THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA, AT KAMPALA

CORAM: HON. JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ
HON. JUSTICE S.B. ENGWAU, JA
HON. JUSTICE S.B.K. KAVUMA, JA

CRIMINAL APPEAL NO. 140 OF 2004

MBATUDDE BETTY ..……..…….... APPELLANT

VERSUS

UGANDA……RESPONDENT

(*Arising from the judgment of the High Court sitting at Nakawa, given by Lady Justice C.A. Okello, on 16th July 2003 in Criminal Case No. 0131 of 2002)*

JUDGEMENT OF THE COURT

The appellant, Mbatudde Betty, was convicted by the High Court of Uganda at Nakawa of the offence of murder and sentenced to suffer death. The appellant appealed to the Court of Appeal of Uganda at Kampala against the decision of the trial court. At the close of the hearing of the appeal on 23/11/2009, the judgment was to be delivered on notice. For the reasons stated below, we now find that the prosecution did prove the appellant's commission of the offence of murder beyond a reasonable doubt. We, therefore, dismiss his appeal, and uphold both conviction and sentence.

Background

While the learned trial judge provided a summary of the facts, they deserve repeating in detail. The facts of the case are that on the date in question, 15th September 2001, at Natete Church

Zone, Kampala district, the appellant committed the offence of murder against the deceased, Stephen Wasswa.

The appellant and the deceased were lovers. On the night in question, the appellant paid a visit to the home of the deceased, and slept in his room. There was one bed in the room, which the appellant shared with the deceased and their infant child. The deceased was renting the room where the incident occurred from his landlord, Sabiti Lubega (PW3). The deceased's room was under the same roof as the residence occupied by PW1 and his wife, Eva Lubega (PW1). In fact, the deceased lived in the unit directly opposite PW1 and PW3's unit. On that night, there was no electricity in the building in the evening hours. However, the power came back, at least briefly, at around 9 p.m. that evening. **"I left the compound at about 9:00 p.m. Power had come back."** Between 3 and 4 a.m. the following morning, PW1 and PW3 were awakened by loud noises coming from the deceased's room. PW1 heard two people crying in agony, the deceased and the appellant. Upon awakening, PW3 discovered that there was still no electric power in the building.

After awakening, PW3 first feared that thieves had attacked his tenants. As PW3 exited his living area – PW1 followed him out a short period later – into the common corridor shared with him and the deceased. He saw black smoke and encountered the appellant in the corridor. PW1 testified that the appellant was "**jumping**," and the appellant stated that a substance had been poured on her and the deceased, burning both of them**.** PW3 observed the appellant scratching herself. The appellant tried to show she was burnt as well, and shook her clothes, but PW1 did not observe any burns. However, PW1 later observed injuries to the back of the appellant's hand, as well as injuries to the child.

Next, PW1 and PW3 entered the room where the appellant and the deceased were staying, and noticed a milky substance on the mattress and the floor. They further observed an oily black substance coming from the soaked mattress. PW3 testified that the milky substance was on the floor near the mattress, and had made some holes in the mattress. PW1 further testified that the milky substance was on the side of the mattress where the deceased had been lying. The damage to the mattress was concentrated on one side of it. The appellant told PW3, in PW1's presence, that the milky substance was water she had used to try to put out the fire.

Upon first entering the deceased's room, PW1 observed him in there. Both the appellant and the deceased were crying out that someone had poured a hot substance on them. PW1 left the room to fetch water in hope of reducing the smoke. Upon re-entering the room, PW3 did not observe the deceased. After PW3 poured water on the mattress, the smoke in the room reduced. Upon hearing cries in the corridor, PW1 and PW3 left the room and observed that the deceased was naked and covered in an oily substance. Furthermore, part of the skin on his body was beginning to peel. At this point, according to PW1, power had come on again in the building.

