

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-SC-513-2019

UGANDA **PROSECUTOR**

Versus

1. MUWANGA SEBIRUMBI
2. NSUBUGA AHMED aka KAMADA ACCUSED

BEFORE: THE MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The accused persons **Muwanga Sebirumbi** and **Nsubuga Ahmed** were indicted with the offence of Aggravated Robbery contrary to sections 285 and 286 (2) of the **Penal Code Act**.

The particulars of offence in this indictment are that the accused persons on the 15th day of June 2018 at Kabawo zone, Mutundwe Parish in Rubaga Division robbed Wanyana Safina of cash worth three hundred thousand shillings (Ugx 300,000/=), a Itel mobile phone worth Ugx 70,000 and a piece of cloth (leesu) all valued at Ugx 395,000 and that immediately before during or after the said robbery were in possession of a dangerous weapon to wit a knife.

At their arraignment, both accused persons pleaded ‘Not Guilty’ thereby bringing all the elements of the offence with which they are indicted into issue. The prosecution called 2 witnesses while the accused persons both testified as the only witnesses for the defence.

The brief facts for the prosecution are that at 9.00 pm on the 15th of June 2018 one Wanyana Safina (the victim) was walking home along the Kitebi to Kabuusu road near the Express Football Club stadium in Wankuluku, Kampala. That two men on one boda boda came along. One got off the motorcycle and asked her how they could get to Victory Church. She stopped to give them directions. That they both suddenly grabbed and carried her off the main road into a bush near a lorry park which was abandoned because that was Idd Day. A1 put her in a strangle hold while A2 slapped her demanding for money. A1 pulled out a knife with a pink handle. He also had a syringe with a needle. The victim had a phone, a leesu and three hundred thousand shillings which they took from her. At about midnight a boda boda man branched off the main road and came towards them to ease himself. The victim called out to the boda driver for help. He directed his boda light at them and started hooting. The noise attracted other boda boda riders passing by who came to the rescue but both assailants escaped with the items taken.

After about a month the victim was walking along the same road when she saw the two accused persons come along and stop another girl. The victim alerted people nearby who arrested both accused persons and took them to Kabowa Community Police Station where they were charged with this offence.

The victim was medically examined and the report tendered as **PE 1**. A sketch plan of the scene of crime was drawn and tendered as **PE 4**. Both accused persons were also medically examined and found to be of a normal mental state. The reports were exhibited as **PE 2** and **PE 3** respectively.

Both accused persons made unsworn statements.

A1, Muwanga Sebirumbi, stated he was a hawker and a married hardworking man. On the day of his arrest he was returning home from his work as a hawker. He stopped a boda boda rider and started to negotiate for the fare. Just then 3 men appeared and arrested him. He thought they were law enforcement officers from Rubaga division. He was taken to the police station. He was surprised when the men who arrested him told the officer at the counter to charge him with robbery.

A2, Nsubuga Ahmed, said that he is a boda boda rider. On the day of his arrest he found a passenger and stopped. As he was negotiating the fare with the man, 2 men came and grabbed his motor cycle and arrested him. They asked for his card. It was close to a boda boda stage so he thought they were arresting him because he was picking a passenger near their stage. That they took him to a police station where the men told the officer to charge him with the offence of robbery.

It is trite law that in criminal cases such as this the burden of proof rests with the prosecution which must prove all elements of the offence to a standard beyond reasonable doubt (see **Okethi Okale Vs Republic [1965] 1 E.A. 555 at 559**).

The offence of aggravated robbery is provided for in Section 285 and 286 (2) of **The Penal Code Act**. The sections state:

Section 285

Any person who steals anything and at or immediately before or immediately after the time of stealing it uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained commits the felony termed robbery.

Section 286 (2)

Notwithstanding subsection (1) (b), where at the time of, or immediately before, or immediately after the time of the robbery, an offender uses or threatens to use a deadly weapon or causes death or grievous harm to any person, such offender and any other person jointly concerned in committing such robbery shall, on conviction by the High Court, be sentenced to death.

The essential elements of the offence of Aggravated robbery are:

1. theft of property;
2. use of; or threat to use violence;

3. use of a deadly weapon
4. the participation of the accused.

The first element is theft which is complete when something is taken from another, without a claim of right, with the intention of permanently depriving the owner of the thing taken (see S.254 of **the Penal Code Act**).

The victim in this matter stated that she lost cash worth UgX 300,000, an ITEL phone worth UgX 70,000 and a leesu. The items were valued at Ugx 395,000. The victim had just picked the money from one Ndagire and was to give it to a mama Alvin. The money was for a group where they were members. She states the items were taken and have never been recovered. In this case therefore she was permanently deprived of the items.

