

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
CRIMINAL SESSION CASE NO.0150 OF 2016

UGANDA ..... PROSECUTION

VERSUS

BARUGINDOHO JOSEPH ..... ACCUSED

*Before: Hon. Justice Byaruhanga Jesse Rugyema*

**JUDGMENT**

- [1] The accused **Barugindoho Joseph** was indicted of **Aggravated Robbery C/ss 285 & 286 PCA**. It is alleged that on the 16/6/2016 at Rwensera village, Kakumiro District, the accused and others still at large robbed a **Motorcycle Reg.No. UEK 549 T** valued at **Ugx 3,670,000/=** and immediately before or after the said robbery used a deadly weapon against the victim, **Kazibwe Ronald**. The accused pleaded not guilty to the offence.
- [2] The prosecution brief facts are that during the month of June 2016, the victim, **Kazibwe Ronald** (PW1), a boda boda rider/operator in Kakumiro placed his motorcycle on market for sale. A one **Sekatte Wilson** (PW3) introduced the accused to the victim as a potential buyer of the Motorcycle on sale. The victim and the accused however failed to agree upon the price and as a result, the two parted ways.
- [3] It was however after 2 days at around 7:15 pm that the accused came on the victim's boda boda stage and sought to be rode to Rwensera village destination. The victim obliged to ride the accused to Rwensera, his place of destination. However, on the way, when they reached around Rwensera Primary School, the accused hit the victim with an unknown object/weapon and as the victim struggled to rescue himself, he was struck further several times. He was over powered and the accused took the moment and rode off the victim's motorcycle.
- [4] The victim was picked from the scene by a one **Sengendo Fred** (PW2) who rushed him to a one **Dr. Sekatte's** clinic where he obtained medication. Upon discharge, he went and reported the case to Kakumiro

police. Though the victim never knew the names of the accused, he was able describe him to police, which was able to locate him from his hiding place and arrested him accordingly.

- [5] The victim's Motorcycle which was still in the names of a one **Kakooza Reagan** (PW4) has to date never been recovered.
- [6] In his sworn defence statement, the accused denied the prosecution allegations. He however admitted being introduced to the victim by **Sekatte Wilson** (PW3) when he wanted a motorcycle to purchase for his movements. They met at a washing bay in Kakumiro Town but they failed to agree on the price. He was shocked on the 24/6/2016 when he saw police come and arrest him on allegations of robbery of the victim's motorcycle.
- [7] It is trite that on a charge of **Aggravated Robbery**, like in all criminal cases, the prosecution has the burden to prove the offence beyond reasonable doubt. The ingredients of the offence are;
  - a) Theft of property belonging to the victim.
  - b) Use of violence or threat of use of violence during the theft.
  - c) Possession of a deadly weapon during the theft or that there was grievous harm or death occasioned to the victim.
  - d) Participation of the accused during the theft; **Sections 285 & 286(2) PCA.**

Where the accused person raises a reasonable doubt, either through weakness of the prosecution case or by his defence, then he must be acquitted; **Uganda Vs Obua Polycarp & Anor, H.C.Crim. Case No. 459/15 [2019] UGHC 3.**

- [8] The following ingredients of the offence; theft of the property and in this case, a motorcycle, use of violence and possession of a deadly weapon during the theft were not contested by the defence. The victim's Motorcycle **Reg.No.UEK 549 T** was stolen by the assailant(s) who hit him with an unknown object/weapon on the head and broke his arms when he raised them up as a form of defence.
- [9] The above connote use of violence during the theft of the motorcycle. As per P.F3, the form where the victim was medically examined (**P.Exh.2**) which was admitted as an agreed fact, the victim sustained a cut wound on the right parietal area of the scalp measuring 8cm long,

0.7cm deep and 0.3cm wide, then a fracture of the mid-ulnar of the left forearm and then a displacement of the distal part of the left forearm (Ulnar). The above injuries sustained by the victim are suggestive of a deadly weapon having been used. **Dr. Sekatte Julius** described the injuries as grievous harm (**P.Exh.2**). The victim was actually lucky to survive. It is the victim's statement that he over bled profusely. It is my finding that the weapon used to inflict such injuries is or was that when used for offensive purposes, is capable of causing death or grievous harm; **S.286 (3) (a) (i) PCA**.

