

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CRIMINAL SESSION CASE NO.0066 OF 2017

UGANDA :: PROSECUTION

VERSUS

A1. BARONGO JOHN

A2. WANJALA PAUL :: ACCUSED

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] The 2 accused persons; **Barongo John** (A1) and **Wanjala Paul** (A2) were indicted of the offence of **Murder C/ss 188 & 189 PCA**. It is alleged that on the 24/8/2016 at Kikunya village in the Kiryandongo District, the 2 accused persons murdered **Atugonza Fiona**. The 2 accused persons pleaded not guilty to the offence.
- [2] The prosecution case is that the deceased **Atugonza Fiona** was living with her husband a one **Bagira Geoffrey** (PW1) at Kikunya village, Kiryandongo District. On the evening of 24/8/2016 at around 6:00pm, **Bagira Geoffrey** (PW1) left home at Kikunya village to Nyakabale Trading Centre to buy juice and pepsi sweets for the deceased wife who had flue. He was however held by rain. Later, the said **Bagira Geoffrey** decided to brave the rain and returned home. It was late at night. He found no security lights on. He nevertheless entered his dark house. By use of a phone flash light, he was able to notice the battery of the solar missing. The bedroom was empty save for his 3 year old child. His deceased wife was missing. He went outside to check on the solar. This is when he found his wife with a rope tied around her neck looped to the roof of the verandah timber with her knees on the ground, dead.
- [3] **Bagira** (PW1) rushed to his brother **Mugisa Godwin's** (PW2) place and told him what he had seen. It is then that **PW2** told him that **Bagira's**

deceased wife had rang him and told him that she had seen **Barongo** (A1) removing the solar panel from the roof and bulbs. The matter was reported to a crime preventer, a one **Julius Kasangaki**, who also alerted police. Police came to scene with a police dog. The body of the deceased was removed from the rope and it was taken to Kiryandongo hospital. A post mortem was conducted confirming the death of the deceased (**P.Exh.1**).

- [4] In the meantime, **Barongo** (A1) was arrested by the community in respect of the death of the deceased. In the presence of **Barongo's** (A1) mother, a one **Grace Barijukire**, L.CI chairperson of the area and other members of the family, **A1's** house was searched by police. A red T-shirt, a trouser with a lot of black jack seeds attached to it, and a plain shirt, all with stains of blood were recovered.
- [5] In the process, **A1's** mother grabbed these clothes and dropped them in a basin of water with the intention of tampering with evidence. She was able to successfully tamper with the evidence because when the recovered clothings were subjected to forensic examination at the Government laboratory for analysis, the results were recorded as "unsatisfactory." However, the scene of crime officer (S.O.C.O). **D/Sgt Ambayo Drareke John** (PW4) had recovered a razor blade cover stained with blood from the deceased's house. It was forwarded to the Government laboratories for analysis. **A1** on the other hand, upon arrest, he was subjected to medical examination and he was found to have had a small fresh cut on the middle finger (**P.Exh.2**). A blood sample, as a result was picked from **A1** and was also forwarded to the Government laboratories for analysis. The results returned linking the blood on the razor blade cover to **A1**. The D.N.A analysis Report (**P.Exh.4**) revealed that **A1** was the donor of the male D.N.A profile recovered exhibit (blood stained razor blade cover) which was recovered from the crime scene, the deceased's house.
- [6] In the meantime, **A1** made a charge and caution statement (**P.Exh.5**) admitting being seen by the deceased at the scene but also implicated **A2** and another as participating in the theft of the solar, a mission that ended in the killing of the deceased.
- [7] Both the accused persons gave unsworn defence statements. **A1** put up a flat denial, and only revealed how police arrested him and eventually

took him to court on allegations of murder of the deceased. **A2** also denied the prosecution allegations and claimed to have visited the scene on receipt of the news of the death of the deceased. That he found many people and that he was present when police came at the scene, introduced a police dog which led to the recovery of a solar panel in the nearby bush.