There was no evidence to dispute the allegations of the complainant regarding her property. I am satisfied that theft was proved.

The next elements are use of violence; and the use of a deadly weapon.

It was the testimony of PW 1 that as she walked home on the 15th of June 2018 she was dragged into the bush. That the first perpetrator strangled her. That the second one started slapping her. That all the while they were demanding for money. That the first one pulled out a knife which had a pink handle. He also had a syringe. That they tortured her from 9.00 pm to midnight.

The victim sought medical attention. Later when she was examined on PF 3 on the 11th of August 2018, the medical officer noted that there were no injuries. He added that because of the lapse of time she may have healed from any injury inflicted. However the attached treatment notes show that the victim was in pain immediately after the attack when she went to see a doctor on the 18th of June 2018. She also said she had difficulty speaking for a long time.

Additionally the victim stated that the assailants were armed with a knife with a pink handle. In subsection (2) of Section 286 of **the Penal Code Act**, a deadly weapon includes any instrument made or adapted for shooting, stabbing or cutting

and any instrument which, when used for offensive purposes, is likely to cause death.

On the other hand, according to the 8th Edition of **Black's Law Dictionary**, violence is the use of physical force unlawfully exercised with intent to harm.

The victim properly described this weapon. She stated it was a kitchen knife with a pink handle but this knife was not recovered or produced in evidence.

The principle is that where an exhibit used as a weapon cannot be produced in evidence it should be described as carefully and exactly as possible by witnesses who saw it used (see **Komiswa vs Uganda [1979] HCB 86**).

I am satisfied that the victim properly saw this knife because she gave the detail including that it was a kitchen knife with a pink handle. A knife is a weapon which if used offensively can cause death.

Secondly, the way the victim was treated in the course of the robbery establishes the use of physical force which harmed her. That proved use of violence.

There was no evidence or submission disputing this evidence. I therefore find that the use of violence and a deadly weapon have been properly established and the second and third elements of the offence are proved.

The last element is participation.

Both accused persons have denied committing the offences. The total denial is in contrast to the prosecution which relies on PW 1 who states it was the two accused persons who attacked and robbed her.

The prosecution is relying on PW1. She stated that she properly identified her attackers as the accused persons. As correctly pointed out, ordinarily, there is no particular number of witnesses required for the proof of any fact (see Sec 133 of **The Evidence Act**). In this case PW1 is a single identifying witness.

The victim stated that she stood with the assailants giving them directions. It was 9.00 pm at the time. She stated however that they were standing under a street light at the time.

It is the law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification. It is also the law that where identification is made in difficult conditions, such as at night, caution must be exercised and court should warn itself to examine such evidence closely to avoid a case of mistaken identity (see **Roria V R 1967 E.A. 583**). I warn myself now as I warned the assessors of this danger.

To avert the stated danger the court will look at the circumstances under which the identification is made to test the quality of the identification evidence by scrutinising the light conditions; the familiarity of this witness with the accused; the length of time observing the incident; and the distance (see **Abdalla Nabulere and Ors V Ug Cr App 1/1978**).

The victim told the court that she was strangled and slapped. This would mean that she was in close proximity to her assailants the whole time. She also said that they stood with her under a street light seeking directions to Victory church. There is nothing to show there was any impediment to her view. PW 1 added that when she was in the custody of her attackers, a boda boda rider turned off and came towards them to ease himself. She called out for help and this person directed his boda light towards them which illuminated the area and again she clearly identified her attackers. I am also mindful that the incident appears to have lasted a long time. The victim estimated it was from 9.00 pm to 12.00 am. During this time the assailants were said to be making phone calls, beating her and demanding for money. They also wanted her to contact her relatives to send money for her rescue or release.

The possibility of a mistaken identity is therefore greatly diminished in these circumstances. It is true that the evidence of a single identifying witness should ordinarily be corroborated for certainty. In my view however this was a matter where the witness was both truthful and unmistakable. Her evidence did not therefore require corroboration. In any event corroboration is cautionary and not

a requirement of the law and a court may, as I do, proceed to accept evidence as truthful in absence of corroboration.

In the result, and for those reasons, the denial by the accused persons cannot stand. They were both properly identified by the victim who placed them at the scene of crime and fingered them as her assailants.

In agreement with both assessors, and as all elements of the offence have been proved against the accused persons, I hereby find,

1. MUWANGA SEBIRUMBI

2. NSUBUGA AHMED aka KAMADA

guilty of the offence of Aggravated Robbery contrary to Section 285 and 286 (2) of the Penal Code and accordingly convict them.

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MICHAEL ELUBU

JUDGE

5.7.22