

**CRIMINAL APPEAL NO. 02 OF 2023**  
(Formerly Masindi Criminal Appeal No. 017 of 2015)

## VERSUS

**Before His Lordship Hon. Justice Byaruhanga Jesse Rugyema**

[1] This is a Criminal Appeal by the Director of Public Prosecutions from the Judgment/Decision of the Chief Magistrate, Hoima at Hoima dated 12<sup>th</sup> August, 2015 who acquitted the 3 Respondents of the charge of the offence of **Doing Grievous Harm c/s 219 PCA**.

[2] On the 26<sup>th</sup> December, 2013, both the Complainant/Victim, a one **Kayemba Ronald** and the Respondents who are mother and sons respectively slated to stage 2 parallel functions at the home of the 1<sup>st</sup> Respondent. Whereas the Complainant and his group intended to hold an annual cultural event, the group of the Respondents held thanks giving and prayers in respect of the demise of the 1<sup>st</sup> Respondent's husband.

- [3] According to the prosecution, when the Complainant arrived at the venue at **Kitagata village, Kikube District**, he was confronted by the Respondents who intimated at him that he was not welcome at the venue and believed that he had come to interrupt their prayers. A scuffle ensued upon which the Complainant was assaulted and as per the medical examination of the Complainant/Victim done by **Dr. Ruyonga Joseph**, he sustained dangerous harm. The matter was reported to Police upon which the 3 Respondents were arrested and were accordingly charged with the offence of **Doing Grievous Harm c/s 219 PCA**.
- [4] According to the Defence, the Complainant had come with a truck full of youths who wanted to stage a parallel function (cultural event) which they used to celebrate annually but the 1<sup>st</sup> Respondent had rejected it and instead dedicated the date to mourning and prayers for her demised husband. The Respondents confronted the Complainant in protest of his intended action of staging a parallel function at their home reminding him of his known intentions of taking the vulnerability of the 1<sup>st</sup> Respondent as a widow and dispossess her of her matrimonial home/house. They denied that any fight ever took place, later on assaulting the Complainant.
- [5] The trial Magistrate on this part, considered and evaluated all the evidence before him and concluded relying on the evidence of **Asp. Magombe Ismail** (Pw5) who had been instructed by the D.P.C. of the area to deploy at the venue where the functions were to be held and ensure security and the smooth running of the functions, who testified that no fight or assault of the

Complainant occurred but that it were a mere fabricated allegation against the Respondents. He, the trial Chief Magistrate accordingly found that there were doubts as regards the guilt of the Respondents and that it would be unsafe to convict them. The Respondents were as a result acquitted and discharged.

[6] The DPP was dissatisfied with the decision of the trial Chief Magistrate and lodged this Appeal on the following grounds.

1. *That the learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record thus reaching a wrong decision.*
2. *That the learned trial Magistrate erred in law and fact when he acquitted the Respondents with the offence of Grievous Harm c/s 219 PCA and in case he found the evidence not constituting the above offence, then he ought to have convicted them with Assault occasioning Actual Bodily Harm c/s 236 of the Penal Code Act accordingly.*

### **Legal Representation**

[7] On Appeal, the Appellant was represented by **Mr. Baine Stanley Moses of the Office of the director of Pubic Prosecutions, Masindi** while the Respondents were represented by **Mr. Guma Davis of Guma & Co. Advocates, Kampala**. Both offered oral submissions and arguments for consideration by this Court in the determination of this Appeal.

## **Duty of the Appellate Court**

- [8] As rightly submitted by Counsel for the Appellant, the duty of the Court as a 1<sup>st</sup> Appellate Court is to re-evaluate the evidence as a whole and come with own decision thereon by rehearing the case and reconsidering the material before the trial Court. The Appellate Court must then make up its own mind not disregarding the Judgment appealed from but carefully weighing and considering it; see **Henry Kifamunte Vs. Uganda S.C.Crim. Appeal No. 10 of 1997**. In this appeal, this Court is to be guided by the above principles.