- [10] In the premises, I am satisfied that the 1<sup>st</sup> three ingredients of the offence have been proved by the prosecution beyond reasonable doubt.
- [11] The last and most important ingredient of the offence is whether the accused participated in the commission of the offence.
- [12] It is not in dispute as the victim, **PW1** and **Sekatte Wilson** (PW3) testified, that 2 days before the incident, the accused had a meeting with the victim at a washing bay along Kakumiro road when they were negotiating for the price of a motor cycle the victim had intended to sale. The meeting and the negotiations took place at around 12:00 - 1:00pm.
- [13] There is no evidence that during this meeting and negotiations for the price of the victim's motorcycle, any of them introduced himself by names. It is however my view that during the time, the atmosphere and the conditions in place were extremely good for each of them to identify each other by appearance. It is the prosecution case that indeed, the victim was in a proper position to properly identify the accused by appearance.
- [14] The victim testified that after 2 days from the date of his meeting with the accused, while at his boda boda stage of operation, at around 7:15pm, the accused approached him and requested to be rode to Rwensera village. The accused had 2 black polythene bags for which the victim never understood the contents. As the victim rode the accused, he heard the accused make a phone call, though he did not hear what the accused communicated. When they reached the place of the accused's destination, he stopped and the accused disembarked from the motorcycle. It is then that the accused struck the victim on

the head and as they struggled with each other, the accused hit him further several times until when the accused over powered him and was able to take off with the victim's motorcycle.

- [15] The victim further testified that he was picked from the scene by **Sengendo Fred** (PW2) and rushed to a one **Dr. Sekatte's** clinic where he obtained medication. Upon discharge, he reported to police where he described the accused. The police managed to locate the accused and accordingly arrested him.
- [16] From the evidence of the victim, it is not correct as put by the defence, that he did not see or identify the attacker. The victim identified the person who attacked him and stole his motorcycle as the accused. 7:15pm was a time when the conditions for proper identification were still good for the victim to identify the accused as the one he had seen and sat with the 2 previous days during the negotiations for the sale of his motorcycle.
- [17] **Sekatte Wilson** (PW3) who on the previous 2 days had introduced the accused to the victim also confirmed that the victim must have identified the accused by appearance because of their meeting during the motorcycle sale negotiations. It was during broad day light. It is therefore not correct as the defence submitted that the victim told **PW3** that he was not able to see or identify the attackers as the accused person. On oath, **PW3** revealed that when he visited the victim at **Dr. Sekatte's clinic**, he found the victim very badly off and could not talk. Besides, as the investigations proceeded, the victim was able to inform the investigating officer **D.C Obukalem Moses** (PW5), that he was attacked and robbed by **Joseph**, the accused. The victim had the opportunity of interfacing with accused on two occasions; when the accused was negotiating for the price of the victim's Motor cycle at between Noon & 1:00pm as the 1<sup>st</sup> encounter and when the accused found the victim at his boda boda stage at around 7:15pm and requested to be rode up to Rwensera village, as a 2<sup>nd</sup> encounter. The circumstances of this case as seen from the above, rule out any possibility of mistaken identification. The accused person on the other hand, did not account for his movements on the evening of the fateful day of the robbery.

- [18] In this case, though it would have been prudent for Police to carry out an Identification Parade so that the victim identifies the assailant out of the many, the failure to do so was and is not fatal to the prosecution case for there are other sufficient evidence pointing at the accused as the assailant.
- [19] From the foregoing, in disagreement with the Gentleman and Lady Assessors, I find that the victim properly identified the accused as the assailant for conditions of a proper identification were good and therefore, the prosecution proved the participation of the accused beyond reasonable doubt. I find the accused guilty of the offence of Aggravated Robbery and I do convict him accordingly.

Signed, dated and delivered at Masindi this 12<sup>th</sup> day of **October, 2022**.

**Byaruhanga Jesse Rugyema**  
**JUDGE.**

12/10/22

Accused present

Ms. Nakaggwa Catherine for state

Mr. Mugabi for defence

Mr. Thembo: Clerk

**Court:** Judgment delivered in the presence of the above.

**State:** The accused is a 1<sup>st</sup> offender. The victim however suffered grievous harm, the Motor cycle has never been recovered, I pray for a deterrent sentence. We pray for 25 years imprisonment and an order of compensation of the value of the motorcycle i.e, **Ugx 3,670,000/=**.

**Mr. Mugabi:** The accused is a 1<sup>st</sup> offender. He is a young man, youthful and resourceful to the nation. He is 34 years. There is room for him to reform. He has been on remand since 2016 i.e, **6 years & 2 months**. The accused left a child and a pregnant woman who after delivery, left home. The new born child was left to the accused's auntie. That's all.

### **SENTENCE**

- [1] The accused is a 1<sup>st</sup> offender and a youth aged 34 years. I find that he still has room for reform. He left a family behind but it is my view that he deserves a deterrent sentence considering the fact that boda boda riders risk their lives in the hands of people of the accused's kind.
- [2] In the premises, I sentence the accused to **20 years imprisonment**. Taking into account the period he has spent on remand i.e, **6 years & 2 months**, the accused/convict will serve **13 years & 10 months** imprisonment. Upon serving the sentence, the accused/convict to pay **shs. 3,670,000/=** (the value of the stolen motor cycle) as compensation to the victim, **Kazibwe Ronald**.
- [3] Lastly, the convict to report to **Kakumiro police O.C** once a month for a period of **3 months** as a form of supervision in accordance with **Section 124 TIA**, to ensure the convict's good conduct.

Right of Appeal explained.

**Byaruhanga Jesse Ruggyema**  
**JUDGE.**