

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0174 OF 2015

UGANDA

PROSECUTOR

5 **VERSUS**

KYATEGESE JOSEPH

ACCUSED

Before Hon. Justice Stephen Mubiru

JUDGMENT

The accused in this case is indicted with one count of Murder *c/s* 188 and 189 of the *Penal Code*
10 *Act*. It is alleged that the accused on the 3rd day of January, 2015 at Namirembe-Senene village,
in Nakaseke District murdered one Nakigozi Faridah by slapping.

The events leading to the prosecution of the accused as narrated by the only prosecution witness
who gave oral testimony is that on 3rd January, 2015 he received information that the accused had
15 assaulted the deceased and that as a result the deceased had been admitted to Nakaseke Hospital
where she eventually died two days later on 5th January, 2015. The deceased was epileptic and
this witness on receiving the information thought the deceased had been afflicted by an epileptic
attack. In his defence, the accused stated that on the fateful day, the deceased went about her
normal chores in the garden from where she returned at around 11.00 am and went to bed, which
20 he thought would be a nap. When he later returned from his own chores at around 5.00 pm, he
found the deceased still in bed and undergoing convulsions. He noticed an injury the deceased
had sustained on the head and called in some medical assistance. As the doctor was
administering treatment, some people intervened and claimed the accused was responsible for
the medical condition of the deceased. They caused his arrest while the deceased was taken to
25 hospital where she died a few days later. He denied having assaulted the deceased.

Since the accused pleaded not guilty, like in all criminal cases the prosecution has the burden of proving the case against him beyond reasonable doubt. The burden does not shift to the accused person and the accused can only be convicted on the strength of the prosecution case and not because of weaknesses in his defence (see *Ssekitoleko v. Uganda* [1967] EA 531). The accused
5 does not have any obligation to prove his innocence. By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove each of the ingredients beyond reasonable doubt before it can secure his conviction. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the
10 accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see *Miller v. Minister of Pensions* [1947] 2 ALL ER 372).

For the accused to be convicted of Aggravated Defilement, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

- 15 1. Death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

20 Death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. In the instant case the prosecution adduced a post mortem report dated 5th January, 2015 prepared by P.W.1 Dr. Mubeezi A.D, a Medical Officer of Kakaseke Hospital, which was admitted during the preliminary hearing and marked as exhibit P. Ex. 1. The body was identified to him by a one
25 Kigozi Amili as that of Nakigozi Faridah. P.W.2 Mwebaza Nathan, a relative of the deceased and the accused, did not see the body but was only informed about her death and later attended the funeral. The accused in his defence admitted having seen the body at Nakaseke hospital after his arrest. Having considered the evidence as a whole, and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that Thomas Nakigozi Faridah died on
30 5th January, 2015.

The prosecution had to prove further that Nakigozi Faridah's death was unlawfully caused. It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law (see *R v. Gusambizi s/o Wesonga (1948) 15 EACA 65*). P.W.1 who conducted the autopsy established the cause of death as “head injury with asphyxia Perinatal (a condition in which a baby’s brain does not receive enough oxygen before, during, or after birth) following convulsions.” Exhibit P. Ex. 1 dated 5th January, 2015 contains the details of his other findings which include a “froth from mouth and nostrils. Blunt head injury.” The accused in his defence stated that he found the deceased in bed convulsing and with a head injury. He does not know how the deceased sustained it.

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In the circumstances, the court can only infer that this death was a homicide after ruling out natural or accidental death. I find the medical evidence to be inconclusive on this point. attribution of causal responsibility is a preliminary step towards the eventual attribution of criminal culpability to the accused. The court may use either the natural consequences test, the substantial cause test, or both. An accused will be held responsible for the final outcome that constitutes the offence if it is the natural result of what the accused said or did, in the sense that it was something that could reasonably have been foreseen as the consequence of what he or she said or did. An accused will also be held responsible for the final outcome is a substantial and operating result of what the accused said or did, but not otherwise. The prosecution has not led any evidence establishing any unlawful act or omission on the part of the accused linked to the resultant death in a clear and proximate chain of causation. On a careful consideration of the facts and circumstances of the case I am unable to determine that this death was a homicide. In agreement with the joint opinion of the assessors I find that it has not been proved beyond reasonable doubt that Nakigozi Faridah was unlawfully caused.

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Since the prosecution has failed to prove one of the essential ingredient of the offence, it is not necessary to evaluate the evidence relating to the rest of the ingredients. I accordingly acquit the accused of the offence of Murder c/s 188 and 189 of the *Penal Code Act*. He should be set free forthwith unless he is being held for other lawful reason.

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Dated at Luwero this 6th day of February, 2018.

Stephen Mubiru

Judge.

6th February, 2018