

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CRIMINAL SESSION CASE NO.040 OF 2017

UGANDA :: PROSECUTION

VERSUS

AYESIGA STEVEN :: ACCUSED

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] The accused **Ayesiga Stephen** was indicted with the offence of **Murder C/ss 188 & 189 PCA**. It is alleged that on the 6/3/2011 at Kitonzo village, Masindi District, the accused unlawfully murdered **Arinaitwe Obadia**. The accused pleaded not guilty to the offence.
- [2] The prosecution case is that on the evening of 7/3/2011, during a promotion of moonberg lager beer drink at Hot Corner Trading Centre Kitonozi, a quarrel developed between a one **Kasaija James** and the deceased, a Mukiga man by the names **Arinaitwe Obadia**, over the deceased's fiancé whom the said **Kasaija** was buying beer for.
- [3] The deceased became furious and this resulted into a confrontation. **Kasaija** raised an alarm and called for help. The able bodied "Kanyamas" who included the accused appeared, they combined their efforts and started to assault the deceased with clubs, sticks and other available tools until when he became unconscious. On the following day he was taken to Masindi hospital where he died from.
- [4] The assault and the death of the deceased was reported to police. In the meantime, the accused, **Kasaija** and group fled the village. However, upon returning one by one, the accused was arrested when his ex-wife reported him to police for assaulting her.

- [5] In his sworn statement, the accused denied committing the offence and attributed the allegations against him to a grudge that existed between him and the prosecution star witness, **Kutiina Franco** (PW1). That the said **Kutiina Franco** in around 2010, required him to steal the **WILL** of his (**Kutiina's**) father which was in the custody of the accused's father a one **Byombi Solomon**, and when he refused, a grudge developed to date.
- [6] 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 and the accused can only be convicted on the strength of the prosecution case and not because of the weakness in his defence; **Ssekitoleko Vs Uganda (1967) E.A 531**.
- [7] It is trite that for the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;
1. Death of the person named in the indictment.
 2. The death was caused by some unlawful act.
 3. That the unlawful act was actuated by malice aforethought.
 4. That it was the accused who caused the death or participated in the commission of the offence; See **Section 188 PCA**.

a) Death of the deceased

- [9] At the commencement of the trial of the accused, the Post Mortem Report of the deceased, P.F48 (**P.Exh.1**) dated 9/3/11 was admitted in evidence as an agreed fact under **Section 66 TIA**. The established cause of death of the deceased was found to be closed chest injury with rupture of internal organs.
- [10] In addition to the Post Mortem Report, the former boss of the deceased a one **Isingoma Margaret** (PW2), testified that she is the one who organized the rushing of the deceased to the hospital when she learnt that he had been badly assaulted at Hot Corner Trading Centre, Kitonozi. According to her, by that time, the deceased was not talking. He died while in Masindi hospital and as per the Post Mortem Report (**P.Exh.1**) from Masindi hospital, she is the one who identified the body of the deceased. It was her who arranged for the deceased's burial in Kanungu District, its last resting place.

[11] From the foregoing, I find that the prosecution has proved beyond reasonable doubt that the deceased **Arinaitwe Obadia** died on around 9/3/2011 and was buried in Kanungu District, his home place.

b) The death was caused unlawfully

[12] It is the law that all homicides are presumed unlawfully caused unless it is accidental, authorized by law, in self defence or defence of property or by an act of God; **Gusambizi S/o Wesonga (1948) 15 EACA 65.**

[13] According to the prosecution star eye witness, **Kutiina Franco** (PW1), the deceased was assaulted over his fiancé when he became furious over a one **Kasaija** who was buying for her beer. The Post Mortem Report (**P.Exh.1**) revealed that the cause of death was closed chest injury with ruptured internal organs. The foregoing rule out the exceptions of homicide. As this ingredient of the offence was not contested, I find that the 2nd ingredient of the offence has been proved by the prosecution beyond reasonable doubt.

c) Malice aforethought

[14] **S.191 PCA** defines Malice aforethought as an intention to cause death of a person or knowledge that the act or omission causing death will probably cause death of some person. It can be inferred from the surrounding circumstances of the offence such as the weapon used, the part of the body targeted and the nature of injuries inflicted; **R Vs Tubere S/o Ochan (1954).**

[15] According to **Kutiina Franco** (PW1), the deceased was assaulted by use of sticks, clubs and other available tools until when he became unconscious. The Post Mortem Report (**P.Exh.1**) showed that the deceased sustained ruptured internal organs. The assailants must have inflicted fatal blows on the delicate parts of the body thus rupturing his internal organs. The assailants must have intended to kill the deceased hence Malice aforethought, and indeed, they took his life. This ingredient of the offence was also not contested, I find the 3rd ingredient of the offence duly proved by the prosecution beyond reasonable doubt.

