

5

The Republic of Uganda
In the High Court of Uganda Holden at Soroti
HCT-09-CR-SC-0107-2018

Uganda ::: Prosecutor

10

Versus

Eiru Paul ::: Accused

15

Before: The Hon. Justice Dr. Henry Peter Adonyo

Ruling:

1. Background:

20

Eiru Paul (herein referred to as the accused), was indicted with Murder contrary to sections 188 and 189 of the Penal Code Act, Cap 120.

The Prosecution case is that on the 17th day of March, 2018 at Atarukot village in Amuria District, with malice aforethought, unlawfully killed Elamu Samuel. The accused pleaded not guilty to the indictment and the Prosecution remained with the burden to adduce sufficient evidence to establish the essential elements of the offence of murder.

25

The prosecution case is that on the 17th day of March, 2018 at around midnight, the deceased who had taken alcohol and lost his way went up to the home of the accused instead of going to Arabet Health Centre II in Amuria district where he was a security guard.

30



5 That upon the victim entering the house of the accused, he was assaulted seriously and tied upside down on a pole in the house of the victim, who subsequently called neighbors.

That the accused continued assaulting the deceased throughout the night. That the deceased's condition worsened and the accused was forced to call
10 for help from Arabet Health Centre where the deceased was properly identified as their worker.

That the deceased had a swollen neck and head and was referred to Soroti Regional Hospital where he died.

To prove the indictment against the accused, the Prosecution adduced
15 evidence of three witnesses (PW1, No. 25743 Detective Sergeant Asubu J, PW2 Okwell Joseph, PW3, Otukei Gabriel – LC1) who testified to the assault of the deceased on the night of 17th March of 2018, which assault subsequently led to the death of the Elamu Samuel on 18th March, 2018 at Soroti Regional Referral Hospital.

20 At the preliminary hearing prior to the trial, the following evidence was agreed to by both parties and duly admitted on the court record as such:

a. Post mortem report as Exhibit PEX; and

b. PF 3A in respect of the accused person as Exhibit PEX2.

25 After the testimony of the three prosecution witnesses, the prosecution closed its case.

The question therefore for my consideration is whether or not a prima facie case has been made out to put the Accused to his defence or acquittal him in the event of a no case to answer.

2. Legal Principles:

30 **Section 73 of the Trial on Indictments Act** requires this court to determine whether or not the evidence adduced has established a prima facie



5 case against the accused. Only then shall the accused be put to his defence (see Section 73(2) of the trial on Indictments Act). Where at the close of the prosecution case a prima facie case has not been made out, the accused would be entitled to an acquittal.

See: ***Wabiro alias Musa v. R [1960] E.A. 184 and Kadiri Kyanju and Others v. Uganda [1974] HCB 215.***

10 A prima facie case means one where a reasonable tribunal, properly directing its mind to the law and evidence could convict if no explanation is offered by the defence.

See: ***Ranandlal T. Bhatt vs. R [1957] EA 332 and R vs. Shabudin Merah MB 38/63***

15 It has been emphasized in the above cases that;

“a prima facie case cannot be one that merely might possibly be thought to be sufficient to sustain a conviction; a mere scintilla of evidence cannot suffice nor can any amount of discredited evidence.”

20 The evidence adduced at this stage, should be sufficient to require an accused to offer an explanation, lest he runs the risk of being convicted. The Prosecution though at this stage is not required to have proved the case beyond reasonable doubt since such a determination can only be made after hearing both the prosecution and the defence.

25 There are mainly two considerations justifying a finding that there is no prima facie case made out as stated in the **Practice Note of Lord Parker [1962] ALL E.R 448** and also applied in ***Uganda v Alfred Ateu [1974] HCB 179***, as follows: -

30 ***1. When there has been no evidence to prove an essential ingredient in the alleged offence, or;***



5 **2. When the evidence adduced by prosecution has been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it.**

3. Burden and Standard of Proof:

10 At this stage, for purposes of establishing a *prima facie* case, the prosecution is not required to prove it is case beyond reasonable doubt. The evidence, however, must be so sufficient that if the Accused does not provide an explanation or defence, a reasonable Court can convict him.

