THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON. MR. JUSTICE S.T. MANYINDO, DCJ.
HON. MR. JUSTICE S.G. ENGWAU, JA.
HON. LADY JUSTICE C.N.B. KITUMBA, JA.

CRIMINAL APPEAL NO. 45 OF 1999.

ANTHONY OKWANGA :::APPELLANT

VERSUS

UGANDA :::RESPONDENT

(An appeal from the Judgment of the High Court (Opio Aweri J) dated 28.4.99 in Criminal Session Case No. 207/98 at Arua.)

JUDGMENT OF THE COURT.

The appellant was indicted on four counts and convicted on three of them. In count 1, he was charged and convicted of murder of Veneranda Pinyanga, contrary to Section 183 of the Penal Code Act and was sentenced to death. On count 11 he was charged and convicted of kidnapping with intent to murder Jurudano Onen, contrary to section 235(1) (a) of the Penal Code Act and was sentenced to 15 years imprisonment. The appellant was in count 111 charged with aggravated robbery, contrary to sections 272 and 273(2) of the Penal Code Act and was acquitted. In count IV he was charged and convicted of attempted murder of Acelma Giriker, contrary to section 197 (a) of the Penal Code Act. He was convicted and sentenced to 15 years imprisonment. The imprisonment sentences on counts 11 and IV were suspended. The particulars of offence in all the counts were that the appellant and other persons still at large committed the offences on the 3 day of June 1980 at Angal village, Nyaravur Division, Nebbi District.

The prosecution evidence as accepted by the learned trial Judge was as follows. The appellant in 1980 was the Under Secretary in the Ministry of Internal Affairs. He had a house and a farm at

Angal village, Nyaravur Division, Nebbi District. He was well known to the prosecution witnesses. During the night of 2nd June 1980, the appellant's home was attacked by unknown people who shot at his house. The appellant reported the incident to Nebbi Police Station but was advised to report to the Army. The appellant suspected Jurudano Onen, the victim in the second count, to have been among the people who attacked him. In the morning of 3rd June 1980 the appellant went in his motor vehicle Mercedes Benz to the home of Jurudano Onen looking for him and was seen by Clouds Opoka, PW3. The appellant was armed with a pistol. When he did not find Jurudano Onen there, he proceeded to the home of his mother Acelma Giriker, PW4, looking for Jurudano Onen. He found Acelma at home and inquired where Jurudano Onen was. When the appellant did not get satisfactory answers from the witness he shot her with a pistol in the arm. The appellant also shot Acelma's daughter Veneranda Pinyanga in the groin and as a result of which she died soon afterwards. Celestino Okumu, PW7, who is a brother of Jurudano Onen, witnessed the incidents at Acelma's home. The appellant continued to look for Jurudano Onen. Madalena Neguwon, (PW5), saw her husband, Jurudano Onen being arrested by men who alleged that they had been sent by the appellant. Jurudano Onen was taken to Angal football pitch. Celestino Okumu (PW7) saw the appellant at the football pitch together with other people torturing Jurudano Onen and later put him in the boot of his car and went away. There was general panic in the village and Jurudano Onen's relatives went into hiding. The body of Veneranda Pinyanga was buried three days afterwards by Lawrence Okellowange, (PW6), and other porters at the instructions of the brothers of Angal Mission. Opoka Clouds (PW3) who was a brother of Jurudano Onen came out of hiding sometime afterwards and reported the incident to Nebbi police station, where he was arrested and handed to the Army. He spent two months in the military barracks before he was released. The prosecution did not call any police evidence concerning the arrest of the appellant or the investigation of the case against him.

In his sworn defence the appellant set up an alibi. He testified that on 2 June 1980 he was in Kampala carrying on his duties in the Ministry of Internal Affairs. He was at Angal village on 30/6/1980 when his home was attacked. He reported the matter to the military authorities who carried on their investigations without him. He saw people gathered at Angal football pitch and heard that Jurudano Onen had been arrested but he never went there. The charges against him had been politically motivated by his opponents in order to prevent him from contesting as

Chairman of Nebbi District Local Council. He was arrested on the day he was collecting papers for nomination for the election. The appellant called his neighbour, Kanutu Kakusa, DW1, in support of his defence. DW1's testimony was to the effect that the appellant's home was attacked and military personnel investigated the incident.

