THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT KAMPALA

CORAM: HON. JUSTICE C.M. KATO, JA.

HON. JUSTICE S.G. ENGWAU, JA

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

CRIMINAL APPEAL NO. 123 OF 1999.

KEDI MARTIN ……APPELLANT

VERSUS

UGANDA ……..RESPONDENT

(Appeal against both the conviction and sentence

of the High court at Soroti (Kania J.) dated 11.11.99 in Criminal Session Case No. 392 of 1999).

JUDGMENT OF THE COURT

The appellant, Kedi Martin, was tried and convicted by the High Court sitting at Soroti of murder, contrary to sections 183 and 184 of the Penal Code Act and sentenced to death.

The brief facts of the case leading to his conviction are that on 30.3.98 the deceased, Dongan Victor, was killed on his way back home from the market. The following day (31.3.98), the appellant reported to L.C.I Defence Secretary, one Opedor (PW2) that he had killed the deceased the previous day. He found PW2 drinking with other people at the home of one Egidio Obwookor. He took PW2 behind the house and informed him that he had killed the deceased by strangulation.

On getting that information, PW2 arrested the appellant and took him to the home of an L.C.I Chairman of the area, one Ajolo Emmanuel (PW3) where again the appellant confessed that he had killed the deceased and told them where he left the body. PW3 together with local chiefs went to the scene of crime and found the body. The police were called and after the examination

of the body by the Clinical Officer, one Epalu Pantaleo (PW5), the police authorized the burial of the deceased.

The appellant was subsequently indicted for murder. He denied having committed the offence and raised the defence of alibi. He stated that on the fateful day he was grazing his cattle and thereafter remained at his home. He further denied confessing to PW2 and PW3 and said that he was made to admit having killed the deceased because of torture by PW2 and one Agama who did not testify in this case. The learned trial judge did not believe the appellant's defence and convicted him.

There are 8 grounds of appeal, namely: -

1. "The learned trial judge erred in law and fact when he found that the evidence adduced was sufficient to prove that the death of the deceased was caused with malice aforethought.

2. The learned trial judge erred when he found that there was sufficient evidence to identify the appellant as the person who caused the death of the deceased.

3. The learned trial judge erred in law and fact when he convicted the appellant on the basis of circumstantial evidence that was not corroborated.

4. The learned trial judge erred in law and fact when he found that the appellant had made a confession admitting that he killed the deceased.

5. The learned trial judge erred in law and fact when he convicted the appellant in disregard of the major inconsistencies, contradictions and hearsay contained in the evidence of PW1, PW2 and PW3.

6. The learned trial judge erred when he accepted the evidence of PW4.

7. The learned trial judge erred when he rejected and/or disregarded the appellant's defence.

8. The learned trial judge erred when he found that the prosecution had proved its case beyond reasonable doubt."

At the hearing of this appeal, Mr. Cranimer Tayebwa, learned Counsel for the appellant, argued the above grounds in two batches. The first batch comprised of grounds 1,2,3,4 and 5 and the second batch consisted of grounds 6, 7 and 8 together.

In the first batch aforesaid, it was the contention of Counsel for the appellant that the learned trial judge wrongly admitted and relied upon an admission (confession) allegedly made by the appellant to both PW2 and PW3 who were L.C. Officials of the area and based his conviction on that admission in complete defiance of the clear provisions of section 29 A of the Evidence Act which reads: -

> 29 A **"Not withstanding the provisions of sections 24 and 25 of this Act when any fact is deposed to as discovered in consequence of information received from a person whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved."**

Learned Counsel argued that since the appellant had retracted or repudiated the said confession (admission) on the allegation of torture, it was incumbent upon the prosecution to establish that the said admission was voluntarily made. It was therefore necessary for the learned trial judge to hold a trial within a trial in order to prove a fact whether or not the confession was made voluntarily. This was not done and that omission, according to Counsel, contravened the provisions of section 29 A of the Evidence Act.

Secondly, Counsel further complained that there were contradictions in the prosecution case. He submitted that evidence of PW 1, the wife of the deceased, was to the effect that the body of the deceased was found in the cattle track about 100 metres away from her home and it was the L.C. Officials who led her to the scene. PW2 who did not go with either PW 1 or PW3 to the scene said that the body was found lying along a path some 200 metres away from the home of the deceased. Though PW2 did not disclose the source of his information, PW3 who went to the scene of crime confirmed that the body was found lying along a path about 200 metres away from the home of the deceased, It was the contention of Counsel that PW 1, PW2 and PW3 had

contradicted themselves about the place where the body of the deceased was exactly found. In view of those contradictions, it was unsafe for the learned trial judge to rely on the admission allegedly made by the appellant to PW2 and PW3.