The deceased was taken to Rubaga Hospital that morning. The appellant stayed at the hospital until 6 a.m. that same morning, departed, and then returned at 11 a.m. At the hospital, the appellant stated that **"she had left the light on electric bedside lamp, which could have burnt the deceased**." The appellant then returned to the deceased's home, where, despite PW3's instructions to the contrary, she locked the room and took the keys. PW3 did not enter the room on the morning following the accident, and he admitted that he did not know if it was locked during that time. It was only after the police arrested the appellant that PW3 entered the room.

PW1 testified that the inner walls had some areas that were not completed all the way to the ceiling. However, she was not certain whether one could get from one room to another without using the door. PW3 concluded that one could not get from room to room without use of a ladder and testified that he observed no signs of breakage into the deceased's room.

PW1 testified that the deceased told her that he did not know who had injured him, as he had no enemies. The Rev. Sengendo Livingstone (PW7), the deceased's father, testified that he visited his son at Rubaga Hospital on 17/09/2001 at about 8 a.m. The appellant was not present. PW7 testified that the deceased stated that he did not know what had happened to him. He further testified that one Nakandi, the appellant's friend, told him that the deceased had been electrocuted.

The deceased was transferred to Mulago Hospital on 17/09/2001 at 4 p.m. The appellant was not present at the time. She arrived at the hospital at around 8 p.m. that day, and told the examining

doctor that the victim had been electrocuted. She also told the doctor she had been burnt on the buttocks. The doctor examined her and found no burns. She was further examined by Dr. Barungi Tadeus (PW2) on 2nd October 2001, who observed only a small chemical burn on her right lower arm. The size of the burn comprised less than 1% of the appellant's total body surface. PW2 concluded that it was a chemical burn because it was corrosive and deep in nature.

The Government analyst, Okuri Stephen (PW4) performed a chemical analysis of a blanket, bed sheet, and piece of burnt mattress taken from the deceased's room, and concluded that the exhibits contained concentrated sulfuric acid. Such a compound is corrosive and can cause death. Dr. Linnet Kyokunda Tumwine (PW5) performed a post-mortem examination on the victim, and noted that his external injuries were "**wide spread burns involving chest wall, abdominal wall, groin wall and upper chest wall ...**" He estimated that the burns covered 60% of the victim's surface area, and determined that the cause of death was hypovolemic shock due to severe burn injuries. He testified that possible causes of the burns included hot water, chemical burns due to acid, petrol, or any flammable material. The victim died at Mulago Hospital on Tuesday, 19th September 2001.

The appellant testified to a different version of events. She recounted details of her relationship with another lover, and the lover's threats toward the appellant and her child. Before going to sleep in the deceased's bed on the night in question, the appellant left the home to purchase paraffin. She wished to light a lamp in the home, as there was no power. After returning from her errand, the appellant testified that, *inter alia,* she ironed clothing.

The appellant testified that she slept in the deceased's room but in a separate bed with her baby, on the floor that night. In the early hours of the morning, the appellant awoke after feeling a burning sensation. The appellant testified that not only was the deceased badly burnt, but she herself was burnt on the buttocks, back, and legs. She stated such injuries had left her with scars. Additionally, the appellant testified that the baby suffered burn wounds.

In the ensuing commotion after awakening, the appellant testified that the deceased climbed over the sideboard and fell over the partition wall into the neighbor's room. When PW3 entered the

room, the appellant stated that they had not left any electrical appliances on during the night, only the bedside light. After arriving at the hospital, the appellant stated that electricity had caused the burn wounds. However, her counsel argued on appeal that the deceased's and the appellant's burn wounds may have been caused by an attacker who dumped the acid from the unfinished top of the bedroom wall.

Sometime after the incident occurred, the appellant testified that she checked on the mattress the deceased had been using and "**found it burned**." However, she removed the mattress she and the child had been using on the night in question from the room for she said, **"The one I used with the child also had some burns,")** but decided to take it for use.

DEFENSE

In her defense, she denied committing the offense. The learned trial judge rejected the appellant's defense, convicted her on murder and sentenced her to death, hence this appeal.