## **The standard and burden of proof in criminal cases**

- [9] As rightly stated by the learned trial Chief Magistrate, this being a criminal case, it is a requirement of the law that the burden is on the prosecution to prove its case and the standard of proof is that beyond reasonable doubt, **Woolmington Vs. DPP [1935] AC 462**, see also **Uganda Vs. Joseph Lote [1978] HCB 209**. It is also our principle of law that an accused person should be convicted on the strength of the case as proved by prosecution and not on weakness of his defence, **Israil Epuku s/o Achietu Vs. R [1934] I EA CA 166 at page 167**.
- [10] However, as also rightly submitted by **Mr. Baine** for the Appellant, *“proof beyond reasonable doubt does not mean proof beyond the shadow of doubt”* as explained by **Lord Denning in Miller Vs. Minister of Pensions [1994] 2 ALLER 372 at 373** thus

*“That degree is well settled. It needs not reach certainty, but is must carry a high degree of probability”.*

[11] In the instant case, it is apparent that both Counsel for the Appellant and the Respondents argued both the 2 grounds of appeal together because both grounds revolve around how the trial Magistrate evaluated the evidence before him to arrive at the decision he made to acquit the Respondents. I shall in the premises also handle the 2 grounds of appeal together.

### **Grounds 1 and 2 of Appeal; Evaluation of evidence**

[12] Counsel for the Appellant submitted that there was overwhelming evidence from the complainant/victim **Kayemba Ronald** (Pw1), **Pw2** and **Pw3** that he was assaulted by the Respondents upon which he sustained bruises/trauma on the stomach, face and on the back. That the victim also sustained a cut on the nose. That this evidence was corroborated by **Dr. Ruyonga Joseph** (Pw4), a health officer who examined the victim and found that he had sustained dangerous harm.

[13] The victim (**Pw1**) testified that his shirt and vest were torn, his shades (sunglasses), optical glasses which were in his pocket and a phone were broken and or damaged. The medical health officer (**Pw4**) who examined the victim also alluded to the bloody shirt the victim was putting on.

[14] According to Counsel for the Appellant, the trial Magistrate did not explain why he disregarded the medical expert report of Pw4 (**P.Exh.1**) which proved the harm occasioned to the victim. He further argued that if Court found the prosecution evidence not disclosing the offence of Grievous harm, Court should have found the Respondents guilty of the minor and cognate offence of Assault occasioning Actual Bodily Harm **C/S. 236 PCA**.

- [15] Counsel for the Respondents on the other hand submitted that **Dr. Ruyonga** (Pw4) did not find any grievous harm occasioned to the victim and that the evidence of the police officer **Asp. Magombe Ismail** (Pw5) who was providing security at the venue scene of crime is to the effect that no fighting took place and that the alleged assault on the complainant/victim was a concocted move against the Respondents.
- [16] It is not in dispute that the complainant/victim (**Pw1**) and the Respondents are relatives. The 1<sup>st</sup> Respondent is a wife to the deceased uncle of the Complainant, **Deo Zabasaija** who died in 2012. It is also not in dispute that at the venue, where the alleged offence was committed, comprise the home of the 1<sup>st</sup> Respondent and her sons, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. At this venue, the family of both the complainant and the Respondents, they used to hold thereon an annual event which the complainant (Pw1) described as a “family union” but Pw4 described it as a “Cultural Dinner” or the annual cultural event as per the Respondents.
- [17] It was the defence case that the Respondents’ family and the Complainant’s family had been feuding over the venue which comprise the house of the Respondents. The Respondents claim that the Complainant, upon the death of the 1<sup>st</sup> Respondent’s husband, wanted to grab their house and throw out the widow (1<sup>st</sup> Respondent) out of the house. It is as a result of this suspicion that the 1<sup>st</sup> Respondent disassociated herself from the said festival “family union” or “Cultural Dinner” and refused it being held at her place. On the 26<sup>th</sup> December, 2013 when the alleged offence was committed, the Complainant came with a truck carrying

music machines to stage the abhorred function yet for Respondents, they had organized a thanks giving and prayer for their demised husband and father.