[8] It is an established principle of law that the burden of proof is upon the prosecution to prove the guilt of the accused person(s) beyond all reasonable doubt. The burden never shifts to the defence except in some exceptional cases provided for by law. The prosecution bears the burden to prove all the ingredients of the offence to the required standard. The participation of each of the accused in the commission of the offence has to be proved beyond reasonable doubt; **Woolmington Vs DPP (1935) A.C 462** and **Lubogo Vs Uganda [1967] E.A 440**.

[9] As regards the charge of murder at hand, it is trite law that for the offence of murder to stand, the following ingredients of the offence have to be proved to the required standard;

1. **Death of the person named in the indictment**
2. **The death was unlawfully caused.**
3. **The death was caused with malice aforethought.**
4. **The accused persons participated in or caused the death of the deceased.**

a) The fact of death

[10] The fact of death of the deceased **Atugonza Fiona** was proved by the prosecution by presentation of the Post Mortem Report (**P.Exh.1**) which was admitted as an agreed upon fact under **S.66 TIA**. It is dated 26/8/2016 and established the cause of death as; "*blockage of haemorrhage due to strangulation causing cardiovascular failure.*" The husband of the deceased **Bagira Geoffrey** (PW1) also testified that he found his wife dead with a rope around her neck looped to the roof of the verandah timber with her knees on the ground. The other witnesses; **Mugisa Godwin** (PW2) brother in law of the deceased, police officers; **Acan Christopher** (PW3) and **D/Sgt Ambayo Drarake John** (PW4) who visited the scene, all testified finding the body of the deceased, a young lady in her twenties hanging on a rope dead, with knees touching the ground.

[11] The defence did not contest this element of the offence. As a result, I find that the prosecution has proved beyond reasonable doubt the death of the deceased **Atugonza Fiona** on the evening of the 24/8/2016.

b) Whether the death was unlawful

[12] The law presumes every homicide i.e, the killing of a human being by another, to be unlawful unless it is accidental or excusable or authorized by the law; **Gusambizi S/o Wesonga Vs R (1948) 15 E.A C.A 65**. In the instant case, there is no evidence that the death of the deceased fell in the exceptions of homicide. The death of **Atugonza Fiona** being a result of an unlawful act was not contested at all by the defence. The believed prosecution case is that the deceased was murdered by way of strangulation as per the Post Mortem Report (**P.Exh.1**) results and the rope was put around her, looped to the timber on the roof of the verandah to disguise suicide. There was no justification at all for strangulation of the deceased to death.

[13] I find the 2nd ingredient of the offence proved beyond reasonable doubt.

c) Whether the death was caused with malice aforethought

[14] Malice aforethought is the
“intentional killing of a human being or knowledge that the act or omission will result into death of a human being”,

See **S.191 PCA and Bukenya & Ors Vs Uganda [1972] 1 E.A 549 (CAK)**

Case law is to the effect that to prove whether or not the prosecution has proved malice aforethought, court takes into account the circumstances surrounding each particular case;

“The circumstances include the nature and number of injuries inflicted, the part of the body injured, the type of weapon used and the conduct of the assailants before, during and immediately after the injuries were inflicted”;

See **Mbugua Vs R [2000] 1 E.A 150** and **R Vs Tubere (1945) 12 E.A C.A 63**.

[15] In the instant case, as per the Post Mortem Report (**P.Exh.1**), the body of the deceased had multiple bruises on the neck and the cause of death was “*blockage of haemorrhage due to strangulation causing cardiovascular failure.*” The neck part of the body of a human being is one of the vulnerable and delicate parts for blockage by strangulation leads to suffocation thus death. It follows therefore that whoever strangled the deceased intended her to die and indeed, the strangulation resulted into the death of the deceased. It does not matter whether the strangulation was by way of hands or the rope for there is no burden on the prosecution to prove the nature of the weapon used in inflicting the harm which caused death; **Uganda Vs Komakech Tony, H.C.Crim. Case No.131/2014.**

[16] I find this ingredient of the offence proved beyond reasonable doubt. The act of strangling of the deceased established malice aforethought for it was intended to kill her.

d)Whether the accused persons directly or indirectly participated in the murder of the deceased.