GROUNDS OF APPEAL

The appeal was based on the following two grounds: -

1. **That the learned trial judge erred in law and fact when she convicted the appellant on the basis of unsatisfactory circumstantial evidence.**
2. **That the learned trial judge erred in law and fact when she failed to adequately evaluate all the material evidence adduced at trial and hence reached an erroneous decision which resulted into a serious miscarriage of justice to the prejudice of the said appellant.**

Court was prayed to quash the conviction of murder and set aside the sentence of death and order for the appellant's release.

REPRESENTATION

The appellant was represented by Mr. Henry Kunya whilst Mr. Badru Mulindwa, Principal State Attorney, appeared for the State. Counsel for the appellant argued the two grounds together. The Principal State Attorney adopted the same approach.

COUNSEL FOR THE APPELLANT'S SUBMISSIONS

The gist of the submissions of the learned counsel for the appellant was that where the court convicts on the basis of circumstantial evidence, it must be satisfied that the exculpatory facts against the appellant are incompatible with the appellant's innocence, and that such facts lead to an irresistible inference of guilt. There must be no co-existing circumstances that weaken or destroy the inference of the appellant's guilt.

In this vein, counsel argued that there was no direct evidence that the appellant poured concentrated sulfuric acid on deceased, causing his death. Although the victim did not die until four days after the incident, at no point did he disclose whom he thought was responsible for burning him. The appellant contended that when the landlord, PW3, visited the deceased in the hospital, the deceased stated that he was in a lot of pain, but did not disclose who had committed the act. Furthermore, counsel for appellant contended that the police did not find any chemicals, containers containing sulfuric acid, or fingerprints at the scene. Besides, as Mr. Kunya pointed out, the appellant was a victim as well in that she also suffered burn injuries. Counsel for the appellant conceded that the extent of the appellant's wounds were small, but stated this was because she was examined two weeks after the incident.

Counsel for the appellant argued for the possibility of an alternative version of events occurring other than the appellant committing the offence. Counsel observed that the walls of the room where the incident occurred were not completed at the ceiling, such that an attacker could have poured the acid from an adjacent room. Consequently, counsel argued that the trial court was in error to rely on the weakness of the defense in its decision to convict. In fact, it was contended for the appellant, that the prosecution had failed in its duty to prove the appellant's guilt beyond a reasonable doubt.

In any case he found it strange that although not a legal requirement, no motive was shown to commit such a heinous act.

The appellant loved the victim, and the prosecution presented no evidence of quarreling between the appellant and the victim. Furthermore, the appellant cooperated fully with the police, and exhibited good conduct in not fleeing the scene of the crime.

Finally, the appellant argued that she had not had an opportunity to state anything in mitigation of her sentence. Her counsel noted that the appellant, aged 32 years, has productive years ahead of her. She has a child aged 8 years. Additionally, she has four siblings, the youngest aged 12, who rely on her as the family's primary earner. In addition, the appellant is remorseful and repentant.

COUNSEL FOR THE RESPONDENT'S SUBMISSIONS

In reply, Mr. Mulindwa opposed the appeal because the two grounds of appeal had no merit. Counsel submitted that PW1, after hearing the deceased crying, entered the room and noticed a liquid, milky substance that had been poured only on the side of the bed where the deceased was lying. Moreover, counsel asserted that based on PW3's testimony, the only way of entrance into the room where the incident occurred was through the door. The space between the inner wall and the roof of the house did not permit climbing from one room into another. Mr. Mulindwa noted that PW4 had examined the substance found on the mattress and found it to be sulfuric acid. There were only three people in the room on the night in question, and only the appellant could have poured the acid on deceased. If such acid had been poured from without, some would have splashed on the wall and/or other parts of the mattress. Consistent with this was the fact that the appellant's burns only covered 1% of her body.