In *Bhatt v Rep. [1957] E.A. 332*, it was held that;

15 **“remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to**
20 **sustain a conviction. This is perilously near to suggesting that the court would not be prepared to convict is no defence is made but rather hopes the defence will fill the gaps in the prosecution case.”**

25 Therefore, all that is required of this court is to determine whether the prosecution has led sufficient evidence capable of proving each of the ingredients of the offence of murder, if the accused chose not to say anything in their defence, and whether such evidence has not been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it.

5 The accused person having pleaded not guilty, the state remained with the burden to adduce sufficient evidence to establish the essential elements of the offence of murder namely;

a) *That death of a human being occurred;*

b) *The death was caused by some unlawful act;*

10 c) *That the unlawful act was actuated by malice aforethought; and lastly;*

d) *That it was the accused who caused the unlawful death.*

a. Death of a human being:

15 Death can be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body.

In this case, the Prosecution adduced evidence of PF 48B (PExh.1), a post mortem report, dated 19th March, 2018 prepared by Dr. Ongaria Joseph of Soroti Regional Referral Hospital which showed the cause of death to be acute respiratory distress following blunt force injury to the chest and head. The postmortem report was agreed upon during the preliminary hearing and later admitted and marked as exhibit P.Ex.1. The body was identified to him by a one Egiru Enos Enocku, a cousin of the deceased.

20 The defence did not dispute the fact of death. P.Ex.1 is an agreed and admitted document. It is not disputed and it supports the fact that Elamu Samuel died. This ingredient is thus proved.

b. Death was unlawful:

25 It is trite that ***“the law presumes every homicide to be unlawful unless it is accidental or excusable or authorised by the law”***.



5 P.Ex.1 which is the post mortem report establishes the cause of death as
***“Acute Respiratory Distress following a severe blunt force injury
to the chest and head.”***

The medical officer’s other observations P.Ex.1 are that the body had a
swelling of the face with multiple abrasions largest being 40cm × 3cm and
10 ***“a right black eye with blood through the right ear and a
laceration over the lower hip zone”.***

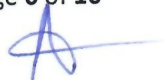
This report concludes that the manner of death as homicidal. Without any
other proof of cause of the death, I would agree with the findings in the post
mortem report and conclude that the injuries as detailed in P.Ex.1 are
15 consistent with homicide.

Furthermore, the prosecution witnesses PW2 and PW3 consistently and
without contradiction told court that thy found the deceased beaten with
PW2 clearly stating even when the deceased was untied, the accused
continued beating him yet the continued assault of the deceased by the
20 accused was not sanctioned by any order of any court, meaning that the
resultant death of Elamu Samuel was unlawful.

c. Malice aforethought:

Section 191 of the *Penal Code Act* defines malice aforethought as either an
intention to cause death of a person or knowledge that the act causing death
25 will probably cause the death of some person.

The issue for determination here is whether the assault on the deceased was
intended to cause death or whether the manner and degree of assault would
probably cause death. Malice aforethought is a mental element that is
difficult to prove by direct evidence. Courts usually consider circumstantial.
30 Malice aforethought in murder trials can be ascertained from the weapon
used, (*whether it is a lethal weapon or not*); the manner in which it is used,



5 (whether it is used repeatedly or the number of injuries inflicted); the part of the body that is targeted or injured, (whether or not it is a vulnerable part), and the conduct of the accused before, during and after the incident, (whether there was impunity), see **R. vs Tubere (1945) 12 EACA 63** and **Uganda vs. Aggrey Kiyingi and 2 others HCCS No. 30 of 2006**.

10 In this case, the Prosecution did not adduce any weapon used for the assault. The only pointer as to how the deceased met his death is the evidence in the post mortem (P.Ex.1) which proved the injuries on the head and body of the deceased. P.Ex.1 further shows that there was a swelling of the face with multiple abrasions the largest of which was 40m × 3cm. The accused also
15 told court that upon realizing that there was a stranger in his house, he pushed him and he fell down.

The major injury on the deceased body was that found on the head. That part of the body is vulnerable and once targeted would impute malicious intent. In absence of any weapon used, this court does rely on the injury to shed light
20 as to the nature of weapon used since every case is to be judged on its own facts.

