



At the hearing of this appeal the counsel for the appellant informed the court that the appellant had abandoned his defence of alibi and admitted having killed the deceased when he was intoxicated.

We agree that there is enough evidence on record to show that the appellant had taken some alcohol before he came to the home of the deceased and he was already drunk. The learned counsel for the state concedes to these facts.

The learned trial judge considered the defence of intoxication but he appears to have misdirected himself to the law applicable. He seems to have relied on section 13(2) of the Penal Code Act instead of subsection 4 of the same section. Had he done so he would have found that malice aforethought had not been proved having regard to the evidence of intoxication on record.

We therefore allow the appeal, quash conviction for murder and set aside sentence of death. We substitute therefore a conviction for manslaughter under section 182 of the Penal Code Act and sentence him to 10 years imprisonment having regard to the period he had been on remand before conviction. This sentence of 10 years takes effect from date of conviction.

Dated at Kampala this 28 day of October, 1999.

C.M. KATO

JUSTICE OF APPEAL

G.M. OKELLO

JUSTICE OF APPEAL

J.P. BERKO

JUSTICE OF APPEAL