The learned trial judge accepted the prosecution case, rejected the defence and convicted the appellant with the result already stated.

There are 11 grounds of appeal:

"I. The learned judge in the Court below erred in law and in fact when he allowed PWI and PW2 to be treated as hostile witnesses thus causing injustice to the appellant.

2. The learned judge in the court below erred in law and in fact when he held that the contradictions in the evidence of the prosecution witnesses were minor and had been explained away.

3. The learned judge in the court below erred in law and in fact to convict the appellant on the basis of the evidence of the prosecution when such evidence was too weak to support such convictions.

4. The learned judge in the court below erred in law and in fact when he considered the case for the prosecution in isolation of the defence case, finding the appellant guilty before considering his defence.

5. The learned judge in the court below erred when he relied on hearsay evidence in convicting the appellant.

6. The learned judge in the court below erred when he failed to consider the alibi of the appellant.

7. The learned judge in the court below misdirected himself on the issue of burden of proof with regard to an alibi and this resulted in a miscarriage of justice to the appellant.

8. The learned Judge erred when he concluded that the appellant acted in concert with the soldiers in committing the offences for which he (appellant) was convicted.

9. That the learned judge in the court below erred in his summing up to the gentleman assessor and this caused miscarriage of justice to the prejudice of the appellant.

10. The learned judge erred in law and in fact when he failed to give due weight and importance the evidence for the defence.

11. That the suspended sentence was too severe in the circumstances."

Mr. Kasule, learned counsel for the appellant, argued grounds 6 and 10 together and all other grounds separately. We shall deal with them in the same order. In ground I Mr. Kasule complained that the learned trial judge's treatment of PWI and PW2 as hostile witnesses was an error in fact and law and caused injustice to the appellant. Counsel contended that PWI simply departed from his police statement and clarified that when he talked of Okwanga in his police statement he meant Sgt. Okwanga and not Okwanga the appellant. The contradictions which were in PWI's statement to the police and his evidence in court were not known as the trial judge never looked at the police statement and compared it with his testimony in court and the statement was not tendered in evidence as an exhibit. Regarding the evidence of PW2 counsel submitted that the witness merely stated that he did not know anything about the case. The state attorney abandoned the witness and did not apply to treat the witness hostile. However, the leaned trial judge in his judgment said that PW2 ***"was also turning hostile"***. Counsel submitted that this creation of the trial judge was prejudicial to the appellant. For these submissions learned counsel relied on Sarkar's Law of Evidence 11th Edition p. 1317 — 1318 and S. 152 of the Evidence Act, Cap. 43 Uganda Laws. Mr. Vicent Wagona, learned Senior State Attorney, conceded that PW1's police statement was not tendered in court as an exhibit and the learned trial Judge did not record the contradictions which appeared in his police statement and his testimony in court. Counsel submitted that it was not fatal as the learned trial judge must have looked at the police statement before granting the prosecution's application to treat PWI as a hostile witness. Mr. Wagona further argued that PW2 was never declared hostile and if the defence had wanted to cross examine him they could have done so. He submitted that no injustice was caused to the appellant.

The Evidence Act provides:-

"S.152. The court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

153. The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him —

(a)…….....

(b) ……

(C) By proof of former statements inconsistent with any part of his evidence which is liable to be

contradicted;

(d)……..”

In Sarkar’s Law on Evidence (supra) at p. 1318 the learned author writes:-

“A hostile witness is one who from the manner in which he gives his evidence (within which is included the fact that he is willing to go back upon previous statements made by him) shows that he is not desirous of telling the truth [Panchanan v. R, 34 C.W.N. 526: A 1930, C. 276: 51 C.L.J. 203]. The matter as to whether permission should or should not be given to cross-examine one’s witness however hostile be may appear to be, is eminently one in the discretion of the trial judge and his decision except in very exceptional circumstances is not open to appeal .

Before allowing a witness to be declared hostile it would have been usual for a judge to look into the statement made before the investigating officer to see whether the witness was actually resiling from the position taken during investigation.” (Emphasis ours.)

It is clear from the legal authorities quoted above that it is within the discretion of the trial court to allow the prosecution to cross examine its own witness. When the court allows the prosecution to cross-examine its own witness, the trial judge must look at the police statement and determine whether the witness is departing from it. In this case the prosecution applied to treat PW1 hostile and the learned trial judge ruled as follows:

“In my view a hostile witness is determined when his testimony is contrary to his statement. This is the position here. I am therefore declaring this witness hostile.”