- [18] Indeed, when the complainant came to the scene to stage a parallel function, confrontation was inevitable. As to whether this confrontation culminated into a fight where by the complainant was assaulted is what the trial Magistrate was expected to investigate through the trial.
- [19] In this case, the Respondents denied committing the alleged offence. They were supported by **Pw5**, a police officer who had been instructed by the DPC of the area to deploy security at the venue as requested by the complainant's group. It is therefore apparent that the complainant expected a clash. Nevertheless, the complainant testified that as a result of the clash, he was assaulted as, according to him, evidenced by the bloody shirt he was putting on which got torn and in addition, his shades/sunglasses, optical glasses and his phone that got broken and or damaged. However, none of these items were tendered in Court by the prosecution to corroborate the complainant's allegations and no explanation was offered by the prosecution for that glaring omission.
- [20] Secondly, when it came to making a report to police, as per the evidence of **Cpl. Bulemu Bogere** (Pw5), in addition to glasses (eye) and the phone, the complainant claimed that he lost a wallet that contained **shs. 3m**. The Complainant however, never alluded to any loss of money during his testimony in Court.

- [21] The totality of the above definitely weakened the prosecution case. The weakness in the state case must be contrasted with the Respondent's defence which is to the effect that they are being harassed by the complainant with the motive of dispossessing them of their home, and that the 1<sup>st</sup> Respondent being a vulnerable widow, the complainant is taking advantage of that. They stated to have however, blocked him from succeeding in his endeavours. Court has to be cautious that the Respondents are not at the end of the day victimized by carefully scrutinizing the evidence of the prosecution. They could have however, used reasonable force to block the complainant though it is possible that he, the Complainant exaggerated the assault, as a form of revenge.
- [22] It is my view that the trial Magistrate was entitled to disregard the evidence of the health officer (Pw4) who examined the complainant if the other available evidence disclosed the contrary which would be detrimental to the prosecution, thus a case in favour of the Respondents; See **Attan Okia Moses Vs. Ariko Herbert Okwiro H.C.E.P. No. 11 of 2022** where it was held that:

*"A Court is entitled to accept evidence of an expert if it is credible, particularly if it is uncontroverted or unchallenged .... It bears emphasis that the .... Reports or findings are merely a formation of an opinion which in itself is not conclusive evidence. In other words, a Court is not bound by the evidence of an expert witness .... It can be rejected if found to be contradictory, unreliable and unhelpful".*



- [23] In the instant case, upon considering the expert evidence/opinion of **Pw4** and the evidence of **Pw5**, a police officer who was at venue to provide security, the trial Magistrate believed his evidence that the said Complainant was not assaulted. That it is true there were some confrontations and or disagreements between the 2 groups but police sorted it by halting any function from taking place at the venue. The trial Magistrate was entitled to this finding by preferring it to that of the medical health expert (**Pw4**) and I have no reason to depart from him.
- [24] Besides, the medical expert (**Pw4**) never saw any injury on the complainant's nose yet Pw1-Pw3 claimed that the Complainant was cut on the nose and according to the Complainant, everybody present saw him bleeding from the nose. With such contradiction in the prosecution case, considered together with the other weaknesses I have highlighted in the prosecution case, such words create doubt in the prosecution case and the Respondents would be entitled to an acquittal.
- [25] In the premises, I find that the learned trial Chief Magistrate properly evaluated the evidence adduced and as a result, rightly arrived at the conclusion that the Respondents were not guilty of the offence charged. Having found the Respondents not guilty of the offence as charged, it was not necessary for him to consider whether they were guilty of a minor and cognate offence of Assault occasioning Actual Bodily Harm because there is no evidence to support the minor charge.

[26] As a result, I find the appeal devoid of any merit and it is accordingly dismissed.

Dated at Hoima this 18<sup>th</sup> day of **August, 2023.**

**Byaruhanga Jesse Ruggyema**  
**Judge**