THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

CORAM: TSEKOOKO, J.S.C., KAROKORA, J.S.C., MULENGA, J.S.C., KANYEIHANBA, J.S.C. AND MUKASA-KIKONYOGO, J.S.C.

CRIMINAL APPEAL NO. 13 OF 1998

BETWEEN

KIKONYOGO GEORGE ……APPELLANT

VERSUS

UGANDA…….. RESPONDENT

(Appeal from the decision of the Court of Appeal (MANYINDO, D.C.J., KATO, J.A, and BERKO, J.A.) dated 17th July 1998 in Court of Appeal Criminal Appeal No. 19 of 1997)

REASONS FOR JUDGMENT OF THE COURT:

The appellant Kikonyogo George was convicted of the offence of murder, contrary to Section 183 of the Penal Code, by the High Court on 2nd October 1995. His appeal against the conviction was dismissed by the Court of Appeal on 17th July 1998. He has appealed to this Court against that dismissal. On 28th October 1998, we heard the appeal, dismissed it and promised to give our reasons for dismissal. We now give the reasons.

The prosecution case was that the appellant lived at Kasenyi landing site and was a neighbour of Aisa Namusoke (P.W.1) who is the mother of the deceased, Falida Najjuko. Prior to the murder of the deceased, the appellant had threatened to beat P.W.1. On 1st December 1992, at about 8.00 p.m., the appellant prepared his supper and kept it in his residence. He was heard announcing to nobody in particular that he was running mad. He called out that he should be tied on to his bed. Neighbours including R.C.1 Secretary for Security gathered at the appellant's residence and yielded to his call. The appellant lay on his bed where onto the neighbours tied him using a gauze wire. They tied his hands and legs to the bed. Thereafter neighbours dispersed. As if the appellant considered the whole thing to be a farce, the appellant ascertained from his wife whether the people had dispersed. Upon being assured by the wife that indeed people had dispersed, the

appellant somehow had his fetters removed from his legs and hands. He got off his bed, armed himself with a hoe and got out of his residence. The appellant then entered P.W.1's kitchen where the deceased was hiding. He pulled the deceased out and thrice hit her on the head with a hoe and apparently rendered her unconscious. The appellant walked away from the scene. He told P.W.1 "to go and collect her dead body". Issa Ssebaggala, (P.W.3) the brother of the deceased took the deceased when unconscious eventually to Entebbe hospital where doctors diagnosed her brains to have been damaged. The deceased died at about 3.00 a.m. the same night. The appellant was arrested taken to the police and was subsequently charged with the murder of the deceased.

During the trial in the High Court, P.W.1, P.W.2 and P.W.3 among other witnesses, gave evidence the gist of which has just been summarised above. The appellant testified on oath to the effect that he did not know how deceased died. His testimony in effect shows that he was near the scene of crime at the time of assault of the deceased. He thus stated "At 8.00 p.m. I heard commotion outside and people were saying that I was inside the house". He claimed he had been sleeping from 6.30p.m. because he had taken some medicine. He never gave the name of the medicine.

The learned trial judge addressed the assessors on the possible defences of insanity and intoxication. The two assessors then gave a lengthy joint opinion rejecting the defence of madness and advised conviction. In her judgment the learned trial judge addressed herself to the possible defences of insanity and intoxication. She found that on the facts the two defences were not available to the appellant. And so she convicted the appellant of the offence of murder and sentenced him to death.

The appellant preferred an appeal to the Court of Appeal against the decision of the trial judge. The appeal was based on three grounds. The first ground was a complaint on irregular admission of medical evidence under S. 64 of T.I.D., 1971. The second was a complaint that the trial judge erred when she held that the appellant was of sound mind at the time he committed the murder. The third ground which was abandoned at the hearing of the appeal in the Court of Appeal was a complaint against rejection of the possible defence of intoxication. The Court of Appeal dismissed the appeal. Hence this appeal.

The single ground in the appeal before us is framed thus - “The Honourable Justices of the Court of Appeal erred in law arid fact when they held that the defence of intoxication was not available to the appellant and in casting the onus of proof of this defence upon the appellant’.

We would observe that the ground of appeal of intoxication as a defence was abandoned in the Court below even though the Court made comments in passing about intoxication.

Be that as it may, Mr. Mubiru, counsel for the appellant put forward theories which were not supported by the evidence on the record. Learned Counsel raised three hypotheses. First that there was a possibility that the appellant was affected by decease of mind which is insanity proper. Second theory was the Possibility that the appellant was temporarily insane because of the drug he took. Third theory put forward was that having swallowed drugs the appellant was intoxicated so much so that he was incapable of forming an intent to commit a crime. Counsel then cited Cheminingwa vs. R. (1956) 23 E.A.C.A 451 at page 452.

As Learned Counsel quite rightly conceded in the end, the appellant bore the burden of adducing evidence in the trial Court to satisfy the court that his case fell within the first two theories. The appellant never adduced any evidence to Support these theories. And therefore, the trial Court which was alive to and considered the possibility of insanity **c**annot be criticised o the basis of theories. Nor can the Court of Appeal be criticised on the same matter.

On the third theory we asked Mr. Mubiru to point out to us whether the name of the drug taken by his client was disclosed to the trial Court. Learned Counsel could not name the drug. In the premises no amount of speculation can help the case of the appellant.

For the foregoing reasons, we were satisfied that the prosecution had discharged its burden of proof beyond reasonable doubt that the appellant was normal when he committed the murder. The learn trial Judge was right in convicting the appellant. The Court of Appeal was justified in confirming the conviction. We were accordingly satisfied that the ground of appeal must fail and the appeal had to be dismissed

Delivered at Mengo this 8th day of November 1998.

J.W. N Tsekooko

Justice of the Supreme Court

A.N. Karokora

Justice of the Supreme Court

J.N. Mulenga

Justice of the Supreme Court

G.W. Kanyeihamba

Justice of the Supreme Court

L.E.M. Mukasa -Kikonyogo

Justice of the Supreme Court