Mr. Mulindwa asserted that the appellant's conduct was not consistent with innocence. She told PW1 and PW3 that the victim was burnt by electric circuit. Also, she further told PW1 and PW3 that the milky oil was water to help burn out the fire. Furthermore, when PW3 requested the keys to the room from the appellant, she refused. The appellant had time to take away any containers from the room. Therefore, Mr. Mulindwa prayed the court to dismiss the appeal and uphold the sentence.

OBSERVATIONS BY THE COURT

Upon listening to the submissions of both Mr. Henry Kunya, learned counsel and Mr. Badru Mulindwa, Principal State Attorney, and on considering the arguments advanced by both sides,

and on perusal of the evidence before the court as well as the relevant provisions of laws and authorities, we have the following observations to make: -

The learned trial judge correctly addressed her mind to the definition and ingredients of the offence of murder and adopted a correct position of the law as reproduced here below under Sections 188, 189, 191 of the Penal Code Act: -

188. Murder

Any person who of malice aforethought causes the death of another person by an unlawful act or omission commits murder.

189. **Punishment of Murder**

Any person convicted of murder shall be sentenced to death.

191. **Malice aforethought**

Malice aforethought shall be deemed to be established by evidence providing either of the following circumstances -

(a) an intention to cause the death of any person, whether such person is the person actually killed or not; or

(b) knowledge that the act or omission causing death will probably cause the death of some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not, or by a wish that it may not be caused.

The contention by the appellant is that the prosecution did not discharge its duty of proving the charge of murder beyond reasonable doubt. There is no evidence to show that the appellant participated. In any case no evidence of malice aforethought or motive was adduced.

We bear in mind the duty of a first appellate court which is to rehear the case and to reconsider the materials before the trial judge. Further, the court makes up its own mind and must not

disregard the judgment appealed from but has carefully to weigh and consider it as provided by the rules of this Court.

Rule 30 (1)(a) Power to reappraise evidence and to take additional evidence.

(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may –

(a) reappraise the evidence and draw inferences of fact;

This authority is reiterated in the case of **Pandy V R 1957 EA 336.**

On both grounds of appeal the learned trial judge was faulted for failure to give proper consideration to the materials brought before her during the trial. On ground one she was, in particular, criticized for basing her decision on insufficient circumstantial evidence. On the second ground she was faulted for the failure to evaluate all the material evidence adduced before her which resulted in an erroneous decision and thereby causing a serious miscarriage of justice to the prejudice of the appellant. Counsel, therefore, prayed this Court to allow the appeal quash the conviction and set aside the death sentence.

The question to be answered by this Court is whether; the learned trial judge properly evaluated the circumstantial evidence and came to a correct conclusion.

In evaluating the evidence, we also propose to adopt the same approach as both learned counsel for the parties did. We shall, therefore, consider both grounds together. On the evidence on record did the prosecution establish the ingredients of the offence of murder beyond reasonable doubt to justify the conviction?

The answer to this question is not hard to find. With regard to the ingredients of the offence we have no quarrel with the findings of the trial judge on the proof by the prosecution.

Firstly, on death, the medical evidence clearly speaks for itself. The prosecution adduced sufficient evidence to prove that the deceased died due to an unlawful cause.

With regard to death, this is confirmed by the post mortem report by the doctor, PW5, who examined the deceased's body. Additionally, the victim's father, PW7, testified that his son had died.

Even the appellant himself testified that the deceased was **"badly affected,"** and referred to him as **"deceased"** in her testimony. Considering the above, and noting that learned counsel for appellant conceded that the victim died, the first element was established.

We also agree with the findings of the trial judge on the remaining ingredients. The second ingredient comprising of the offence of murder is **(ii) an unlawful act causing death,** was also proved. In determining whether such an unlawful act occurred, we must consider whether the prosecution had established that an unlawful act had been committed and caused the death and not caused by an electrical short-circuit.