This ruling of the judge clearly shows that he looked at PWI’s police statement and found that it contradicted his testimony in court. We appreciate that the ideal procedure would have been for the prosecution to tender in evidence the police statement as an exhibit, or for the learned trial judge to record parts of the police statement which were contradictory to PWI’s testimony in court. In our view PWI was properly declared a hostile witness.

We are unable to agree with Mr. Kasule's submission that the defence was deprived of the evidence of PW2. The prosecution simply abandoned PW2 when he said that he did not know anything about the case. However, the prosecution offered PW2 to the defence for cross examination but the defence did not. It was an oversight by the learned trial judge to write in his judgment that PW2 ***"was turning hostile"***. We find that there was no injustice caused to the appellant by reason of PWI being declared a hostile witness and by PW2 being abandoned by the prosecution. Ground I fails.

Mr. Kasule's arguments on second ground were three folded. Firstly, that there were inconsistencies and contradictions in the evidence of the witnesses given in court. Secondly, that there were contradictions and inconsistencies between the testimony of the witnesses given in court and their police statements. Thirdly, that the learned trial judge considered the contradictions in a wrong manner.

With regard to the evidence in court, counsel submitted that the evidence of Acelma (PW4) contradicted that of Celestino Okumu (PW7). Acelma (PW4) testified that the appellant was dressed in a prison officers' uniform and went alone in his car and packed it at the door of her house, On the other hand, Celestino Okumu's (PW7) testimony was to the effect that the appellant was dressed in civilian Clothes and was with another man. He packed his car on the road and went to Acelma's house. Acelma (PW4) testified that Veneranda Pinyanga after being shot by appellant cried out "***Why has Okwanga killed me?"*** whereas Celestino Okumu (PW7) did not mention that in his testimony. Counsel further submitted that there were so apparent contradictions/inconsistencies in the evidence of the prosecution witnesses with regard to the time and the places the appellant is alleged to have committed the offences. According to the evidence of Opoka (PW3), Jurudano Onen's home is four miles from that of the appellant and four miles from that of Acelma (PW4). Counsel argued that the testimony of Acelma (PW4), Celestino Okumu, (PW7) and Opoka (PW3) cannot therefore be true because the appellant could not have been at the different places mentioned by these witnesses at the same time. Counsel submitted that if the learned trial judge had considered all these inconsistencies he would have found that the prosecution witnesses were not truthful.

With regard to the witnesses' testimony in court and their statements to the police, Mr. Kasule submitted that Acelma (PW4) did not say anything about the dying declaration of Veneranda in her police statement Exhibit D2. Besides Celestino Okumu (PW7) does not mention the dying declaration either in his testimony in court or in his statement to the police, Exhibit D4. The learned trial Judge was wrong therefore to find corroboration of the dying declaration in the evidence of Celestino Okumu (PW7) and base a conviction of the appellant on that. Mr. Kasule complained that in Celestino Okumu's (PW7) statement to the police Exhibit D4, he gives a different sequence of the events. He narrates that the appellant first tortured Jurudano Onen and kidnapped him and then went to the home of Acelma, shot her and killed Veneranda Pinyanga. In addition to the above, exhibits D2 and D4 are contradictory with regard to the shooting of Pinyanga. In Exhibit D4, Celestino Okumu (PW7) stated that the deceased was shot in her left thigh whereas in exhibit D2 Acelma (PW4) stated that the deceased was shot in the right thigh.

Mr. Kasule also submitted that the learned trial judge found the appellant guilty on the three counts he was convicted of, before considering the contradictions and their effect on the whole case. Counsel argued that this procedure was fundamentally wrong. He relied on **Oketh Okale & Another V R [1965] EA. 555.**

