

THE REPUBLIC OF UGANDA
IN TH HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0004 OF 2015

UGANDA-----PROSECUTOR

VERSUS

A1- KAKURU JACKSON

A3-MUBERO OPIO-----ACCUSED

RULING

BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE.

Three accused persons, Kakuru Jackson, Uyeregiu Julius and Mubero Opio were indicted with the offence of murder C/S 188 & 189 of the Penal Code Act.

The particulars were that the three accused, on the 5/7/2014 at Kisenyi “B” cell, Kanara Town Council in Ntoroko District murdered Kabiira Farida. One accused Uyeregiu pleaded guilty and was convicted under Plea Bargain arrangement. He was sentenced to 16 years imprisonment.

As for A1 and A3 now in court, they pleaded not guilty.

The prosecution relied on the post mortem report in respect of the deceased, Kabiira Farida which was admitted in evidence U/S 66 of the T.I.A. The prosecution also adduced evidence of two witnesses, PW1 Umegio Julius and PW2, Muhindi Saidi, the LC.I Chairman Kisenyi “B” cell.

At the end of the prosecution case, Mr. Accellam Collins submitted on no case to answer. He stated that where all the essential elements of the offence have not been established, then there is no case to answer. He further submitted that the post mortem report and the evidence of the two prosecution witnesses confirmed the three ingredients of death, death being unlawfully caused, and that death was caused as a result of malice aforethought.

I respectively agree that the first three ingredients of the offence were proved by the prosecution. The contention was on participation of the two accused, A1, Kakuru Jackson and A3, Mubero Opio.

Counsel for the two accused submitted that the two accused are not linked to the commission of the offence at all.

He made reference to the evidence of PW1, Umegio Julius who discovered the dead body in the pit latrine and how a door to door search was mounted in the area. Counsel added that whereas blood stains were found at the door of Kakuru A1, Kakuru had spent the night fishing and was

seen coming from the lake the following morning. Further submissions were that PW2, the area Chairperson participated in the search and confirmed that the two accused persons now went to the lake for fishing and returned the following morning. Counsel also submitted that A1 left the key to his house with Uyeregiu Julius, A2 who pleaded guilty and is serving sentence. He concluded that since the two accused did not participate, no prima facie case had been made out against them.

Mr. Kwesiga Michael for the state conceded that A2, Uyeregiu pleaded guilty and is serving sentence. However, this contention was that since the head of the deceased was recovered in the house of A1, Kakuru who was staying with A2, then common intention was established and each person is deemed to be an agent of the other. He referred to the case of **Charles Onusula Vs. Uganda (1979] H.C.B.86.**

He concluded that the acts of Uyeregiu, who pleaded guilty, implicate accused persons, A1 and A3, who should be put on their defence.

I have considered the submissions on both sides and I wish to refer to section 20 of the Penal Code Act which provides:-

“20. When two or more persons form common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence”.

I have considered the evidence of the two prosecution witnesses on record and I find no common intention as defined under section 20 of the Penal Code Act. PW1, Umegio Julius testified as follows:-

“The accused, Kakuru had spent his night at the lake. I knew because A1 left with his fishing nets and other equipments. I saw A1 going to the lake for fishing. I did not see A1 return that night. A1 went together with A3, Opio.....”

PW1 also went on to testify that he saw Uyeregiu A2 after A1 and A3 had left and that it was at 8:00 p.m. PW2, Muhindi Saidi, the LCI Chairman of the area also confirmed that during the search, they found blood stains at the door way of A1 and A3. PW2 added:-

“We found Kakuru and Opio coming from the lake. It was Kakuru and Opio, accused now who were coming out of the water to the landing site. The third, Uyeregiu had slept in the room of Kakuru and had taken back his key. I saw Uyeregiu give the key to Kakuru to open the house.....”

During cross examination PW2 went on to state that he has been a fisherman for 20 years and that when one goes for fishing at night, they return the following morning. PW2 added that he

saw the two accused with fish and knew they were coming from fishing, and that it was normal to come back in the morning.

PW2 concluded:-

“it is not the two accused now who killed the deceased because they went fishing and left another person.

.....the two accused found Uyeregiu at the landing site”.

And during a clarification quotation from one of the Assessors, PW2 stated that the two accused left the key with Uyeregiu.

The evidence of PW1 and PW2, particularly PW2 places Uyeregiu squarely at the scene of crime and exonerates the two accused now in court as submitted by counsel for the accused. And where prosecution evidence exonerates the accused persons, then no reasonable tribunal, properly directing its mind on the law and evidence can proceed to convict as was held in the case of Bhat V.R. To crown it all, in his plea of guilty to the court, Uyeregiu Julius, A2 stated:-

“Accused: I am here pleading guilty to murder. I murdered Farida of Ntoroko. I used a panga to cut her on the head. I left her dead. I took the body to the toilet”.

Asked by court on what he had to say on 18 years imprisonment, Uyeregiu Julius, A2 went on to state:-

“Accused: True I accept 18 Years because I am the one who murdered. The others were just joined to me”.

In the circumstances, I find and hold, that the prosecution that the prosecution evidence did not establish the participation of A1 and A3 now in the dock as they were out on the lake fishing when A2, Uyeregiu murdered the deceased.

I therefore uphold a submission of no case to answer.

I accordingly enter a plea of not guilty against both accused and acquit them U/S 73 (1) of the T.I.A. On no case to answer.

.....
WILSON MASALU MUSENE
JUDGE.

31/5/2018

2 accused present

Kwesiga Michael for state

Acellam Collins for accused

Consolate Yoni Rulet, Alur Interpreter present

Assessors present

Signed: (Wilson Masalu Musene)

Judge.

Court: Ruling read in open court.

**Signed: (Wilson Masalu Musene)
Judge.**