According to PW1, upon meeting the appellant shortly after the incident, the appellant was crying out that **"they have poured some hot substance on me**." When PW1 went into the corridor and met the appellant there, she was "**saying something had been poured on them, and they had been burnt**." Additionally, the deceased was crying out that "**some hot substance had been poured on him**."

However, the appellant testified that shortly after the incident occurred, upon the appellant calling out to PW3 for help, PW3 asked her "**have you got short circuit again?**" PW3 further queried the appellant as to whether an electrical appliance had been left turned on during the night, and the appellant replied that only the bedside light had been kept lit. PW1 testified that the appellant stated that "**she had left the electric bedside lamp turned on, which could have burnt the deceased**." Consistent with such a version of events, when the appellant was asked at the hospital what had caused the deceased's wounds, she answered "**electricity probably**." Her friend also told the deceased's father that his son had been electrocuted. **("She answered that my son had been electrocuted.").**

Yet, the appellant testified that there was no power on the evening before the deceased was burned. Accordingly, she was forced to buy paraffin to light a lantern. On returning with the

paraffin, after feeding and bathing her baby, she "**ironed clothes**." This may have been possible, though, given PW1's testimony that "**power had come back**" at around 9:00 p.m. on the night before the incident.

Ultimately, it is of secondary importance whether the appellant had power sufficient to iron clothes on the evening before the incident. **("She appears to contradict her claim that power was on when she stated that one of the several chores she performed that night was buying paraffin when power went out; then ironing afterwards. She must have used a charcoal iron.").** What is instead critical is PW3's testimony that there was no power in the building at the time he heard the screams of the deceased and the appellant. **("There were cries, my wife told me to switch on light but there was no power.")**. Clearly, from the evidence of PW3, **there was no short circuit before or after the incident**. Moreover, PW1 testified that shortly after the deceased requested to be taken to the hospital, power and electricity returned.

Additionally, the court must also consider the physical exhibits taken from the deceased's room by the Police. These included specimens of a blanket, a bed sheet, and a piece of burnt mattress which PW4 "**found to contain concentrated sulfuric acid**." The acid was corrosive and could cause death. Such findings are inconsistent with the deceased's injuries having resulted from an electrical short-circuit.

In the premises, we are satisfied that the prosecution established beyond reasonable doubt that the victim died as a result of an unlawful act. The appellant's testimony contradicts itself. She first stated at the time of the incident that someone had poured a hot substance on her. Then, she insisted that an electric short-circuit caused the injuries. Ultimately, at the trial, she testified at length about a jilted lover that had made threats toward her. At the hearing of the appeal, her counsel argued the possibility of acid being poured from the top of the wall. Regardless of whether the power came back sufficient to allow the appellant to iron, the occurrence of a short circuit was impossible because there was no power in the building at the time of the incident.

Finally, the chemical analysis of the physical evidence from the scene detected concentrated sulfuric acid. PW6 testified that he "**found no sign of fire at the scene. But suspected exhibits**

were burnt by some other substance." The presence of such a chemical and the lack of evidence of a fire is entirely inconsistent with an electrical short-circuit. As the evidence stands on record, in its totality, the deceased did not die as a result of result of an electrical short-circuit, but from burn wounds caused by acid.

We next turn to the third ingredient of murder – there must be **(iii) proof that the appellant committed the unlawful act**. Learned counsel for the appellant, in his first ground of appeal, submits that the learned trial judge convicted the appellant on the basis of unsatisfactory circumstantial evidence. Indeed, the conviction was based on circumstantial evidence, for no one directly witnessed the murderous act of pouring acid on the victim. We note that "**generally, in a criminal case, for circumstantial evidence to sustain a conviction, such evidence must point irresistibly to the guilt of the accused.**" **Mureeba and Others vs Uganda (Criminal Appeal No. 13 of 2003) UGSC 7 (21 July 2006).** To "**justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of guilt.**" **Id. (*citing* R. vs Kipkering Arap Koske and Another (1949) 16 EACA. 165).**