d) Participation of the accused in the commission of the offence

- [16] According to both the prosecution eye witness **Kutiina Franco** (PW1) and the deceased's former boss **Isingoma Margaret** (PW3), it was in the evening hours when the deceased was at Hot Corner Trading Centre, Kitonozi during a moonberg lager promotion when the incident took place.
- [17] The eye witness (**PW1**) through his detailed testimony of the events that eventually led to the death of the deceased, never alluded to the lighting conditions during the time the deceased was being assaulted. It is nevertheless apparent that the identification conditions were good since there was a promotion of moonberg lager drink going on. There is no suggestion that the moonberg lager promotion was being conducted in darkness. In my view, the lighting conditions of such an event were such that would enable one identify the other.
- [18] **PW1** knew very well the deceased for he referred to him as a Mukiga man and indeed, upon his death, he was buried in Kanungu, western region where some of the Bakiga hail from. **PW1** testified that the accused with a one **Kasaija** and others, assaulted the deceased over his fiancé but managed to flee. However, as nobody can be late for his death, the deceased returned from his safety place for his fiancé and this is when he met the fury of the accused, **Kasaija** and others under the command of the L.CI Chairperson **Eliab Kaahwa** who vowed to assault him to death. With the use of clubs, sticks and the other available tools at the time, the accused, the said **Kasaija** and group assaulted the deceased until he became unconscious. They left him to die. On the following day, he was rushed to Masindi hospital where he was later pronounced dead.
- [19] As can be seen from the foregoing, this is a case of a single identifying witness (**PW1**). The law relating to a single identifying witness is that court can convict on such evidence after warning, itself and the assessors of the special need for caution before convicting, of the danger of possibility of mistaken identity in such case. The court must in every such case examine the testimony of the single witness with greatest care and where possible look for corroborating or other supportive evidence. If after warning itself and scrutinizing the

evidence for the identification evidence, it can still convict if it is sure that there is no mistaken identity; **John Katuramu Vs Uganda, Criminal Appeal No.2 of 1998 (S.C).**

- [20] As I have already observed, the prosecution star eye witness (**PW1**) knew both the deceased and the accused very well as he knew them by their names. There appear no evidence of any factor that would not enable proper identification. There was an event of moonberg lager promotion signifying proper lighting conditions. **PW1's** evidence was not challenged at all, even regarding how the accused was arrested at the behest of his wife whom he had assaulted. The accused conceded to this aspect during his defence.
- [21] The accused raised an issue of a grudge that allegedly existed between him and **PW1** who testified against him. It is to the effect that at one time in around 2010, **PW1** asked the accused to steal for him (**PW1's**) father's **WILL** which was under the custody of his (accused's) father and that the accused refused hence the grudge. It is surprising however, that before this issue of the **WILL** came in, **PW1** was found stealing matooke, arrested by the locals and was tied with ropes. But that however, because **PW1's** clan mate was the L.CI Chairperson, he caused for his release. Then, **PW1** reported the accused, the L.C defence secretary and the chairman to police for torture and he, the accused had to be always on the run for fear of arrest. Then one wonders, how thereafter, **PW1** would confide in the accused to steal the **WILL** of **PW1's** father that was in custody of the accused's father.
- [22] In my view, the above scenario does not add up for a grudge the accused is alleging. A grudge has only cropped up as a result of a possibility of **PW1** testifying against the accused hence the threats towards him by the relatives of the accused whom he pointed at in court's attendance as **Sarah Byombi** and a one **Emmanuel**. Indeed, he has only remained under the protection of God as he professed.
- [23] As I have inquired into the grudge as raised by the accused, I don't find credence in the accused's claims but rather, I find it in **PW1's** claims. **PW1** mentioned **Kasaija James** to had teamed up with the accused to assault the deceased to unconsciousness and indeed, in his defence the accused admitted knowing the said **Kasaija James** as his village mate who he had known since childhood. According to **PW1**, the incident

started with a confrontation over the deceased's fiancé between the deceased and the accused at Hot Corner and the deceased was indeed assaulted at Hot Corner Trading Centre, Kitonozi and indeed as per **PW3**, the report she got was that the deceased was assaulted at the same place. **PW1** mentioned use of weapons such clubs and sticks during the assault of the deceased and indeed, the Post Mortem Report revealed "closed chest Injury" and "rupture of internal organs" which are consistent with an assault by use of such weapons. The doctor did not, as he should have done, indicate in the Post Mortem Report which weapon could have caused the injuries, but I am of the opinion that his failure to do so, did not seriously affect the prosecution case. The eye witness saw the accused participate in the assault that eventually led to the death of the deceased.

- [24] In my view, the foregoing support and corroborate the evidence of **PW1**. The lady and gentleman assessors advised to find the accused not guilty for it is apparent that they were not moved by the evidence of **PW1** but I depart from their opinion. The accused was clearly seen by **PW1** participating in the commission of the offence of murder of the deceased and as a result, I find that the prosecution has proved his participation beyond reasonable doubt. I find him guilty of the offence charged and I do convict him accordingly.

Signed, dated and delivered at Masindi this **07th** day of **October, 2022**.

Byaruhanga Jesse Ruggyema
JUDGE.

7/10/22

Accused present

Ms. Akello Folrence for state

Ms. Twesiime for defence

Mr. Thembo: Clerk

2 Assessors present

Court: Judgment delivered in the presence of the above.

State: The accused is a 1st offender but he has been convicted of a very serious offence of murder which carries a maximum sentence of death. This offence is rampant in this area. The accused person and others took life casually and assaulted the victim to death. The deceased was a porter who was working for his family back in Kanungu. The convict deserve a deterrent sentence of 35 years.

Ms. Twesiime: The convict is a 1st offender, a father of 2 children who has been on remand for a period of 6 years and 6 months. Besides, the convict is aged 39 years, in a productive stage whereby he has a lot to do for this country. We pray for a lesser sentence of 20 years.

SENTENCE

- [1] The accused is a first offender aged 39 years and therefore a productive age of which I believe, he has room to reform and contribute positively to his family and society. The offence carries a maximum sentence of death, for the above reasons, I don't consider the death sentence appropriate.
- [2] The deceased appear to equally had been of the productive age. He was a porter in the area. He had his fiancé and he died in the hands of the accused and others who were in for his fiancé. The convict therefore deserve a deterrent sentence for others to learn from.
- [3] In the premises, I do consider a **sentence of 25 years term of imprisonment**. Taking into account **6 years and 6 months** the accused has spent on remand, he is to **serve 18 years and 6 months term of imprisonment**.

Right of Appeal explained

Byaruhanga Jesse Rugyema
JUDGE.