In reply Counsel for the state submitted that the contradictions concerning where the car was parked was a minor one because Acelma (PW4) testified that the vehicle was parked at their home and Celestino Okumu (PW7) testified that the vehicle was parked by the road side at a road junction and in re-examination he stated that the vehicle was parked fifteen metres from Acelema's home. With regard to time and places, counsel submitted that there were no contradictions. Opoka (PW3) did not state the time when he saw the appellant and his group and the events at Jurudano Onen's home. Celestino Okumu (PW7) also does not state the time when he witnessed the events at Acelma's (PW4's) home. Acelma testified that it was around 9.00 a.m. but this was a mere estimate. On inconsistencies Mr. Wagona conceded that the learned trial judge made specific findings of guilt of the appellant before considering their effect. However, that was not fatal as the evidence on record was sufficient to warrant the convictions. On contradictions between the witnesses' testimony in court and their police statements, learned State Attorney submitted that the police statements were denied by the witnesses, and the

defence did not prove that the witnesses actually made those statements. The State Attorney relied on **Ojede s/o Odyek VR [1962] EA 494** in which it was held by the then Court of Appeal for Eastern Africa that where a witness challenges his/her police statement it must be proved strictly by calling a police officer who recorded it if it is to be used to discredit him or her.

In his judgment the learned trial judge did not consider the witnesses' police statements and rightly so in our view, as they were not properly admitted in evidence. We do not agree with Mr. Kasule's submission that since the State Attorney did not object when the defence tendered Exhibits Dl, D2, D3 and D4 in evidence, the learned trial judge should have considered those statements. The witnesses denied making those statements. For example; Celestino Okumu (PW7) said that he had consumed waragi and the police did not allow him time to sober up before recording his statement. Acelma testified that she told the police about the dying declaration but they did not record it. In such circumstances it was absolutely necessary to call the police who recorded the statements. The duty to call the police was neither on the prosecution nor on the court as Mr. Kasule suggested. The appellant was represented by counsel and the prosecution had fulfilled its duty by availing the defence the police statements. See **Thairu s/o Muhoro & Others V R (1954) 21 EACA 187 & Amisi & Others v Uganda [1970] EA 662.**

In his judgment the learned trial judge considered some of the contradictions, whether Acelma (PW4) was shot while running away or while facing the appellant; whether the car was parked at Acelma's home or by the road side and the fact that Acelma did not mention the presence of Celestino Okumu at her home. He found that those contradictions were minor and did not go to the root of the case and could be explained away by forgetfulness due to lapse of memory. The judge also directed himself on the law on dying declarations; that it is evidence of the weakest kind and so requires corroboration.

We agree with the trial judge's findings and directions. The appellant was well known to all the prosecution witnesses and the offences were committed in broad day light. The witnesses testified nineteen years after the incident. We are of the opinion that the inconsistencies and contradictions which were in their evidence were not intended to deceive the court but were due to lapse of memory. The time and places in our view are not material. The appellant was using a

motor vehicle and according to the indictment all offences were committed at Angal village. The appellant was at Angal village on the morning of 3/6/1980 committing the offences. The learned trial judge properly directed himself on the law on dying declarations. He was right in our view to find corroboration in the evidence of Celestino Okumu (PW7) as he found him to be a truthful witness. Ground 2 therefore fails.

Ground 3 is that the prosecution evidence was so weak and the learned trial judge erred in law and in fact to convict the appellant on such evidence. Mr. Kasule's submissions on this ground were that the offences for which the appellant was convicted were alleged to have been committed in 1980 and no report was made to the police by the complainant's inspite of the fact that the appellant was in Uganda all the time. No police officer who either investigated the case or arrested the appellant testified. Counsel relied on **Kella v Republic [1967] EA 809 and Bogere Moses & Another v Uganda — Criminal Appeal No. I of 1997 Supreme Court (SC).** In reply Mr. Wagona supported the finding of the trial judge that a report was made to Nebbi Police Station. Opoka (PW3) who reported was arrested by police and detained in military barracks at Pakwach apparently under the influence of the appellant. He conceded that the prosecution did not call police evidence but that was not fatal to its case.