In the instant case, the post mortem report (P.Ex.1) which describes the extent of injuries on the deceased body. These include swelling of the face with multiple abrasions with the largest being 40 cm × 3 cm wide, a black
25 eye and blood permeating out of the ears. Though the weapon used to inflict this head injury was never recovered nor exhibited, P.Ex.1 show that the cause of death was due to a severe blunt force injury.

The use of a blunt object or force with a sharp edge or such force as to inflict considerable force to the head capable will certainly result to bleeding
30 through the ear. Any person who uses such force which result to head bleeding must foresee that death is the probable consequence of his or her

5 act, given the fact that the force used targeted a very vulnerable part of the body which is the head.

Further, the conduct of the accused revealed impunity. According to PW2 who went to the house of the accused the following morning, he found the deceased was tied and had already been badly beaten but still the accused
10 continued beating him even when PW2 was untying him.

PW3 ,on the other hand told court that upon finding the deceased lying injured on the floor of the house, he requested the accused that they both take him for medical attention but the accused was refused and was unbothered.

15 According to PW1, the investigating officer attached to Amuria police station, on the night in question, the accused alleged that he was attacked by the deceased as he slept with his wife and that the accused told him that he beat the deceased in self defence by kicking him.

PW1 further testified that, during the investigations, the accused informed
20 him that he tied the deceased with a rope and on the pole inside his house. PW1 then produced the accused before the D/AIP and a charge and caution statement by the accused was recorded in which he admitted doing so though the charge and caution statement was not adduced in court.

On the other hand, PW2 testified that on the night in question, he was
25 approached by the mayor and his committee members of the area at around 10:00 p.m. to 11:00 p.m. at Parapet Health Centre where his wife works and he then went to the home of the accused where they found the deceased in the accused's house tied down and seriously beaten. The deceased was found with his hands and legs tied and badly beaten. He testified that when the
30 deceased was untied, the accused continued beating him till the LCs intervened. That because of the injuries on the deceased, they took the



5 deceased to Kabyelebyong Health Centre IV in Kabyelebyong town on his bicycle. But that because of the seriousness of the injuries, the deceased was referred to Soroti Regional Referral hospital in an ambulance the following day where he died.

PW3's testimony also shows that on that night, he went to the accused's house where he found people gathered. On asking the accused what happened, the accused informed him that he had beaten the deceased.

PW3 told court that when he entered the house to see who it was he found the deceased lying on the floor tied down and was bleeding.

That even when the deceased was being untied, the accused continued beating him. That the deceased had injuries on his head and blood oozing from his nose.

On the following day, this witness told court that he received a call that the deceased died after having been referred to Soroti Referral hospital.

From the sequence of events, it is clear that the assault led to the death of the Elamu Samuel.

The fact of tying and continued beating of the deceased even in the presence of witnesses demonstrates that the accused intended to finish of the deceased. Those acts impute that the accused had malice aforethought.

d. Participation of the Accused:

In law, it is a requirement that the participation of an accused person in the committal of a crime must result from direct or circumstantial evidence which places an accused at the scene of the crime and which shows that such an accused person was an active participant in the commission of the offence. In the instant case, PW1 told court that the accused informed him that he acted in self defence when he beat, tied and kicked the deceased and subsequently tied him with a rope.



5 PW2 testified that he found the deceased beaten and bleeding while he was tied at the accused's house and further, even after PW1 untied the deceased, the accused continuously kicked the deceased while he was helpless.

PW3 who was the LC1 Chairman of the village at the time testified that when he went to the accused's home, he found the deceased lying on the floor of
10 the accused's house with a swollen head and bleeding from the nose.

Although no evidence was adduced of used to inflict the injuries which would connect the accused to the committal of the crime, it is clear that the Accused was found at the scene of crime and he told witnesses who went to the scene that he did in fact assault the deceased in self defence since the deceased had
15 entered his house in darkness without any reasonable cause.

After carefully evaluating the prosecution evidence, I would find and conclude that in the absence of any explanation to the contrary from the accused, the evidence in court does establish the four (4) ingredients of the offence of murder.

20 Accordingly, a *prima facie* case has been established against the accused person for the offence of murder contrary to sections 188 and 189 of the Penal Code Act.

The accused person is thus put to his defence.

25


.....
Hon. Dr. Justice Henry Peter Adonyo

Judge

5th day of January, 2023