The third issue raised by Counsel for the appellant once more relates to contradictions, this time, regarding time factor as to when the appellant actually made the alleged admission to both PW2 and PW3. PW1 testified that on 31.3.98 at about 8 a.m., the L.C. Officials came to her home while asking her for the whereabouts of her husband which she did not know, Later on the L.C. ‘s led her to the place where the body of her husband was found, On the other hand, PW2, said that the appellant informed him of the death on 31.3.98 at about 9 a.m. while he was at the home of one Egidio Obwookor and yet PW3 said that he received the information about the death of the deceased from both PW2 and the appellant at around 11 a.m. In Counsel’s view, there was a doubt as to when the appellant allegedly made an admission to PW2 and PW3 regarding the death of the deceased and therefore it was unsafe for the learned trial judge to rely on the said admission to found a conviction.

Mr. Tayebwa’s last complaint from this batch was that the cause of death is questionable. The medical report compiled by the Medical Clinical Officer, Epalu Pantaleo (PW5) was to the effect that the neck of the deceased was twisted with the tongue hanging out. The face could turn and face the back. Blood was flowing from the face onto the chest. According to Counsel, this report was not conclusive about the cause of death. In the premises the court should have looked for further and better evidence on the cause of death.

In the 2nd batch, the thrust of the complaint relates to appellant’s defence of alibi. He said that on the fateful day he was looking after his cattle and thereafter remained at his home for the rest of the night. Learned Counsel submitted that it was imperative for the prosecution to destroy that defence of alibi which the learned trial judge made no mention of in his judgment. The prosecution failed to rebut it beyond reasonable doubt.

On the other hand, Mr. Vincent Okwang, Principal State Attorney representing the State, supported both the conviction and sentence. He submitted that the learned trial judge had correctly evaluated the evidence on record before admitting the admission made by the appellant

to both PW2 and PW3 in their capacity as L.C Officials of the area. In the first place, it was the appellant who reported to PW2 about the death of the deceased. He took PW2 behind a house and confidentially informed him that he had killed his step father, the deceased, the previous day. He repeated the same admission to PW3 in the presence of PW2.

We agree with the Principal State Attorney that the conduct of the appellant to both PW2 and PW3, in effect, corroborated his admission. He could not have been tortured because nobody knew that the deceased was dead. The appellant trusted both PW2 and PW3 as people in authority and informed them the manner in which he killed the deceased and the place where he had dumped the body which led to the recovery of the body. We are unable to fault the learned trial judge that he did not comply with the provisions of section 29 A of the Evidence Act and that he did not also look for corroboration.

On the issue of where the body of the deceased was discovered, Mr. Okwang rightly, in our view, submitted that there is no major contradiction at all going to the root of the prosecution case. According to PW2, the body was found lying on a village path about 200 metres away from the home of the deceased. PW3 also said the same thing. It was PW1 only who said that the body was found 100 metres away from her home. We think that the precise description of the direction of the place by the appellant to PW2 and PW3 to the discovery of the body. We also find that any contradiction relating to the time when the death was known is not grave as to affect the prosecution case. We have considered lapse of memory since the witnesses testified about 2 years after the incident.

As regards the cause of death, Mr. Okwang submitted rightly, in our view, that it was the appellant who, on his own, admitted voluntarily to both PW2 and PW3 that he had killed the deceased. He described the manner in which he killed him and the place where he dumped his body to both witnesses in great detail as an insider. We find that the evidence of both PW2 and PW3 corroborated that of the appellant when he admitted having killed the deceased by strangling him. The neck is a vulnerable part of the body. We are inclined to believe the evidence of PW1, PW2, PW3 and PW5 who said that the death of the deceased was caused by the fatal injury he had sustained on the neck.

On the defence of alibi, we agree with the Principal State Attorney that the learned trial judge adequately considered it in his judgment. The appellant had put himself squarely at the scene of crime when he admitted before PW2 and PW3 that he had killed his step father, the deceased. He described in great detail the direction of the place where the body was found. This, in our view, was an act of an insider. We find, therefore, that the learned trial judge was justified in rejecting the appellant's defence of alibi. He had, on his own, put himself at the scene of crime. All in all, therefore, we find no merit in this appeal.

In the result, the appeal is dismissed.

Dated at Kampala this 27th day of February 2001.

C.M KATO
JUSTICE OF APPEAL

S.G. ENGWAU
JUSTICE OF APPEAL

C.N.B KITUMBA
JUSTICE OF APPEAL