

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI
HCT-09-CR-SC-0032 OF 2014**

UGANDA:.....PROSECUTOR

VERSUS

**A1. EKELLU DAVID
A2. AJOTU JAMES
A3. ENYUTU EMMANUEL
A4. OLUKA JAMES
A5. OKIRIA JULIUS
A6. OKWII MOSES
A7. OKODI JAMES
A8. ATIANG CHRISTINE BETTY**

.....ACCUSED

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

Judgment

All the accused persons stand charged with one count of Murder C/S 188 and 189 of the Penal Code Act. It is alleged that they murdered Opolot Paul with malice aforethought.

Brief facts

On the 12th day of January, 2014 Opolot Paul was detained at Kyere Police Post in Serere district on a complaint by A6. Okwii Moses and his wife A8 Atiang Christine that he had defiled their daughter.

Later that morning A2. CPL Ajotu James brought in a clinical officer Oluka James A4 to carry out an HIV test on the suspect in cells. A3 P.C Enyutu who was the police officer in-charge of the cells opened for Oluka James to examine the suspect in the presence of A6 Okwii Moses, A7 Okodi James A8 Atiang Christine Betty and Ekellu David (A1).

Around midday the suspect Opolot Paul was found hanging on a rope in what was alleged to be suicide. The doctor who carried out a post mortem examination ruled out suicide and gave the opinion that the deceased's neck was twisted because he

had a broken spine in the neck area. All the accused claimed the deceased had committed suicide and denied participating in the murder of the deceased.

Ingredients of murder

- a) A person must have died
- b) The act that caused the death must have been unlawful
- c) The murder was done with malice aforethought.
- d) The accused must have participated in the murder.

Evidence

Both the prosecution and defence admitted the fact that Opolot Paul died in the police cells of Kyere Police Post. We are all agreed that the death was unlawful since it was not authorized by law.

PW6 Dr. Etolu explained that the deceased had a broken neck. The breaking of the spine around the neck blocked the breathing and blood flow to the brain. He died of cardiac respiratory arrest. The doctor explained that if the deceased had committed suicide the rope would have caused burns around the whole neck and not just a small part of it. That the rope would have pushed inside the voice box and that would in turn push out the tongue. That once the blood flow from the head is blocked it ends up pushing the eyes with pressure to protrude from the eye sockets. In this case the tongue and eyes were not so affected.

The deceased would have released urine and faeces too. This was not the case. This doctor's evidence proved that the deceased did not take his own life but was killed. Whoever caused the death of Opolot did it with malice aforethought.

Participation and identification

Opolot was last seen alive when A4 Oluka James came to pick his blood sample for the HIV test. Oluka came at the invitation of A6 Okwii Moses and his wife A8 Atiang Christine Betty. In order to access the police cells orders were given by A2 Ajotu James to the in-charge cells A3 PC. Enyutu Emmanuel. A7 Okodi James and A1 Ekellu David were close friends of A6 Okwii Moses and were seen in the cells witnessing the medical examination. The mother of the deceased PW2 Achanit Stella and PW1 Achola Anna Grace the mother of another female suspect were denied entry into the cells. Both witnesses told Court that A3 Enyutu was the police officer in charge of the police cells who refused to grant them entry while A2 Ajotu was the police officer who blocked the door way. All the accused were

inside the police cell to witness the medical personnel A4 Oluka picking the blood sample from the deceased for an HIV test.

PW1 and PW2 saw the Medical Personnel come out with a syringe full of blood. He was followed by all the accused who had been inside the police cell. A4 and A8 went to a room near the cells and screened the blood for HIV. After the test A8 was seen throwing away the blood sample and syringe in a nearby pit Latrine. Thereafter A4 left alone.

I do not believe the defence that Oluka made an announcement of the HIV test to all present. The mothers of the suspects in the cells did not hear him announce the results.

Once the medical officer left Okwii tried to negotiate for a fine of Shs. 3,000,000/= from PW2, the mother of the deceased. He even issued to her threats that if she failed to raise the money her clan would clap their hands within 3 days. This was a proverb heard by both PW2 and PW3. I believe he meant that they would clap hands in shock at what he would have done to their son.

