

The accused pleaded not guilty in both counts.

By virtue of those pleas of not guilty, the burden was cast on the prosecution to prove all the ingredients of the offences beyond reasonable doubt as required by **Article 28(3)(a) of the Constitution of Uganda**. Also see **Okale –Vs- Republic [1965] E.A, 55**.

In an offence of Murder, the ingredients are:-

- 1) Death of a human being;
- 2) That the death of the deceased was caused unlawfully;
- 3) That the death of the deceased was caused with malice aforethought;
- 4) That the accused participated in causing the death of the deceased.

Then as far as count II of Attempted Murder is concerned, the ingredients are:-

- 1) Whether there was intention to cause injury to Corporal Omach;
- 2) Whether there was an act towards him;
- 3) Whether the accused was responsible.

I shall start with Count I of Murder:-

As far as the 1st ingredient of the offence is concerned, this court finds no difficulty in holding that there is no dispute that No. 33364 W/Sgt. Adong Judith is dead. The post-mortem report on record, Exhibit P.7 signed by Dr. Alele David gave detailed injuries to the deceased and concluded that the cause of death was multiple crush injuries. The same is dated 17-12-2014.

All the prosecution witnesses on record allude to the fact of death of No. 33364 W/Sgt. Adong Judith. Even the accused in his defence did not deny that the late W/Sgt. Adong Judith is no more.

In the premises, I find and hold that the first ingredient of the offence has been proved beyond reasonable doubt.

The second ingredient of the offence is whether the death of the deceased was unlawful. In that regard, all Homicides are presumed to be unlawfully caused, unless caused by accident or in defence of property or person or by an act of God. The classic case of **R –Vs- Gusambizi s/o Wesonga [1948] EACA 65** is a case in point. Whereas the accused gave the defence of accident as the cause of death there was overwhelming prosecution evidence to the contrary. As submitted by Counsel for state, the first witness PW1, Denis Kamugisha, a Senior Police officer testified about a broken and sour love relationship between deceased and accused. PW1 at one time settled their problems.

Secondly, PW2 Omach Patrick who was at the scene together with the deceased testified that he saw a Police Vehicle Reg. UP1217 from Gulu side and that the driver reduced the speed from 50 metres away, indicating as if he was stopping. And that being a police vehicle, they thought he was bringing them a message. PW2 testified that when he reached five metres from where they were, he increased the speed and knocked him down and he regained consciousness five days later at Mulago with serious injuries. In the meantime, he learnt of the death of Sgt. Adongo on spot. That evidence was corroborated by PW3, Nabukonde Lydia, a fellow Woman Police officer and PW4, No. 29175 Corporal Biryomumisho Stephen.

PW3's evidence was that the Police Vehicle, UP1271 Toyota reduced speed as it approached them but to her surprise, it increased speed and knocked Sgt. Adong

Judith and Corporal Omach who were standing next to the two motor cycles. PW3 added:-

“The Police vehicle ran over the two motorcycles and Sgt. Adong and Corporal Omach for some distance (10 Metres away). I was standing at the shoulder line. I fell down on the tarmac . . . When I got up I realized that Sgt. Adong Judith had died on the spot. The body was lying off the road side and so was Corporal Omach. He was in a critical condition”.

As already noted, PW4 also testified that as the driver of UP1217 Toyota Blue in colour indicated he was going to park all of a sudden, he applied a high gear knocking Sgt. Adong, Corporal Omach and the two Motor cycles. And whereas counsel for the accused submitted that the evidence of PW6, Asst. Superintendent of Police was supportive of accident, my findings are to the steering. For avoidance of doubt, I do hereby quote some extract from PW6’s testimony.

“. . . I was seated in the co-driver’s seat, it run over two police officers and two motor cycles. They were standing in the same direction, in a trench. Accused struggled with the vehicle and shortly stopped. It stopped after running over the officers and motorcycled. Accused did not tell me anything as to what happened. I realized when the vehicle was about to knock. I realized when the vehicle was about to knock. He did not answer”.

The question is why did accused not tell PW6 if anything was wrong with the vehicle and why did he stop after the two police officers and the motorcycles? That was an indication of mission accomplished and cannot therefore be said to have been an accident.