We agree with the finding of fact by the trial judge that when relatives of the victims of the appellant's crimes reported to the police they were not helped and Opoka (PW3) was arrested and detained in Military barracks. There is no time of limitation in law within which a criminal prosecution should be instituted. The appellant was an influential person at the time and it is not surprising that it took a period of nineteen years before he could be brought to justice. This court must take judicial notice of the turbulent history of this country which resulted into the breakdown of law and order. We appreciate counsel's complaint that not a single police officer who either investigated the case or arrested the appellant was called as a prosecution witness. It is a good practice in criminal prosecutions to call such police officers whenever possible. Failure to call them however, in this case did not weaken the prosecution case and did not in any way indicate that the charges had been politically motivated. When Acelma PW4 testified, her hand which had been shot by the appellant was visibly disabled and the learned trial judge saw it. Jurudano Onen has never been seen again since 3/6/1980 and Veneranda Pinyanga was killed by

the appellant. The fact that no post mortem examination was performed on her body was explained away by the state of fear which gripped the whole village such that everybody ran away and her body was not buried until three days afterwards. Her funeral was carried out on instructions from the brothers at Angal Mission. In any case even if the appellant had political opponents, there is no evidence that the victims of his crimes and the prosecution witnesses were concerned with the Nebbi District Local Council elections as candidates competing for the same post with the appellant. Ground three must fail.

Mr. Kasule's submissions in ground four were similar to his arguments in ground 2. Learned counsel submitted that the learned trial judge considered the prosecution case in isolation of the defence and found the appellant guilty before considering the defence which procedure was fundamentally wrong. The learned counsel submitted that the trial judge found the appellant guilty on Counts 1, 11 and IV and acquitted him of Count 111 before considering the contradictions in the prosecution case which affected all the counts.

We agree with the submissions of counsel that the appellant was convicted on Counts 1, 11 and IV and acquitted on Count 111 before the contradictions were considered. This being a first appellate court the appellant is entitled to have this court's own consideration and re-evaluation of the evidence as a whole. We have the duty to re-evaluate the evidence which was before the trial court and make up our mind, bearing in mind that we did not have a chance to see the witnesses: See **Kifamunte Henri, v Uganda Criminal Appeal No. l0 of 1997**. Supreme Court (SC) (unreported). We find that there is sufficient evidence on record that the appellant was seen in broad day light by PW4 and PW7 committing the offences which he was convicted of. As we said earlier the contradictions in their evidence are minor. Had the learned trial judge considered the evidence in the proper manner, he would have come to the same conclusion. As we have pointed out already there were no major contradictions in the prosecution evidence. Ground 4 also must fail.

Learned counsel's complaint in ground five is that the learned trial judge relied on hearsay evidence to convict the appellant. Counsel submitted that in his judgment the learned trial judge included what Opoka (PW3) was told by the children and these children were not called as

witnesses. With due respect to counsel we find that in the judgment the learned trial judge did not convict on hearsay evidence. Ground five therefore, has no merit.

Submitting on grounds six and ten together, the learned counsel for the appellant contended that the appellant's alibi was not judicially considered and the evidence of the appellant and his witness was not considered by the court. Relying on **Bogere and Another (Supra).** Mr. Kasule submitted that the learned trial judge should have given reasons why he believed the prosecution evidence and not the appellant's alibi.

We appreciate counsel's arguments. However, we are satisfied that the prosecution evidence put the appellant at the scene of crime at the material time. Acelma (PW4) and Celestino Okumu (PW7) saw him shooting Veneranda Pinyanga and Acelma. Celestino Okumu (PW7) saw the appellant torturing Jurudano Onen and putting his body in the boot of his car. This as we said before was during broad day light. The appellant's alibi was that he was in Kampala on 3 June 1980 when the offences he was alleged to have committed took place. He was at his home in Angal on 30th June 1980 when his house was attacked. He reported to Nebbi police station and on advice of the police reported to the military unit at Packwach. The military carried on their investigations without him. He saw people at Angal football pitch and heard that Jurudano Onen had been arrested. In cross-examination the appellant testified that his sister, Agatha, who answered his alarm saw someone like Jurudano Onen running away from the appellant's home. We find that by this evidence the appellant put himself at the scene of crime on the day Jurudano Onen was kidnapped. The appellant was a prominent figure in the area and the prosecution witnesses knew him well. We do not accept Mr. Kasule's contention that the witnesses implicated the appellant for offences committed nineteen years ago on political grounds. Had the learned trial judge considered all available evidence he would have concluded as we do, that the appellant's alibi was a pack of lies. It is remarkable that the evidence of Celestino Okumu (PW7) showed that there was a meeting in which the appellant admitted committing the offences in question and he even promised to settle the matter with him. Celestino Okumu (PW 7) was not challenged on these matters in cross-examination. Grounds 6 and 10 fail.

