

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIM.S. CASE NO. 0089 OF 2015; CRB HMA 178/2015
UGANDA:..... PROSECUTOR
VERSUS
UMAR LONDROMA :..... ACCUSED
JUDGMENT
BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] The accused **Umar Londroma** was indicted with the offence of Murder **C/ss 188 & 189 PCA**. It is alleged that on the 3rd day of February, 2015 at Hohwa village in the Hoima District, the accused unlawfully caused the death of **Roza Nganju**. The accused pleaded not guilty to the offence.
- [2] The prosecution case is that on the 3.2.2015 at around 3:47 am, the accused **Umar Londroma** went to Kaseeta Police Post and reported that his wife, the deceased **Roza Nganju** had died as a result of taking a lot of booze. The police officer at the police station a one **Sgt. Muhumuza Ferdinand** became suspicious and as a result, he decided to retain the accused and placed him in safe custody until day light.
- [3] Later, **Sgt. Muhumuza** went to visit the scene but he left the accused in custody for purposes of his safety (incase his suspicions became a reality). He went to the accused's house but found it completely empty without any item. It is then that he got in touch with the area LC1 chairman whom he connected to the accused through another police officer at the station on phone and the accused was able to direct them where the body of the deceased was. It was found along Hohwa and Cheploro village paths.

- [4] The body of the deceased **Roza Nganju** was taken for medical examination at Hoima Referral Hospital. According to the Post Mortem Report, the deceased had bruises and had died of strangulation.
- [5] As a result of all the above, the accused was charged of the instant offence of Murder of his wife and eventually indicted for this trial. In his unsworn statement, the accused denied the prosecution allegations that he was responsible for the murder of his wife **Roza Nganju**.
- [6] The accused stated that on the fateful day, he returned home from the garden at 3:00pm but found his wife, the deceased not at home. He however later located her at a one **Banga Goba's** place where he found her eating food and boozing waragi. That he questioned **Goba** as to why he gave his wife food and waragi yet she had not prepared for him (the accused) any food. In bitterness, he left the deceased at **Goba's** place and went to police for help because the deceased was too drunk to even move.
- [7] The accused explained that at police, he was detained and on the morning of the following day, he received a phone call through a police officer at the station in which he was told that his wife, the deceased was dead. He wondered how his wife came to meet her death yet he had left her alive and kicking.
- [8] As in all criminal cases, the prosecution has the burden of proving the case against the accused person beyond reasonable doubt. The burden does not shift to the accused person except in certain statutory cases of which the present one is not. The accused is only convicted on the strength of the prosecution case and not on the weaknesses of his defence; **SEKITOLEKO VS UGANDA [1967] EA 531**.

- [9] Before the prosecution can secure a conviction in a case of murder, it must prove each of the following ingredients of the offence beyond reasonable doubt.
1. Death of the person named in the indictment.
 2. The death was caused by an unlawful act or omission.
 3. The unlawful act was actuated by malice aforethought.
 4. The accused person was responsible for the death of the deceased.

Death of the deceased

- [10] During the preliminary hearing under **Section 66 TIA** the prosecution adduced evidence of a post mortem report (**P.Exh.1**) which established the death of the deceased as mechanical asphyxia ie strangulation. The body of the deceased was identified by **Clabbee Dhiey** (PW1), the brother to the deceased.
- [11] The Post Mortem Report (**P.Exh.1**) was not challenged by the defence. It was admitted under **Section 66 TIA** and it is now an established principle of case law that “such evidence admitted under Section 66 TIA is deemed proved”; See **ABASI KANYIKE VS UGANDA S.C.C.A NO.34/1989**. Since the Post Mortem Report (P.Exh.1) confirmed the death of the deceased whose body was also confirmed and identified by her brother PW1, I do find that the prosecution had proved the 1st ingredient of the offence beyond reasonable doubt.

Whether the death of the deceased was unlawful

- [12] All homicides (killing of a human being by another) are presumed to be unlawfully caused unless they are excusable, accidental or in self defence or defence of property or by an act of God; **See R VS GUSAMBIZI S/o WESONGA [1948] EACA 65**.
- [13] In the instant case, as per the Post Mortem Report (**P.Exh.1**), the deceased was battered and mechanically asphyxiated leading her to death. There is nothing to show that the death of the deceased fell in the exceptions of homicide. The Post Mortem Report is clear that the

deceased was actually murdered. The act of taking life is unjustified and therefore unlawful.

In the premises, I find the 2nd ingredient of the offence duly proved beyond reasonable doubt.

Malice aforethought

[14] Malice aforethought is defined under **Section 191 PCA** to mean;

“a) An intention to cause death of a person whether such a person is the one killed or not.

b) Knowledge that the act or omission causing death will probably cause death of some person, whether such person is actually killed or not.”