When the HIV test had been done A2 advised PW2 to go and bring food for her son. She went to a nearby place she called a hotel and returned with food. A3 did not open the cells to allow the deceased to eat lunch. Instead Okwii returned to PW2 demanding for the money. She had no money. This mother of the deceased poured away the food and returned the plates to the hotel. She told Court she left her son praying in the police cells. When she returned she sat on the bench waiting only to be told that her son had committed suicide in the cells.

The prosecution evidence leaves the two police officers on duty and Okwii at the scene of crime when the deceased was last heard alive by his mother PW2.

It is during the time she took back plates to the food kiosk that her son died in the police cells. In between two police officers came from Serere responding to a police report that the deceased suspect had committed suicide in the cells. PW2 saw them arrive and entering the cells but did not know why they had come. She only learnt later that they were police officers. Court learnt that the two police officers were PW4 D/AIP Atayet, the investigating officer from Serere and PW5 D/CPL Okello Moses the scenes of crime officer from Serere Central Police Station.

My considered opinion is that having refused to open for the mother to feed the prisoner, the police know better whom they opened for in her absence. The mother

of the deceased and his brother PW3 Oboire did not participate in the exercise of picking the deceased's blood. A4 Oluka did it with the accused. It is possible that the accused twisted and broke Olupot's neck during that exercise. He could have remained alive praying in pain. It is also possible Okwii and the police officers revisited the cells and twisted the deceased's neck causing his death. By the time his mother returned from the food kiosk her son was no more. That is the time when a rope was tied around his neck, suicide feigned and Serere police called in.

Where were the accused by that time? A4 had left after carrying out the HIV test. A1 Ekellu, A7 Okodi and A8 Christine Betty Atiang were all around waiting on A6 Okwii Moses who was still demanding for a fine of Shs. 3,000,000/=.

Whereas A1 Ekellu claimed he had left with Okwii to attend a marriage introduction ceremony, the two speak of different time spaces. Ekellu said he left his home at around 11:00am to go to Kyere Police Post to pick Okwii. He waited for sometime before Okwii completed the matters that had taken him there. That means they left for the party around noon. But Okwii told Court that Ekellu picked him in the morning at about 10:00am. This is a major contradiction.

The evidence of this alibi is not convincing. No witness came to tell Court that the two accused A1 and A6 attended such a ceremony and more so at 10:00am. The party was a myth. If it took place and the accused attended, it must have been in the afternoon long after they had murdered the deceased.

A8 Atiang was the main complainant. Together with her husband Okwii they took over the work of police participating actively in securing the medical examination of the deceased Olupot. She called in the Medical Personnel A4 Oluka. She participated in picking the blood sample from the deceased who was being held in police cells. She personally carried out the screening of the blood to establish the HIV status of her daughter and that of the deceased. These activities took some time. They could not have ended before 10:00am as she claims.

First of all A8 had her daughter escorted to Kyere Health Centre for the medical examination on PF3A at 9:00am. Then when Mr. Oluka declined working with her alone since she was an interested party, they had to look for nurse Okurut who was neutral. Then Oluka had to crossover from the Health Centre to the Police Post across the road. I am sure by the time the medical examination ended it was well beyond 11:00am. Her defence that she was back at her station by 10:00am was a lie.

The only person who did not witness the medical examination was the chairperson of LCI-A5-Okiria Julius. That one left when the deceased was well and alive. It is another lie by A8 to say she left the mother of the deceased talking to A5 after the medical test. A8 Atiang claimed that after getting the HIV test she left the police station together with Ekellu and Okwii. That is another lie and major contradiction. By 10:00am none of them had left. The medical tests were just beginning.

A7 Okodi James similarly claimed he left the police post by 10:00am. This is not believable. For a man who offered his transport and was personally involved in arresting the deceased, his interest had just began. He was a close friend with Okwii in whom he had gone to confide some family matters. I cannot believe that he chased the deceased, caught him and walked him to Kyere Police Post and then left immediately. PW1 and PW2 saw and recognized him among those who entered the police cells. He was seen in the small meeting of Okwii, Atiang and Ekellu under the cashew nut trees at the police post. No prosecution witness mentioned his departure like they did of A5 the LCI Chairperson. He must have remained with Okwii and Atiang all the time. After all he had decided to help Okwii to solve this family problem of the deceased disappearing with his daughter.