We bear in mind the possible threats from the appellant's former lover, and her counsel's submission of a possible alternative of an assailant pouring acid on the deceased but reject them as unlikely. Yet, as observed by Mr. Badru Mulindwa, Principal State Attorney, if such an event had occurred, it would be difficult for the acid to be poured without splashing on the appellant, the child, and the walls. Moreover, as PW1 testified, the walls were between 4 and a half and 5 meters tall. PW1 stated that "**I don't know whether one could jump from one room to another because walls are tall . . . .**" PW3 testified that the "**space between inner wall and roof of house doesn't permit climbing into next room without a ladder.**" Such testimony, as well as the lack of a ladder at the scene of the crime, make it unlikely that an intruder poured acid on the deceased from the ceiling of the room. An intruder would have had to enter a room adjacent to the deceased's, scale a wall nearly 5 meters high with a container of acid in hand, pour the acid, and make a rapid escape without leaving a trace of his or her activities.

We next examine the Principal State Attorney's submission that if such a substance had been poured on the deceased from the ceiling, the acid would have splashed on the appellant. Such a contention is consistent with the relative wounds of the deceased and the appellant. While the deceased suffered burn wounds covering approximately 60% of his body, the appellant was only burned on approximately 1% of her body. PW1 testified that the appellant was "**jumping**" in pain shortly after the event. PW3 observed the appellant "**scratching her body.**" PW1 did not notice any burns on the appellant's clothes, but did observe "**some injury on accused's on back of her hand**." He further stated that "**at the time, I did not notice injuries on accused apart from scratching. I believed her to have sustained injuries – but later saw her *without* injuries.**" **(emphasis added).** Additionally, PW7 testified that the appellant had complained of burn wounds on her buttocks to a physician at the hospital, but the doctor found no such burns.

Ultimately, the appellant was not examined by a physician, PW2, until 2nd October 2001. PW2 observed chemical burns covering an area "**less than the palm of her hand**." Contrary to the appellant's testimony at trial, he observed no evidence of burns on the appellant's buttocks, back, or legs. **("I got burns on my buttocks back and legs.").** Notwithstanding the delay in the appellant's medical examination, we conclude that such chemical burns would have remained readily apparent on the appellant's body even after such a period between the incident and the examination had passed. The time gap between the incident and the examination does not necessitate a finding that the appellant's wounds were more severe than those minor wounds observed by PW2. The evidence of the appellant's minor burn wounds is inconsistent with acid being poured on the deceased by an intruder from a height of 5 meters, for splashing would have resulted, and the appellant's wounds would have certainly been greater.

On the evidence on record, we are satisfied that the deceased died of an unlawful death. He went to bed alive but he was awakened and cried out when sulfuric acid was poured on him. Evidence was adduced to show that the deceased subsequent death was due to that attack.

However, the appellant testified that while the deceased slept on the mattress, the appellant and the child slept on a second mattress on the floor. She further stated in her defense that subsequent to the fateful events she removed from the room the mattress she had been sharing

with her infant child on the night in question. **("On the contrary, at home I checked on the mattress Wasswa had been using and found it burned. The one I used with child also had some burns, but decided to take it for use.)**

To the contrary, PW1 testified that "**deceased had one bed near the wall. Accused, deceased, and their child shared the same bed."** Moreover, PW3 testified that "**in the house of the deceased I only noticed bed, mattress, cups and chairs.**" The police gathering evidence from the scene of the crime did not find such a mattress either. Consequently, we conclude that there was only one mattress in the room, that which was shared by the appellant, the deceased, and the child on the night in question.

Further, we find the appellant's testimony about the milky substance on the mattress to be untruthful. At the time of the crime, PW1 observed that "**some liquid substance had been poured on the bed. It looked milky in some areas and oily in other areas. The milky substance was on the side where the deceased had been lying and the oily black one was coming out of the soaked mattress."** When PW3 asked what the milky substance was, the appellant said **"I have poured there water**." Yet, when PW3 entered the room, "**he noticed a lot of smoke**." After he poured water on the mattress, the "**smoke reduced**." Neither PW1 nor PW3 testified that the water PW3 poured on the bed resulted in the production of more of the milky substance. We, therefore, find the milky substance present at the scene to be inconsistent with an effort by the appellant to lessen the victim's wounds by dousing him and the mattress with water.