That is particularly when you consider the earlier evidence of PW2, PW3 and PW4 that he reduced speed as if he was going to stop and, then all of a sudden increased and put in high gears to knock the deceased and Corporal Omach.

Reference to the case of **Uganda –Vs- Dr. Aggrey Kiyingi, Criminal Session Case No. 30 of 2006** before Justice Opio Aweri, as he then was, therefore was quoted out of context. The same is distinguishable from the present case.

I instead agree with the submissions of counsel for the state that the accused was in control of the vehicle and he violently knocked the victims.

The post-mortem report signed by Dr. Allele David revealed several injuries and the conclusion was that W/Sgt. Adong Judith died as a result of multiple injuries.

In the premises, I find and hold that the death of the deceased was unlawfully caused. The prosecution has therefore proved the second ingredient of the offence beyond reasonable doubt.

I now turn to the third ingredient of Malice aforethought:-

Malice aforethought is defined under section 191 of the Penal Code Act as follows:-

- 1) An intention to cause death of a person, whether such a person is the one killed or not.
- 2) Knowledge that the act or omission causing death will probably cause death of some person, whether such person is actually killed or not.

Malice aforethought is therefore a mental element of the offence of murder and therefore difficult to prove by direct evidence.

However, it can be inferred from the surrounding circumstances of the offence, such as the weapon used, the part of the body targeted, the nature of injuries implicated and the conduct of the assailant before, during and after the offence.

The relevant authorities are:-

- RVS. Tubere s/o Ochan (1954) EACA 63.
- Akol Patrick & Others Vs- Uganda (2006) HCB 16.

In the present case, the prosecution case was that the intention by accused to kill Sgt. Adong Judith was due to a love relationship gone sour as brought out the testimony of PW1, Denis Kamugisha. He had intervened while at Jinja road police station. But more fundamental was the evidence of PW3, Nabukonde Lydia who testified that police vehicle driven by accused from Gulu to Kampala approached them at Katuugo Trading Centre, she added:-

“As it approached us, it slowed down the speed. I thought the driver had a message for us and was stopping. Then surprisingly and all of a sudden, it increased speed and knocked the two motor cycles parked off the road. Sgt. Adong and Corporal Omach who were standing next to the motorcycles were also knocked. The police vehicle ran over the two motorcycles and Sgt. Adong and Corporal Omach for some distance (10 metres away)”.

That evidence of PW3 was corroborated by PW4, Corporal Biryomumisho Stephen who added that when accused approached them, he slowed down and drove towards Sgt. Adong and when he reached them, he applied high gear knocking Sgt. Adong, Omach and the motorcycles. PW4 also added that accused dragged the deceased for a distance of 7 metres.

Much as counsel for accused submitted that it was an accident, I find and hold that the act of reducing speed as if to stop and then all of a sudden putting a heavy gear to knock the deceased was not an accident. And to confirm that it was not an accident but intentional on the part of the accused, he dragged the deceased for a distance before stopping. I therefore agree with the submissions of counsel for the state that

the act of dragging the deceased for a distance of 10 metres or so was a clear manifestation of malice aforethought.

This is also in view of the evidence of PW5, AIP Joseph Akatwera, the Inspector of Vehicles whose findings were that the motor vehicle in question had no mechanical defects. This case is on all fours with **Uganda Vs- Uwera, Kampala High Court Criminal Session No. 312 of 2013**. The Act of knocking Nsenga and dragging for some distance of 10 metres was held to be malice aforethought.

The prosecution case was strengthened by PW6, Supt. Of police, Waibi Philbert who was seated at the front seat with accused in the vehicle in question. PW6 testified that when accused ran over the two police officers and the two motorcycles, accused did not tell him anything as to what happened and that none of the people in the vehicle were injured. And to crown the prosecution's case of pinning accused further was the evidence of PW7, Corporal Driver Odvara Stephen which corroborated with that of PW5 and was not challenged by the Defence. According to PW7, there were no defects on the motor vehicle driven by the accused, including the breaking system as alleged by accused.

In the premises, I find and hold that the prosecution has through witnesses PW2, PW3, PW4, PW5, PW6 and PW7 has laid the Defence of accident negative. I am satisfied that the actions of the accused were clear intentions to kill the deceased Sgt. Adong, hence malice aforethought. The prosecution has therefore proved the 3rd ingredient of the offence beyond reasonable doubt.