Malice aforethought is therefore a mental element of the offence of murder and it is inferred from the surrounding circumstances of the offence such as the weapon used, the part of the body targeted, the nature of the injuries inflicted and the conduct of the assailant before, during and after the offence; **R VS TUBERE S/o OCHAM [1954] EACA 63.**

[15] In the instant case, the Post Mortem Report (**P.Exh.1**) is to the effect that the deceased was battered but above all strangled as evidenced by the scratch marks over the neck. A neck is one of vulnerable parts of a human body because once sufficiently squeezed, then the human being ceases to breathe as he or she is suffocated thus leading to death. This is what apparently occurred to the deceased. It follows therefore that whoever assaulted the deceased by battering her and inflicting the multiple bruises all over body, followed by strangulation by the neck as revealed by the Post Mortem Report (**P.Exh.1**), intended to cause her death or knew that the manner and the degree of assault would probably cause death. In the premises, I find the 3rd ingredient of the offence duly proved by the prosecution beyond reasonable doubt.

Whether the accused is responsible for the death of the deceased

- [16] This is the most important ingredient of the offence because it was the most contested one by the defence. There should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence. There is however no legal burden upon an accused to prove his innocence.
- [17] In the instant case, **Sgt. Muhumuza** (PW2) testified how on the fateful day at around 3:47am the accused found him at Kaseeta Police post and reported to him how his wife, the deceased **Roza Nganju** had died as a result of “a lot of booze”. In his defence however, he denies reporting to police that his wife was dead. He insisted that he reported to police about the conduct of a one **Goba** who had given his wife, the deceased food and waragi. Is this type of conduct of **Goba** such that would require the accused to go to police and report? My view to the answer is “no” implying that the accused denied his report as an afterthought.
- [18] Besides, when the accused was connected to the area L.C1 chairman by an officer at police where the accused had been detained, he properly directed the chairman where the body was lying. The body of the deceased was found along a village path of Hohwa and Cheploro village.
- [19] Upon discovery of the body of the deceased, **PW2** found it with bruises all over the face and the head. The Post Mortem Report (**P.Exh.1**) described the bruises as multiple and the death of the deceased was caused by strangulation. The discoveries and findings on the body of the deceased which the defence did not contest are contrary to the accused’s report to police regarding the cause of death of the deceased. The accused had attributed the cause of death to be lots of booze but the medical examination of the body (**P.Exh.1**) and

the findings of **PW2** who recovered the body reveal that she died of battering and strangulation.

- [20] Whereas it may be true that the deceased had been drunk with waragi as the accused stated in his defence, it is not true that she died of the same. It is apparent as the accused himself reported at police, that the accused parted with the deceased when already dead or was dying. He placed himself at the scene of the crime. The inculpatory facts are not consistent with the innocence of the accused and are incapable of any other explanation or hypothesis than that of guilt; **SIRASI KISEMBO VS UGANDA S.C.CRIM. APEAL NO.13/98**. I find this case as being one of the many secret murders but where circumstantial evidence point at no one other than the accused as the culprit. He took himself to police for safety of his life upon murder of his wife because there is no other convincing reason as to why the accused had to go and report himself to police. The reason he gave in his defence that **Goba** had fed his wife with food and waragi as the reason for reporting to police is not convincing as no offence had been committed by **Goba**.
- [21] In the premises, in agreement with the lady and gentleman assessors, I find that the prosecution has proved its case beyond reasonable doubt that the accused murdered his wife, the deceased **Roza Nganju**. I find him guilty and convict him accordingly.

Dated at Masindi this 4th day of **March**, 2022.

Byaruhanga Jesse Rugyema
JUDGE

SENTENCE

- [1] The accused person has been convicted of a very serious offence of murder that carries a maximum sentence of death.
- [2] The convict is a first offender who murdered his wife. There is nothing on record as regards whether the couple had children. The convict is however aged 50 years and has been on remand since 17/2/2015. It is of course shocking that the deceased had to meet her death in the hands of her husband, the accused. This goes into domestic violence cases which becomes an aggravating factor. The convict killed his wife by manual strangulation!
- [3] It is now trite that court may only pass a sentence of death in exceptional circumstances, ie the rarest of rare cases, where the alternative of life imprisonment or other custodial sentence is clearly inadequate. It follows therefore, the death penalty may only be given where reform or rehabilitation is impossible; **Susan Kigula & Ors Vs A.G Constitutional Appeal No.3 of 2006.**
- [4] In this case, the reform and rehabilitation of the convict is possible and it is apparent that the fact that the accused reported himself to police is a sign of regret and remorsefulness and therefore, he is capable of reforming. This is not a case of the rarest of the rare such as to persuade court to take the exceptional course of imposing the death sentence.
- [5] As per the Sentencing Guidelines, the sentencing range for murder is from 30 Years imprisonment to death penalty upon consideration of the mitigating and aggravating factors. In the premises, upon considering the above mitigating and aggravating factors, I consider a **sentence of 30 years** as appropriate sentence for the convict. However, taking into account of the fact that the accused/convict has been on remand for a period of **7 years and 1 month**, he shall serve a sentence of **22 and 11 months**.
Right of Appel explained.

Byaruhanga Jesse Rugyema

JUDGE.

18/3/22