We do find it curious that the deceased, though he had opportunity, did not even attempt to identify the person that burned him. He did not identify the appellant as the perpetrator to PW1 and PW3 at the scene of the crime, nor did he identify the appellant as the perpetrator when speaking to his father at the hospital prior to the victim's death.

Surprisingly, the prosecution did not identify a motive for the appellant to commit the crime. Nonetheless, weighing the above-noted evidence implicating the appellant in the commission of the offence, the lack of identification and motive does not militate a finding that the prosecution

failed to establish the appellant's guilt beyond reasonable doubt. The circumstantial evidence in the case points irresistibly to the appellant's guilt, and is incompatible with her innocence.

The fourth ingredient of the offence of murder is that **(iv) death be caused by malice aforethought**. Turning to the post-mortem report, the cause of death was hypovolemic shock due to severe burns. PW3 testified to the extent of the deceased's suffering after being burned: - "**I heard cry of agony . . . . I found person squatting in entrance to corridor. He was naked covered in oily substance. There was only piece of underpants remaining. He cried that he had a lot of pain. I saw that part of the skin on the body was peeling off."** The burn wounds covered approximately 60% of the deceased's body, and unquestionably resulted in severe pain and suffering. Such burns were widespread and located on the "**chest wall, abdominal wall, groin, limbs, and back**." The deceased further, testified that, his son "**looked like the remains of a burnt substance.**" The victim's final four days were spent enduring the shock and torture of suffering excruciating burn wounds covering well over half of his entire person.

While not argued by learned counsel for the appellant, we note that the deceased's injuries are not the result of an accident or a result of the appellant acting in self-defense. PW6 testified that he observed "**no signs of a fight**" at the crime scene. The acid was poured on the deceased in the early hours of the morning when he was presumably asleep and defenseless. He was vulnerable to such an attack, and could not have prevented it from happening.

We do carefully weigh PW1's testimony that "**accused was in a state of shock**" at the time of the event. Nonetheless, the gruesome nature of the deceased's injuries, the early hour of the crime, the vulnerable and helpless state of the deceased, the deadly acid used to inflict such an injury, the impossibility that such an act was done by accident or was the result of an electrical short-circuit, and the minor burn injuries suffered by the appellant all led to a finding, beyond a reasonable doubt, that the appellant acted with malice aforethought. Dumping acid in such a quantity as to burn 60% of the victim's body demonstrates the appellant's intention to cause the deceased's death.

Finally, the appellant's testimony evidences her intention to cover-up her activities. She testified at trial about a jilted lover and told PW1 and PW3 that someone had dumped a hot substance on her, but repeatedly stated at the time of the incident and thereafter that the deceased had died from an electric short-circuit. Her testimony as to the deceased's death by short-circuit was patently inconsistent with the finding of concentrated sulfuric acid on the mattress. Her claim that there was a second mattress in the room, and that she and the child slept on the ground, were unfounded given the testimony of PW1 and PW3 and the evidence uncovered during the police investigation. Ultimately, we find the appellant's testimony to be consistent with an effort to cover-up the commission of the offence against the deceased.

Given the heinous nature of the crime, we decline to lessen the sentence imposed by the learned trial judge. Acid-related crimes are barbaric and should not be tolerated in a civilized society. We therefore, dismiss the appellant's appeal and uphold the sentence of death imposed by the learned trial judge.

Dated at Kampala this 11th day of May 2010

L.E.M. Mukasa-Kikonyogo

DEPUTY CHIEF JUSTICE

S.G. Engwau

JUSTICE OF APPEAL

S.B.K. Kavuma

JUSTICE OF APPEAL