[17] In the present case, as regards **A1**, the prosecution relied on the evidence of majorly **Mugisa Godwin** (PW2). He testified that on the 24/8/2016 at around 8:00pm, he received a phone call from **Atugonza Fiona**, the wife of his brother **Bagira Geoffrey** (PW1) who was saying that she sighted **A1** steal her solar panel. It was raining and therefore he, **PW2** failed to respond to her call. Later, at around 10:00pm, his brother **PW1** came and told him that he found his wife dead. With **PW2**'s information regarding the phone call he call he got from the deceased before the news of her death, was sufficient cause for the suspicion of **A1** as being behind the death of the deceased. Information regarding the death of the deceased and **A1** as a suspect spread all over and as a result, **A1** was arrested by the community, though in his defence, he claims to had been arrested by police. It does not however matter whether he was arrested by the community or by police. What is paramount is that upon his arrest and interrogation, **A1** made a charge and caution statement. It was admitted as an agreed fact under **S.66 TIA** as **P.Exh.5**. Though in the charge and caution statement **A1** denied directly participating in the murder of the deceased and instead attributed it to **A2**, therein he admitted that he was identified by the

deceased at the scene during the initial stages of stealing the deceased's solar system from her house.

- [18] On this aspect, the charge and caution statement supported and corroborated the statement of **PW2** who revealed that the deceased had rang and told him that she had sighted **A1** at the scene stealing her solar system. This evidence is strong enough to place **A1** at the scene of the crime.
- [19] The 2nd piece of evidence that links **A1** to the murder of the deceased is the razor blade cover that was recovered from the house of the deceased. It had blood stains. **A1** was also upon medical examination found to have had a fresh small cut on the middle left finger (**P.Exh.2**). This aroused suspicion that the blood stains on the razor blade cover could be linked to him. Indeed, when both the blood stained razor blade cover and a sample of blood from him were subjected to analysis by the Government laboratories, the results were that **A1** was the donor of the male D.N.A profile generated from the Razor blade cover. This is sufficient evidence that placed **A1** inside the deceased's house where the razor blade cover was recovered. It destroyed his defence claims in the charge and caution statement that for him he remained outside and it is **A2** who actually entered the house and murdered the deceased.
- [20] Again, the fact that from **A1's** place, clothings having blood stains were recovered, though the blood stain evidence was destroyed by his mother who intentionally dipped the clothes in a basin of water, the fact of recovery of the blood stained clothes was not challenged at all by the defence. The act of **A1's** mother destroying evidence further corroborated **PW2's** evidence and **A1's** own charge and caution statement that he was at the scene of the crime at the time the deceased was murdered and actually participated in the murder. **A1's** flat denial has in the circumstances to be rejected. In the premises, I find that the prosecution has proved beyond reasonable doubt that **A1** participated in the murder of the deceased **Atugonza Fiona**.
- [21] As regards **A2**, it is **A1's** Charge and Caution Statement that implicated him. It is the law that

"court will only act on a confession if it is only corroborated by independent evidence acceptable by the court";

See, **Tuwamoi Vs Uganda [1967] E.A 84** though again in **Festo Androa Asenua & Anor Vs Uganda, S.C.Crim. Appeal No.1 of 1998 [1998] UGSC 23**, the supreme court emphasized that court may act on a

confession as long as it is fully satisfied after considering all the material circumstances that a confession cannot but be true”.

