

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT ARUA
CRIMINAL SESSION NO. 0073 OF 2019
(Arising from Criminal Case No. 0001/2018; CRB 018/2018 Kei)

UGANDA :::::::::::::::::::::::::::::::::: PROSECUTION

VERSUS

BAKOLE MAJID :::::::::::::::::::::::::::::::::: ACCUSED

JUDGMENT

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] The accused person **Bakole Majid** was indicted for ***Murder*** of **Eminuku Sadadi** on the 12th day of April, 2018 at Buzze village in Yumbe District. The accused pleaded not guilty to the offence.
- [2] The Prosecution case is that the accused was the husband of the complainant **Atoma Selifa** (PW1), the mother of the deceased **Eminuku Sadadi**.
- [3] On the 12th day of April, 2018 at around 07:00pm, the accused beat up the complainant, his wife on suspicion that she had sexual intercourse with her brother in law a one **Siliba**. The accused hit her with a pestle whereupon she collapsed down inside the house.
- [4] The accused went out of the house and locked the house from outside after which he set it ablaze. The complainant (PW1) was rescued by her co-wife who opened the door from outside and found her having crawled to the door. Together with her other child aged 4 years, were rescued but the 1 month baby could not make it. The roof of the house fell on it before it was rescued and it was burnt to death.
- [5] In his unsworn statement, the accused stated that he assaulted his wife (PW1) because she had denied him sex something he thought was his right. He stated further that after assaulting her, because of annoyance, he decided to leave the house and go to Anube Trading Centre where he stayed up to 09:50pm. That when he returned home, he found his 2

houses i.e. belonging to his 2 wives on fire. That he decided to go to his friend's place and stayed there for a night. On the following day, he reported himself to the Sub county Headquarters where he was arrested and then was eventually charged with the instant offence.

[6] It is trite law that it is the duty of the Prosecution to prove the guilt of the accused person beyond reasonable doubt and that burden of proof does not shift to the accused person. It remains with the Prosecution except in some exceptional cases where the statute provides otherwise; **WOOLMINGTON VS. DPP (1935) AC 462. OKETH OKALE VS. R. (1965) E. A 555.** It is also the law that a conviction should not be based on the weakness of the case as put up by defence but it must be based on the strength of the Prosecution; **UGANDA VS. OLOYA S/O YOVAN OWEKA [1977] HCB 6.** In the instant case, the accused is indicted with the offence of Murder contrary to **Section 188 Penal Code Act** and the Prosecution can only secure a conviction after proving, Inter alia, the following ingredients:-

- i. There was death of the person named in the Indictment.
- ii. Death was caused unlawfully.
- iii. It was caused with malice aforethought.
- iv. The accused was responsible for the said death; **UGANDA VS. NKOJO SOLOMON H. C. CRIM. SESSION NO. 036/2016.**

[7] As regards the 1st ingredient of the offence, the Prosecution led evidence of PW1, the mother of the deceased and **D/Sgt. Opio Rashid**, a police officer who visited the scene and found that the body of the deceased having been retrieved from the burning house by the locals. The body was identified to him by the locals as that of the deceased. He took photos of the deceased's body and the photos were admitted under **Section 66 Trial on indictment Act** as agreed upon facts (P. Exh. II). The mother confirmed the death of her 1 month old baby, the deceased. The above confirmed the death of the deceased **Eminuku Sadadi**.

[8] The next issue is whether the death was unlawful. It has been held that all homicides are unlawful unless excused in the following circumstances; execution of lawful order/sentence, accidental death or when caused during the course of self defence or defence of property; **R. VS. GUSAMBIZI S/O WESONGA [1948] EACA 65.** In the instant case, there

is nothing suggesting that the killing of the deceased fell under any of the above exceptions.

- [9] As regards whether the killing of the deceased was caused with malice aforethought, again the Prosecution led the evidence of PW1 and PW2. They both testified to the effect that the deceased died of burns arising from a house that had been set on fire. The arsonist must have had knowledge that the act of setting the house ablaze when the children and their mother were inside would cause death to the occupants (**Section 191 Penal Code Act**). It is my finding that in the circumstances of this case, malice aforethought has been amply proved by the Prosecution.
- [10] As to whether the accused is responsible for the death of deceased, it is the evidence of PW1 that upon assaulting her, the accused left the house, locked it and set it on fire. She was rescued by her co-wife. The other child escaped but the deceased who was then 1 month could not be rescued.
- [11] In his defence, the accused admitted assaulting his wife (PW1) but that thereafter he left and went to Anube Trading Centre from where he returned at 09:50pm and found the 2 houses belonging to his 2 wives burning. On seeing this, he decided to go to his friend's place for a night and on the following day, he reported himself to the Sub county Headquarters where he was arrested and eventually charged with the instant offence.
- [12] The accused put up a defence of a sort of alibi. It is the law that once an accused puts up as defence of alibi, he does not assume the responsibility of proving it; **UGANDA VS. KAIJA [1991] HCB 34**.
- [13] In this case, the accused was the head of the family. He had 2 wives. He had left his 1st wife (PW1) and the children inside the house. On his return from Anube Trading Centre, he stated that he found the 2 houses of his 2 wives on fire. It is the view of this court that having found his 2 houses on fire, the next step expected of him would have been to search for the survivors or to go and immediately report to the authorities and even seek help. The conduct of the accused in this case was not consistent with or in line with his role as the head of the family. The reason why he went to report himself to the Sub county was to flee himself from the consequences of his act of setting PW1's house ablaze.

- [14] When the conduct of the accused after the houses were set ablaze is considered with the evidence of PW1 who is one of the victims of the arson but survived, their evidence constitute sufficient circumstantial evidence that there are no other co-existing circumstances but pointing at the accused as the one who set fire to the house that eventually led to the death of the deceased; ***UGANDA VS. NANSAMBA H. C. CRIM. SESSION NO. 152/2015 (At Luwero).***
- [15] In the circumstances, I find that the Prosecution has proved its case beyond reasonable doubt. The accused intentionally set his house ablaze well knowing that his family was inside and as a result, his child, the deceased met his death. I find the accused guilty of the offence and I do convict him accordingly.

Byaruhanga Jesse Rugyema
JUDGE

08/10/2020:

Accused present.

2 Assessor present.

Kepo & Onencan for defence.

Nyipir for State

Mary Ayaru: Clerk.

Court:

Judgment delivered in the presence of the above.

State:

This is a very serious offence that carries maximum sentence of death. There is need to protect lives. The accused burnt his own houses. The rest in the house survived by a whisker. A signal must be sent by giving the accused a deterrent sentence.

Mr. Kepo:

The convict is a 1st offender. A look at his face, one is able to read remorsefulness and a youthful man of 24 years. He has 2 other children at home and they need his care and love, the facts of this case

notwithstanding. He has spent 2 years, 5 months on remand. We seek for a lenient sentence for the convict.

Sentence:

The accused is a 1st offender aged 24 years. He set fire to a house in the heat of passion and ended up killing his own son. He left an indelible trauma on the mother of the deceased child. It was just 1 month old. The accused was merciless. This occurred after he had mercilessly assaulted the mother who is lucky to have survived the fire. The intention was to murder the mother and her children. The aggravating factors outweigh the mitigating factors and taking into account of the 2 years and 5 months he has spent on remand, I do sentence the accused to life imprisonment.

Byaruhanga Jesse Rugyema

JUDGE

08/10/2020