

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT FORTPORTAL
HCT-09-CR-CN-0009 - 2015

SHIMANYA GEOFREY:::APPELLANT

VERSUS

UGANDA :::RESPONDENT

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

Judgment

Shimanya Geofrey filed this appeal against the conviction and sentence of H/W Matyama Paul Magistrate Grade 1, Bukedea. Appellant was convicted of Doing grievous Harm C/S 219 of the Penal Code Act.

It was alleged that on the 20th day of June 2013 the accused with others at Akakat village in Bukedea district did grievous Harm to Chebrot Alex. One of the accused readily pleaded guilty to the charges and said he did it alone, that A2 and A3 were not there.

A trial was held for A2 and A3 who had pleaded Not guilty. Upon conviction A2 was sentenced to fine of Three million, seven hundred thousand or 24 months in default. An order was made that out of the said fine three million shillings go to the victim of assault as compensation.

Grounds of Appeal

1. The Learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on the Court record as a whole thereby arriving at a wrong decision.

2. The Learned Trial Magistrate erred in law and fact when he failed to give an exhaustive scrutiny and proper evaluation of the evidence and legal arguments on the Court record thus arriving at a wrong decision.
3. The decision of the Learned Trial Magistrate has occasioned substantial miscarriage of Justice.

Re- Evaluation of Evidence

This Court as a first appellate Court has a duty to re-evaluate all evidence on record and arrive at its own decision bearing in mind that, unlike the Trial Court, this Court had no opportunity to observe the demeanour of the witnesses.

The Appellant seeks to be absolved of liability because his co-accused A1 pleaded guilty and said A2 and A3 never participated in the crime.

Counsel quotes the words of A1 at page 6 of the proceedings

“A2 and A3 shouldn’t have been charged because they were not present”.

He concludes that Court should not have insisted on trying A2 and A3 basing on the words of A1.

First of all this was not evidence on oath from A1. He could not be taken for granted or believed on the face of it. He was never cross-examined on his plain statement in Court. They could only be relevant as far as he was admitting personal liability in a plea of guilty.

Secondly evidence of an accomplice cannot be admitted without caution Such evidence could be deliberately intended to incriminate co-accused or get them off the hook.

The accused A2 raised an alibi that he was never at the scene of crime. He said he first heard of the fight between PW1 (Complainant) and A1 (the convict) when he went to the trading centre and the police station on 19th day of June, 2013. This alibi is false and of no legal effect because it is covering 19th June, 2013 which was a day before the assault charged of 20th June, 2013.

The Appellant is properly planted at the scene of crime by the evidence of PW3 and DW3.

DW3 Otade Moses told Court that he was at home with A2 (Appellant) when they heard an alarm. When he responded to the alarm he found 3 young children and DW4 ASIMO JESICA as the person making the alarm.

This witness does not tell Court where A2 went when they heard the alarm. DW3 said he met A1 assaulting PW1 (complainant) and A3 came in to stop the fight.

That A3 arrested A1 and took him to police while PW1 was helped by a lady to get a bicycle that took him home. The defence witness does not name the lady Samaritan but this was PW3. In the unchallenged testimony of PW3 she stated that she was coming from the well when she heard an alarm in the bush. She had gone to fetch water from the well around 10:00a.m. When she responded to the alarm she found her brother PW1 making the alarm. He had a cut on the head and mouth and was bleeding.

PW1 failed to talk at the scene and so did not name any suspect. This witness used her phone to call her husband who brought a bicycle and rushed the assaulted man PW1 to Mbale Hospital. It is only after some time that the patient regained his consciousness and named the suspects from the hospital bed.

PW3's testimony is believable because she was a sister to PW1 but did not name the Appellant arbitrarily. If she was a liar she would have named the appellant but she told Court that she did not see anybody at the scene of crime. She was not biased.

Evidence pinning the Appellant came from his own witnesses DW3 Otade not rhyming with that of DW4 Asimo Jesca. If these two defence witnesses were speaking the truth their story would have been the same as to what happened and who was at the scene of crime. They both claimed they answered an alarm but their stories differ. Otade said he found Asimo making the alarm. A1 was seating on PW1 and he separated them. That PW1 had a broken leg and was bleeding from the leg. Asimo does not mention the bleeding at all.

Both witnesses speak of PW3 in passing as a lady who was going to the well and they asked her to help them to call for a bicycle to take PW1 home. These were village mates and they must have known this lady as a sister to PW1,

indeed she told Court how concerned she got on seeing her speechless and bleeding brother. She must have been the one who raised the alarm not Asimo. It cannot be true that she was a mere passerby going to the well. She responded to the alarm and she ensured her real brother is rushed to Mbale hospital.

While Otade narrated the story of how PW1 was allegedly rescued he did not tell Court how A1 was arrested. It is Asimo who said with certainty that Okello (A3) arrested A1 and took him to police. Asimo says PW1 went home while PW3 said they rushed him to hospital.

Otade said the incident took place at 3:00pm yet other evidence shows that the incident occurred in the morning around 10:00am.

The medical evidence shows that PW1 had a cut wound at the back of the head. I wonder why the defence witnesses failed to see such a scarring wound.

All this goes to show that they did not tell Court the truth and were not credible at all. Therefore the Trial Magistrate was right to conclude that they were untruthful. He weighed the prosecution evidence, more so of PW3 and found it strong enough to sustain a conviction.

It is trite law that a conviction must be based on the strength of the prosecution case and not the weakness of the defence in the instant case the defence evidence was only weak but contradictory and full of deliberate lies. The alibi of the Appellant was completely destroyed by the prosecution that it was not covering the date of commission of the crime.

It spike of things of 19th yet the charge is for event of 20th June, 2013.

In conclusion I find that the Trial Magistrate properly evaluated the evidence on record and arrived at the right decision convicting all the 3 accused persons.

There was no miscarriage of Justice. The appeal fails on all grounds of appeal. It is dismissed.

Judge
13th/03/2017