- [22] **A1’s** Charge and Caution Statement did not definitely amount to a confession within its strict sense for the accused was just merely trying to distance himself from the commission of the offence and instead attributing it to **A2**.
- [23] **A2** on his part denied the prosecution allegations. He raised an alibi. That he was at his home when the deceased was murdered. His wife **Berucan Lilian** (A1/DW1) testified in support of her husband’s alibi. It is the law that where an accused raises the defence of alibi, he has no duty to prove it. The duty lies on the prosecution to disprove a defence of alibi and place the accused at the scene of crime as the perpetrator of the offence; **Cpl Wasswa & Anor Vs Uganda, S.C.Crim. Appeal No.49 of 1999**.
- [24] Apart from relying on the charge and caution statement of **A1** where he attributed the murder of the deceased to **A2**, there is no other evidence that was led by the prosecution to place **A2** at the scene or support and or corroborate the charge and caution statement of **A1**. What we have here is accomplice evidence which has often been described by authorities as evidence of the weakest kind; **Anyango Vs R(1968) E.A 239 at p.240** and **Andrew Walusimbi & 3 Ors Vs A.G S.C.Crim. Appeal No.28/1992**.
- [25] In the absence of any other piece of evidence to corroborate the claims of **A1** in his charge and caution statement, I find that **A2’s** alibi raises a reasonable doubt as to the guilt of **A2**. **A2’s** alibi is sufficient to secure an acquittal for him; See **Leonard Aniseth Vs R (1963) E.A 206**. In the premises, I find that the prosecution has not proved a case and participation of **A2** in the alleged murder. I do not find him guilty and I acquit him accordingly.
- [26] It is only **A1** who stand guilty of the offence of murder and he is accordingly convicted.

Signed, dated and delivered at Masindi this 7th day of **October, 2022**.

Byaruhanga Jesse Rugyema
JUDGE.

7/10/22

Both accused persons present

Ms. Akello Florence for state

Ms. Irene Twesiime for defence

Mr. Thembo: Clerk

Court: Judgment delivered in the presence of the above. **A2** acquitted and set free forthwith.

State: A1 the convict is a 1st offender. He has however been convicted of a serious offence of murder that attracts a death sentence. This was a planned murder which arose out of burglary. The deceased had a child that is now motherless and therefore vulnerable thus the death of the deceased affected the whole family as a whole. I in the premises pray for a deterrent sentence of 40 years so that any would be murderer get the signal of how courts are abhorring the offence.

Ms. Twesiime: The accused is a first offender aged 24 years. The accused is remorseful and prays for mercy and leniency. He prays that the time he has spent on remand which is 6 years and 1 month be taken into account. We pray for a sentence less than 20 years.

SENTENCE

- [1] The accused is a 1st offender aged 24 years and therefore in his productive stage of life. He has been on remand for a period of 6 years and therefore is entitled to have this period deducted from whatever sentence this court will consider as appropriate for him.
- [2] The accused has on the other hand been convicted of a serious offence of murder that attracts a death sentence as maximum. However, considering the circumstances surrounding this case which include the age of the accused as 24 years, signifying he has a chance to reform and the regime of sentences regarding murder convicts; **Uganda Vs Obong Tom, H.C.Crim.Case No.124/2014 and Aharikundira Yustine Vs Uganda, [201 8] UGSC 49** where the Appellant murdered her husband in cold blood, the Supreme Court reduced a death sentence to 30 years. **Uganda Vs Lydia Draru, H.C.Crim. Case No. 404/10, Akbar Hussein Godi Vs Uganda, S.C.Crim. Appeal No.3/2013**, (the convict

had killed his wife) the convicts of murder were sentenced to 25 years. This is therefore not a case for a death sentence.

- [3] In the premises, I consider **30 years imprisonment** as a deterrent and appropriate sentence for **A1**. Taking into account that he has been on remand for a period of **6 years** and **1 month**, he will **serve a sentence of 23 years** and **11 months** term of imprisonment.

Right of Appeal explained.

Byaruhanga Jesse Rugyema
JUDGE.

7/10/22