On the 4th ingredient of identification of accused, the evidence on record is overwhelming that he was the one driving and in control of the killer vehicle. Even accused he did not deny.

As far as Count II of attempted murder is concerned, I agree with the submissions of Counsel for the state that the acts of the accused occurred at the same time on both the deceased, Judith Adong and PW2, Omach Patrick. The intent to cause the death of Omach Patrick has been proved by the same evidence of PW2, PW3 and PW6.

PW6, Waibi Philbert proved participation of accused in the knocking of Omach Patrick, rendering him unconscious. Although Counsel for the accused submitted that the program to drive crime preventers to Kampala was abrupt and accused could not have planned to knock the deceased, the findings of this Court are to the contrary. This is particularly after considering the evidence of PW7, Corporal Driver Odvara Stephen who drove the vehicle after the accident. PW7 testified that he found the killer vehicle parked and on gear one and he drove it to Katuugo police station. And during re-examination by court, PW7 testified that one cannot park in gear one if he is not in control.

That evidence together with that of PW9, A/S/P Sekalema Hussein confirm that the accused had intention to knock both the deceased and Corporal Omach Patrick.

PW9 had this to say during cross-examination by Counsel for accused:-

“We carried out investigations. My findings were there was malice aforethought or it was intentional. The sign post of the road junction is made of metal. It is strong enough to stop the vehicle . . . I don’t agree that it was a risk to knock the metal. If he had observed the speed limit without increasing it, he would not have knocked those people . . .”

Furthermore, the coming out of the spare tyre was after accused had knocked the two persons and not before. So this court cannot believe the defence of accused that when the spare tyre came off, he lost control.

In my view, the prosecution has proved all the ingredients of attempted Murder in Count II.

In the premises, and in view of the overwhelming opinion of both lady and gentleman Assessors, I find and hold that the prosecution has proved all the ingredients of both offences beyond reasonable doubt. And as advised by the Assessors, I proceed to convict accused in Count I of Murder and Count II of Attempted Murder as indicated.

Judge

Court: Having heard the opinion of the assessors, I shall proceed to read the Judgment of the court.

Judge

Court: Judgment read out in open court.

Judge

Mr. Semu Joel for the State:

The offences with which the accused has been convicted are grave.

In Count I, the maximum is death and in Count II, life imprisonment. The circumstances were aggravating in nature. The victims of the offence were police officers on duty. The convict now is also a police officer is conversant with the law. The deceased Adong, left young children and the mother of the deceased is in court.

The second victim lost mobility and moves on crutches. I pray for a deterrent sentence against convict.

Judge

Convict Sgt. Nkojo Solomon in Mitigation:

I pray for leniency as the offence was not intentional. I have brothers, a mother who is very old and children. They will suffer if I am given a deterrent sentence. I was a civil servant on government duty. So I pray for forgiveness to serve my country Uganda.

I am 55 years old. I am suffering from HIV/AIDs and on treatment. So I pray for leniency.

Judge.

Sentence and Reasons:

As I stated at the beginning of this Judgment, this was a strange state of affairs in that a fellow police officer killed a colleague on duty and seriously injured the other. They were all on duty and that was impunity of the highest order even if the convict had been wronged by deceased.

Life is God given gift which cannot be played with or taken away wantonly and moreover by a police officer whose duty is to protect members of the general public and their property. The way the crimes in question were committed was very barbaric, crude, cruel and uncivilized. Such circumstances would call for life imprisonment.

However, court will consider the mitigating factors raised by convict, particularly of being above 50 years (Advanced age) and suffering from HIV/AIDs.

In such circumstances, I shall not sentence you to death or life imprisonment. However, much as convict talks of Dependants and other family responsibilities, the same applies to the W/Sgt. Adong Judith. She is left to have left young children behind and an elderly mother. Corporal Omach has been reduced to crutches.

All in all and in the circumstances, I do hereby sentence convict to serve 18 years imprisonment in Count I, and 12 years imprisonment in Count II.

Both sentences to run concurrently. The mother of Deceased Sgt. AdongJudith is advised to file a civil suit against Attorney General for damages and loss of future earnings in respect of the late W/Sgt. Adong Judith.

Judge

16th/01/2018