Counsel's complaint in ground seven is that the trial judge did not properly direct himself on the burden of proof with regard to alibi. We are unable to appreciate counsel's criticism of the trial judge on this point. In his judgment the learned trial judge was alive to the law that when the appellant raised the defence of alibi he had no duty to prove it. The burden is upon the prosecution to disprove it. That is the law. See **Sentale v Uganda 119681 E.A. 365**. However as we have said earlier in grounds 6 & 10 the learned trial judge did not weigh in detail the appellant's alibi against the prosecution evidence, but that is of no consequence as there is sufficient evidence on record which put the appellant at the scene of crime. Ground Seven must fail.

We now turn to ground eight which is that the learned trial judge was wrong to find that the appellant committed the offences together with others and that there was common intention. Learned counsel submitted that the evidence on record showed that the appellant acted alone in all other counts except in count 111 where he was charged with robbery but was acquitted. We find that the learned trial judge was wrong to have imported common intention in Counts 1 and IV. The evidence on record shows that the appellant shot Pinyanga and Acelma alone. However according to the evidence of Madalena (PW5) and Celestino Okumu (PW7) the appellant was together with others when he kidnapped Jurudano Onen. Common intention was therefore relevant only in Count 11. Ground eight must also fail as the misdirection is not fatal.

Submitting on ground nine, learned counsel contented that in the summing up of the case to the assessor the learned trial judge failed to direct the gentleman assessor on the burden of proof, on inconsistencies and on the dying declaration. On the burden of proof he should have directed the gentleman assessor that each count had to be proved beyond reasonable doubt. The judge should have also pointed out to the gentleman assessor which contradictions were major and which ones were minor. The learned state attorney submitted to the contrary and argued that the judge's directions to the assessor were proper on all issues.

We agree with learned counsel's submission partly. In his summing up the trial judge directed the gentleman assessor only on the count of murder that it had to be proved beyond reasonable doubt. The trial judge should have directed the assessor that each of the counts had to be proved

beyond reasonable doubt. On contradictions, we find that the trial judge pointed out the contradictions to the assessor and directed him that if he considered them to be major, they would affect the truthfulness of the prosecution evidence and that if they were minor and well explained by the prosecution, they should be disregarded. The judge should have explained to the gentleman assessor what is a major and what a minor contradiction is. Mr. Kasule's contention that the trial judge should have pointed out to the assessor which contradictions are major and which ones are minor is untenable as this would be tantamount to influencing the assessor's opinion. We find that the misdirection of the judge was of no effect and did not cause a miscarriage of justice since the gentleman assessor advised the judge to acquit the appellant on all counts. Ground nine therefore fails.

On ground eleven, Counsel submitted that the suspended sentences of 15 years imprisonment on convictions of kidnapping and attempted murder were harsh and excessive. The learned trial judge did not take into account the fact that the appellant was 63 years old and was a first offender. He prayed that the sentence should be reduced to five years imprisonment. Mr. Wagona conceded that the sentences were harsh and excessive in the circumstances. He suggested that the sentences should be reduced to 8 years imprisonment.

We agree with both counsel that the trial judge erred in not taking into account the constitutional requirements of age and the period of remand when assessing sentence. The maximum sentence for kidnapping is death and for attempted murder it is life imprisonment. We find that the sentence of fifteen years imprisonment was harsh but not excessive in the circumstances. The circumstances in which the offences were committed were brutal and the appellant deserved a harsh sentence. The sentence must not only fit the offender but the crime as well. Ground 11 must fail too.

Before we take leave of this case we wish to comment on one matter. During the trial of this case when PWI was being cross examined, one of the gentlemen assessors sought leave of the trial judge to leave because his child was sick. The judge dispensed with his attendance and continued the trial with only one assessor. That procedure was irregular. The trial judge should have adjourned the trial for a while to enable the assessor attend to his sick child and then return. In

case the gentleman assessor was unable to return the judge should have selected another assessor to replace him because PWI was a hostile witness and his evidence was of no effect in the case. No other witness had testified at that stage.

All in all we are satisfied that the evidence justified the convictions of the appellant. Accordingly the appeal is dismissed.

Dated at Kampala this 23rd day of March 2000.

S.T. Manyindo
DEPUTY CHIEF JUSTICE.

S.G. Engwau
JUSTICE OF APPEAL.

C.N.B. Kitumba
JUSTICE OF APPEAL.