prosecution had failed to plant the accused at the scene of crime. That the evidence of PW1 Achieng showed that her mother left the house to go to the LCI home but was not followed immediately by the accused. Counsel Ogire rightly argued that between 8:00pm and 10:00pm when accused is said to have followed her, anybody else had the time and chance to murder her. That no one knows where the deceased was between 7:00pm and 10:00pm. He insinuated that since Stella (PW1) was not a biological daughter of the accused, and that since her mother had problems with the accused, it is evidence that raises eyebrows.

Commenting on the conduct of the accused after the alleged murder the Counsel submitted that it was conduct of an innocent man. He did not run away. He stayed in his home doing normal business. He tried to look for his wife and found the LCI Chairperson who told him that she had been found dead. That the cause of death is not known.

The State maintains that there is circumstantial evidence that since the accused followed the deceased with a knife he is the most likely murderer of his wife.

The prosecution invited Court to believe that the accused followed his wife in the dark of the night and murdered her.

For this Court to rely on circumstantial evidence to Court there must be evidence which is inconsistent with the innocence of the accused. That what he did was incapable of any other explanation except the guilt of the accused.

Looking at the events of the fateful night between the accused and the deceased, the accused was last seen following the deceased out in the dark night. Their daughter Achieng Stella no doubt saw them quarreling and fighting. The mum left the house heading to the home of the LCI Chairperson to report the fight and threats to her life. If she was strangled dead near the home of the LC1 Chairperson, it can be concluded that she was on her way to her destination. Stella saw the accused follow the deceased. The assailant stabbed the deceased on the neck slit open her abdomen and cut off her genitalia. The assailant must have used a sharp cutting knife. The stabs and cutting are consistent with use of a sharp knife the accused went out with following the deceased. He did not come back with the knife and we are not told that it is anywhere else. It is unfortunate that the knife recovered at the scene was not tendered in as an exhibit to seal the evidence but that was not fatal. The fact remained that the accused was seen going out with a sharp knife, going after the deceased and the deceased was found dead the next day. The circumstantial evidence is overwhelming and convincing.

The last nail in the coffin of the accused is his behavior after the disappearance of his wife. He pretended to attempt to look for her and then went grazing. He did not show much concern that she had not come home and had gone missing. He did not raise any alarm or inform neighbours and village mates. There was no main hunt for the missing wife! With the known background of domestic violence, we are convinced that the accused is given away by his conduct.

Counsel Ogire was under instruction to submit that the accused did not kill his wife but if at all he killed her it did not amount to murder but manslaughter. This was a very surprising submission. What could have justified the manslaughter? The accused never raised any defence of provocation, intoxication or accidental cause of death. He did all he did with malice aforethought. He was determined to either kill the wife or himself or both because he gave his last word to their daughter

saying he is going out after his wife but he is not sure whether he will ever come back or not. Sounds prophetic. May be he thought he would be lynched to death after killing his wife. My belief is that the accused strangled his wife and mutilated her body. When he attempted to revisit the place where he dumped the body or the scene of crime he met the LC Chairperson coming from the scene. He knew where the body of his wife was. He walked through a cassava garden towards the dead body. It cannot be that he was going to the home of the Chairperson. There was no known shortcut through the gardens in that direction. How did he know that the Chairperson was in the bush in that direction? He did not know. It was by shere coincidence that he met him otherwise he had other reasons for going back to the scene of crime.

I am convinced beyond reasonable doubt that the accused participated in the murder of his wife and in so convicted of murder C/S 188 and 189 of the Penal Code Act.

Judge
2/05/2017