

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE
CRIMINAL SESSION CASE NO.0282 OF 2018
(ARISING FROM CRIMINAL CASE NO.047/2018; CRB 1053/2017)
UGANDA :: PROSECUTION
VERSUS
SWALIK WODIDI alias SWALEH ::::::::::::::::::::::::::::::::::::::: RESPONDENT
BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

- [1] The accused **Wodidi** alias **Swaleh Simon** stands indicted with the offence of Aggravated Robbery contrary to **Section 285 and 286(2) P.C.A.** It is alleged that on the 8th day of June 2017 at IUIU prison farm in Mbale District, the accused robbed **Warder Ochingamere John Robert** a gun **A.K.47 No. UG PR 1563617937 CODE 02022 with 30 ROUNDS of live ammunition** and immediately after the time of the said robbery used a deadly weapon to wit-a hammer on the said **Ochingamere Jon Robert**. The accused denied the allegations and pleaded not guilty to the offence.
- [2] The prosecution's case is that on the 7/6/17, the complainant/victim and his colleagues; **Warder No.13158 Isingoma Steve** and **Awiy Denis**, all warders attached to Maluku prison, Mbale were deployed to guard the prison farm of maize plantation at Islamic University in Uganda (IUIU).
- [3] At around midnight, while each of the warder guards was at his respective position of guard, the complainant/victim was confronted by goons who hit him at the back from behind and when he turned to see who had hit him, he was knocked on the head upon which he fell into a trench unconscious. In the process, he lost his gun. He was later helped to the hospital and on recovery, he helped police to identify the accused person who had been arrested in another operation on other allegations in an identification parade. As a result, the accused was arraigned on the present charges.
- [4] In his unsworn statement, the accused denied the prosecution's allegations and only narrated to court the process he went through during his arrest up to when the present allegations were brought against him.

- [5] It is trite that on a charge of Aggravated Robbery contrary to **sections 285 and 286(2) P.C.A**, the prosecution has the burden to prove the elements of the offence beyond reasonable doubt; **SEKITOLEKO Vs UGANDA [1967] E.A 53**. The ingredients of the offence are;
- i) Theft of the property of the victim
 - ii) That the theft was accompanied by use of violence or thereof use of violence
 - iii) Possession of a deadly weapon during the theft.
 - iv) Participation of the accused in the commission of the offence.
- [6] In the instant case, the complainant/victim warder **Ochingamere John Robert** (PW₂) testified that while on duty with his colleagues guarding the prison farm at IUIU, at around midnight, he was confronted by goons who battered him into unconsciousness and in the process, he lost his gun.
- [7] The defence did neither challenge nor contest this piece of evidence. The victim (PW₂)'s evidence is supported and was corroborated by that of his colleague **Warder Isingoma Steven**(PW₁) who stated that he and his colleague **Awiyo Denis** found the victim groaning in pain. Further corroboration is found in the P.F.3 in respect of the victim which was admitted during the preliminary hearing under **section 66 TIA (P.Exh.I)**.The victim upon medical examination by the Mbale referral hospital clinical officer Bitsetse Steven was found to had sustained a blunt trauma on the back which was classified as “dangerous harm”.
- [8] The foregoing is sufficient evidence of theft of the gun accompanied by use of violence which was exerted in order to obtain the stolen gun. I find the 1st and 2nd ingredients of the offence fully proved to the required standard.
- [9] As to whether the assailants possessed a deadly weapon and used it or threatened to be used during the theft, it is the evidence of the complainant/victim (PW₂) that he was hit on the back from behind and then knocked on the head to unconsciousness. He was not able to see or identify what instrument was used to hit him. The indictment referred to a “hammer” being used to inflict the near fatal injuries to the victim but this is not supported by any evidence. In view of the above, it is my finding that the 3rd ingredient of the offence has not been proved by the prosecution.
- [10] As regard whether the accused person participated in the commission of the offence, it is again the evidence of the complainant/victim (PW₂) that the incident occurred at around midnight, it was not dark as a

result of a bright moonlight and he never knew the accused before. The same applies to Isingoma (PW₁) who also never saw the assailants. The victim was knocked to unconsciousness from behind though he had a small stint facing the assailants.

- [11] In spite of the foregoing, it is the evidence of **D/AIP Echuinyu Joseph** (PW₄) that the victim was able to identify the accused during an identification parade mounted by police after a period of about 1 year. I find this not possible and therefore unbelievable. I am not persuaded that a victim can identify an accused during an identification parade mounted after a year from the date of the incident when during the robbery, conditions of identification were extremely difficult as they were in the instant case. It should be remembered that the victim never knew and had never seen the assailants.
- [12] It is my position and view that the identification purportedly mounted by police was fundamentally superficial and therefore questionable. Such cannot be relied upon by court and it is rejected accordingly.
- [13] The prosecution has failed to prove that the accused participated in the commission of the offence alleged. In disagreement with the gentlemen and lady assessors in this case, I find that the accused not guilty of the offence and is therefore acquitted accordingly.

Dated at Mbale this 4th day of March, 2021.

Byaruhanga Jesse Ruggyema

JUDGE.

4/3/21

Accused present

Wamimbi for defence

Malinga for staete.

Masola: clerk

Court: judgment delivered in the presence of the above.

Signed

Byaruhanga Jesse Ruggyema

JUDGE.