

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CRIMINAL SESSION CASE NO. 143/95

UGANDAPROSECUTION

VERSUS

OWINO MOSES..... ACCUSED

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

JUDGMENT

The accused person Moses Owino, whom I shall hereinafter refer to as the accused, is indicted for the murder of his wife Christine Naula c/s 183 of the Penal Code Act. He pleaded not guilty to the indictment.

The case for the prosecution was basically that on 2-9-93 the accused and his wife picked a quarrel which resulted in a fight between them. Neighbours who included Wafula PW2 and Ogutu PW4 separated them. Later on the accused reported to Ogutu that the woman had poisoned herself to death. On the other hand the accused denies ever having killed his wife. According to him he had a quarrel with his wife and slapped her once then went away to Ogutu's home but on his return he found the deceased had drunk some medicine used for spraying rice which resulted in her death.

It is trite law that the duty is upon prosecution to prove the guilt of the accused person beyond reasonable doubt and that burden does not shift to the accused except in a few statutory cases: Woolmington v DPP (1935) AC 462. It is also a cardinal principle of our law that an accused person should not be convicted on the weakness of his defence but should be convicted on the strength of the case as proved by prosecution: R v Israil Epuka s/o Achietu (1943) 1 EACA 166.

In a case of murder like the one now under consideration prosecution is enjoined to prove reasonable doubt that a human being was killed, that the killing of the human being was

unlawfully caused and that the killing was with malice aforethought within the meaning of section 186 of the Penal Code Act. Prosecution must further prove that the accused directly or indirectly participated in that killing.

Prosecution adduced evidence of three witnesses who testified that a lady called Christine Naula died on the night of 2-9-93, this fact is not denied by the accused himself; this court has no reason for not believing these witnesses. I find as a fact that that a lady called Christine Naula died on the night of 2-9-93.

The next point to be considered is whether or not her death was unlawfully caused. It is the case for the prosecution that the death of this human being was unlawfully caused but it is the case for the accused that the deceased took away her own life. In the case of Gusanbizi s/o Wesonga v R (1948) EACA 65, it was held that in all cases of homicide death is presumed to have been unlawfully caused unless there is evidence that it was accidental or authorised by law. In the instant case the issue is whether the deceased died as a result of the beating she had received from the accused or died by deliberately poisoning herself. In my opinion it is immaterial as to which of the two theories is correct the fact remains that death was unlawfully caused, whether it was by self poisoning or beating.

The next point to be considered is whether or not the accused was criminally liable for the death of his wife. The evidence of James Wafula PW3 shows that on the night before the death of the deceased he had found the accused quarrelling with his wife although he did not witness the accused beating her. The evidence of Ogutu PW4 shows that he found the accused fighting his wife. The accused himself admits having a fight with the deceased on that night in the course of which he slapped her once; there is no doubt therefore over the fact that the accused and the deceased fought on that night. What remains to be found out is whether or not the deceased died as result of that fight or of poisoning as the defence is alleging.

Mr. Sanya who appeared for the defence ably argued that in the absence of the doctor's evidence to establish the cause of death and in the absence of the exhibits which were used in causing the death of the deceased, this court should not proceed to convict the accused of murder and he relied on the case of: Uganda v. Yosefu Nabenda (1972)2 ULR 19. With due respect, I agree with the line of reasoning adopted by this learned counsel. It is the law that where there are two conflicting theories as to the cause of death and in the absence of the

doctors evidence to resolve the conflict it would be highly unsafe to convict an accused person of murder. In the instant case the doctor did not testify although it is not the law that in all the murder cases doctors must testify but this was a case where it was highly desirable to have the evidence of the doctor to resolve this conflict. In his sworn evidence before court the accused insisted that his wife had poisoned herself using a drug use for spraying rice. PW2 D/Sgt. Wandera told the court that those who reported to him the death of the deceased said the lady had poisoned herself. PW3 Wafula also said that when Ogutu reported to him about the death of the deceased he told him that the deceased had poisoned herself. These 2 witnesses definitely reported the accused's story that the deceased poisoned herself.

In these circumstances I am inclined to accept the accused's story that his wife met her death by poisoning herself. In view of this finding I would hold that the accused was not responsible for the death of the deceased. Considering the fact however, that there was a fight between the deceased before she poisoned herself, a fight which did not result in death of the deceased, and considering: the fact that the accused admitted having slapped the deceased once I find the accused not guilty of murder but I find him guilty of common assault as advised by one of the gentlemen assessors. The accused is accordingly acquitted of murder and convicted of common assault under section 227 of the Penal Code Act and section 86 of TID. (Uganda v Leo Mubyazita (1972) ULR 3 followed)

C.M. KATO

JUDGE

27—9—1995