My considered opinion is that the two police officers Ajotu and Enyutu did not only act in an unprofessional manner by allowing the other accused to access the police cells, but must also have participated in the murder of the deceased. Court got no explanation from A2 and A3 as to how and why they allowed civilians to access the deceased suspect in police cells. They must have had a common intention of twisting and breaking his neck. They did it and he died in the police cells. The common intention can be inferred from the introduction of a rope in the police cells. The very police officers took time to tie the rope around the deceased's neck and hanged his body up in the cells to create the impression that the deceased had committed suicide. These are elaborate actions that could only be done with the permission and supervision of the police officers in charge of Kyere Police Post. A2 and A3 were the police officers on duty and in charge of the case reported against the deceased suspect. Under Section 20 of the Penal Code Act joint offenders in prosecution of a common purpose whose commission was a probable consequence are each held liable and deemed to have committed the offence. In the instant case the accused had a common intention of causing the death of Olupot. Their conduct prior to his death and subsequent immediately after his death point at that common intention. Otherwise the police officers would not have organized a medical checkup for the deceased in the police cells. The non-

medical staff would not have been inside the police cells on the pretext of witnessing the medical examination and the rope exhibited would never have reached the cells. The attempt to disguise the death of a suspect in cells as suicide is a clear sign that A2 and A3 of police had no suspect to arrest but themselves. The civilians accused of this murder clearly went beyond their roles of arresting and handing over the suspect (deceased) to police.

In conclusion I would excuse only the Medical Personnel A4, Oluka who was called in to carry out the medical check-up and left after screening the blood. There is little to implicate him in the twisting and breaking the neck of the deceased. He left the scene of crime once he had picked the blood sample and screened the same for HIV. He made a silly mistake of leaving the Health Centre to do his work within a police cell. This professional misconduct should be handled administratively by the district administration/Ministry of Health. He is acquitted of murder.

I find A1 Ekellu David, A2 No.33166 D/CPL Ajotu James, A3 No.55084 P.C Enyutu Emmanuel, A6 Okwii Moses, A7 Okodi James and A8 Atiang Christine Betty Guilty of Murder as charged.

I convict the accused accordingly.

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Hon. Justice Batema N.D.A
JUDGE
13/04/2018

Sentence

All the convicts are first offenders. They have families to look after and all of them have spent at least 03 years and some months on remand.

A2 Ajotu James and A3 Enyutu Emmanuel are Police officers who were in charge of the Police cells from where the offence of Murder was committed. These two held a higher obligation and duty to ensure that suspects in Police cells are safe.

Whereas A6 and A8 are husband and wife who had complained of defilement of their daughter, A1 and A7 were just family friends who got themselves more involved than the complainants themselves.

Throughout the trial none of the convict showed any sign of being remorseful and sorry for causing the death of the deceased. They all deserve no mercy from this Court.

A2 Ajotu James and A3 Enyutu Emmanuel are each sentenced to 18 years imprisonment. Each of them has spent 3 years and 10 months on remand. I round the 10 months to a full year since they answered their bail obediently. Each will serve the balance of 14 years imprisonment at Luzira Upper Prison.

A6 and A8 are a couple. Assisted by their friends A1 and A7 they had all the malice to harm the deceased alleged defiler. A6 has spent 3 years and 4 months on remand. He is sentenced to 14 years imprisonment less by the remand period. He will serve 10 years and 8 months at Soroti.

A8 is sentenced to 14 years imprisonment. She has been on remand for 3 years and 5 months. She serves 10 years and 7 months at Soroti.

A1 is sentenced to 14 years imprisonment less by 3 years and 10 months. That is rounded to 4 years. Leaving him with 10 years imprisonment at Malukhu Prisons Mbale.

A7 is sentenced to 14 years imprisonment. He has been on remand for 3 years and 4 months which is inclusive. He will now serve 10 years and 8 months at Moroto Prison.

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Hon. Justice Batema N.D.A
JUDGE
30/04/2018