<u>THE REPUBLIC OF UGANDA</u>

<u>IN THE COURT OF APPEAL OF UGANDA</u>

<u>AT KAMPALA</u>

<u>CRIMINAL APPEAL NO.22/99</u>

<u>CORAM.</u> *HON MR. JUSTICE C.M KATO, JA.*

HON MR. JUSTICE J.P. BERKO, JA.

HON LADY JUSTICE C.N. B. KITUMBA, JA.

BUKIRWA ROBINAH::APPELLANT

VERSUS

UGANDA ::: RESPONDENT

(An appeal from the decision of the High Court at Mubende (S.B. Bossa, J.) dated 4/12/98 in C.S.C. No.96/97)

<u>REASONS FOR DECISION OF THE COURT:</u>

The appellant was indicted for the murder of her husband, one Severiyo Bangi, contrary to section 183 of the Penal Code Act. She was convicted and sentenced to death. She appealed to this court against the conviction and sentence. On 22/7/99 after listening to the arguments presented by counsel from both sides, we dismissed the appeal but reserved our reasons for the decision. We now proceed to give those reasons.

The brief facts which gave rise to this appeal are as follows: - The appellant was living with the deceased as husband and wife. On the night of 29/6/95 the deceased returned home when drunk and blamed the appellant for not cleaning their jerrican (a water container). After their quarrel the appellant served the deceased with supper which he ate.

Having finished his meal he went to bed. As the deceased was sleeping the appellant picked an axe and cut him on the forehead while her brother, Kayiira, was holding him down. The deceased

died instantly. The appellant, with the help of her brother, dragged the body out of the room and placed it on a bicycle. They dumped the bicycle and the body on the road. The appellant returned to the house and cleaned it thoroughly. Her brother buried the blanket and bed sheets in a nearby garden. All these events were witnessed by Keneth Kakooza (PW3) the stepson of the appellant and Florence Nakyanzi (PW5) appellant's daughter. The following morning the appellant and her brother were arrested and later on charged with the murder of the deceased.

At the trial the appellant denied ever having killed her husband. She learnt about his death after the body had been found by the roadside a day after he had left her saying he was going on duty. The trial judge rejected her evidence and believed that of the prosecution. As stated earlier she was convicted and sentenced, hence this appeal.

There are 3 grounds of appeal, namely:

1. That the learned trial judge erred to hold that there was Sufficient evidence to connect the appellant with the offence
2. That the learned trial judge erred to hold that the prosecution had proved its case beyond reasonable doubt.
3. The learned trial judge erred in relying on evidence of children of tender years without sufficient corroboration.

Mr. Akampurira, learned counsel for the appellant, argued grounds one and two together; he abandoned the third ground on realising that the proviso to section 38 of the Trial on Indictments Decree upon which he intended to rely did not apply to this case as the children gave evidence on oath. In fact PW3, Keneth Kakooza, was not a child of tender years. He was 15 years at the time he testified.

In his laconic submission Mr. Akampurira argued that the prevailing conditions did not favour correct identification of the appellant by the two eye witnesses who were in a different room from the one where the deceased was hacked to death. He contended that the source of light was poor as it was a "*tadooba* ".

On the other hand, Mr. Ogwal-Olwa submitted that the appellant had been positively identified by the two eye witnesses who knew her so well as their parent. He contended that there was enough light from the *"tadooba"*.

We agree with the finding of the learned trial judge that the appellant was correctly identified at the scene of crime by her own daughter (PW5) and stepson (PW3). The appellant was not a stranger to these two eye witnesses. They were close to her in the same house. The witnesses were observing her when she was moving around going to collect the axe, removing the body from the house and collecting the bicycle on which the body was carried. There was light in the house provided by a *"tadooba"* which helped the two witnesses to see the appellant. Although the incident took place in the bedroom and the children were in the sitting room, there was no curtain or door shutter which could have prevented them from seeing what was going on in the bedroom. It is our view that there were conditions favouring correct identification of the appellant by Kakooza and Nakyanzi. There was also the dying declaration by the deceased which Kakooza testified about to the effect that he heard the deceased saying "Robinah you have killed me". The conduct of the appellant after the death of her husband also was not that of an innocent person. According to the evidence of Semeo Turyangina (PW4) she showed him where the blood stained axe she had used to kill the deceased was. This strengthens the story of the children that she was the killer. Their evidence is further strengthened by the bicycle tyre marks and drops of blood leading from deceased's home to where the body was found.

We are in full agreement with Mr. Ogwal-Olwa's submission that there is overwhelming evidence to show that the appellant murdered the deceased.

It was for those reasons that we dismissed the appeal.

Before we take leave of this matter we would like to point out that the learned trial judge was wrong to have stated in her ruling of case to answer that the appellant had committed the offence. It was irregular for her at that stage to make such a statement, at that stage she should have only ruled that there was a prima facie case made out for the appellant to answer but not to proceed further and say the appellant had committed the offence. Considering all the circumstances of this case we feel no miscarriage of justice has been occasioned by that irregularity. The learned

trial judge appears to have been misled by the provisions of section 71(2) of T.I.D. which we have recently said is a bad law in our judgment in Criminal Appeal No.76 of 1998: Semambo and Fred Musisi Semakula v Uganda.

Dated at Kampala this 5th day of August 1999.

C.M. KATO
JUSTICE OF APPEAL

J.P. BERKO
JUSTICE OF APPEAL

C.N. B. KITUMBA
JUSTICE OF APPEAL