

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

HCT-09-CR-SC-0132 OF 2013

UGANDA:::PROSECUTION

VERSUS

OKOLIMO STEPHEN & 3 OTHERS:::ACCUSED

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

Judgment

The accused stand charged with murder C/S 188 & 189 of the Penal Code Act.

It is alleged that on the 27th day of March 2013 at Africa village in Amuria district the accused murdered Venasio Olum.

It was agreed upon as a fact that the deceased Olum Venasio was killed by a mob. A post mortem report PF. 48C was tendered as exhibit PE1 indicating that the deceased had cut wounds on the head, a broken left leg and a broken skull. The cause of death was severe bleeding due to the various injuries sustained and broken skull. It was also agreed that all the accused are sane adults.

By the nature of injuries that caused death we can safely conclude that the deceased died an unlawful death and whoever caused his death did it with malice aforethought.

Participation by the accused in the murder is denied. We have to look for evidence of identification.

PW1 Icholot Hellen was wife to the deceased. She told Court that police came to the village at 6:00am at the invitation of the deceased. Police arrested two men the deceased accused of refusing to vacate his land he had been awarded after a Court judgment. Once they took the suspects their families rose against the deceased.

At around 8:00am the accused came to attack her husband. He ran away. They chased him. That another group followed them and she mingled with the mob chasing after her husband. Her husband entered the house of a neighbour and locked himself inside. The accused who were armed with pangas, axes, spears and sticks broke the walls and door of the hut and tortured the deceased to death. This wife witnessed the mob justice, before they recognized her.

When she was recognized, the mob chased her away. She ran back home and hid in her house until police came to the scene.

PW2 Odong John is a son of the deceased. He corroborated the evidence of his mother. He said he was using oxen to plough near home when the accused came running to attack his father. He was able to identify the accused because they are neighbours well known to him. They were in a small group but followed by a larger group. He ran away and climbed a tree near the home where his father was assaulted to death. From his hiding place he saw the accused enter the house first after his father. He saw others breaking the walls of the house to gain entry. He heard his father crying for his life and offering his assailants some money and a phone. Once the walls of the house were broken down and the door thrown down he was able to see his father being beaten and cut to death. When the accused and mob were done they came out and dispersed from the scene. The witness identified other suspects still at large.

PW3 ATODU Martin is a son to the deceased. He had escorted the suspects earlier arrested by police at 6:00am. While at police he received a call from his father that he had been surrounded by village mob and his life was in danger. He brought police to the scene but it was too late. His father had been killed by the time he arrived with police.

That before the phone conversation got cut off the deceased had named the accused as some of the people in the mob after his life.

In their defence the accused denied participating. They made plain statements. A1 claimed he was at his home. At 4:00am he heard police go past his home. After a short while they returned and asked him who had killed the deceased. He did not know. Police arrested him on these charges of murder.

A2 claimed his wife woke him up at 4:00am after hearing gun shots. He could not tell what was wrong then. At 6:00am he woke up and escorted his children to school. He had to see the head-teacher. He waited until he saw him. After 8:00am he returned to his home. He learnt from the LCI Chairperson that the deceased had been killed. He advised the Chairperson to run to police and make a report. For him he went out to graze his cattle. Later he was arrested on these charges of murder.

A3 said that on the fateful day he heard of the arrest of Olem and Ochap from the LCI Chairperson.

At 9:00am he again heard from the Chairperson that he was going to police to report that Venasio had been killed. He went out to graze his cattle till evening. The next day he was arrested on these charges of murder.

A4 said that at 6:00am she heard that police had arrested Amodoi, Martin, John Otac, Olem Charles and Ochap.

At 8:00am one Osele Bosco passed by her home running. He said Olum had been killed and everybody was running from the village for fear of mass arrests. She also walked away from her home because she was too old to run.

At about 10:00am she saw smoke from her village. The family of the deceased had burnt down their homes in act of revenge. She stayed away at her son's home. She was later arrested from another village- Olekat and charged with the murder of Venasio. She had migrated for her own safety.

Opinion

It was possible for the prosecution witnesses to identify the four accused because they led others. They were the first to arrive in a small group. By the time the other bigger group joined them they had distinguished themselves as the group leaders. PW1 and PW2 clearly identified them when they first attacked the deceased at his home.

Apart from being the leaders in the first small group the accused attacked in broad day light. The witnesses knew them before as their immediate neighbours.

The grudge arising from the land dispute explains their motive and malice aforethought. Anyait was directly linked to the land dispute. The deceased had sued her husband and emerged as the successful party. The other accused were her relatives and sympathizers. They were all against the arrest of Olem and Ochap.

I find that they all had a common intention to murder the deceased. They did not only abet or aid. They were properly identified participating in the murder of the deceased Venasio. They are all principal offenders under Section 19 of the Penal Code Act. I find them guilty of the offence of murder C/S 188 and 189 of the Penal Code Act as charged.

Judge
05/05/2017