

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT TORORO**

HCT-04-CR-SC-259/2002

UGANDAPROSECUTION

VRS

KINYERA DAVID.....ACCUSED

BEFORE THE HON. LADY JUSTICE FAITH MWONDHA

RULING

The accused person was indicted on two counts i.e. one of murder c/s 183 and 184 of the Penal Code Act. And on the 2nd count of Robbery c/s 272 and 273 (2) of the Penal Code Act.

It was alleged by the prosecution that the accused and others still at large on the 3rd day of April 2001 at Abore “A” Zone in the Tororo District unlawfully murdered Nyaketcho Angella. And also that the accused and others still at large on the 3rd day of April 2001 at Abore “A” Zone in Tororo District robbed Bamura Stella of cash shs.80,000 (eighty thousand shillings only) and at or immediately before or immediately after the robbery used a deadly weapon to wit a gun to the said Bamura Stella.

Always in criminal cases the prosecution has the burden to prove the case beyond reasonable doubt in order to bring the guilt of the accused person home. In the first count the prosecution has to prove the following ingredients.

1. That the deceased is dead.
2. That the cause of death was unlawful.
3. That there was malice aforethought.
4. That the accused participated in the act.

The defence Counsel submitted a no case to answer on both counts in that there was no evidence established to require the accused to be put on his defence.

The evidence of the prosecution depended on PW1's testimony, who in substance in regard to count I, that she came out of the house and she found one Nyaketcho Angella had died. That she heard gunshots when she was in her house when one of the robbers was with her. It was not established if these were the same robbers who went to the home of the deceased and shot her. Besides this witness said in Court, that she had recognised the accused as he was trying to enter her house. But that since the accused was the last of the three people who stormed her house, he eventually didn't enter. She said that she reported to Police and made a statement there. She made one statement on 4/4/2001 in which she said that she didn't know the accused persons. Even in the 2nd statement she made on 6/4/2001 she said that she didn't know the accused persons.

In cross-examination she admitted that she didn't tell the Police the names of the attackers.

PW3 also said that she heard the deceased shoot and later she heard the gun shots. That she didn't recognise any of the assailants. PW2 said that he arrested the accused because one of the suspects had told him that he got the live ammunitions from the accused. That he went and searched the accused's home and he found two live ammunitions. This evidence is so scanty to connect the accused with the robbery or murder, when there was no identification of the robbers at the scene of crime.

As far as the 2nd count was concerned PW1 said that the robbers took 80,000/= from her, that the robbers had a gun, but as to the participation of the accused, the evidence was lacking.

In the case of *Bhatt v R [1957] E.A.332* it was held in holding [ii] that the question whether there is a case to answer cannot depend only on whether there is some evidence irrespective of its credibility on weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence. It was further stated at page 335 that a prima facie must mean one on which a reasonable tribunal properly directing its mind on the law and evidence could convict if no explanation is offered by the defence.

In the instant case I find the evidence of PW1 who would have been the star witness in this case waiting and PW2's evidence couldn't improve the situation since it was scanty. Since PW2 just found the accused with the two ammunitions the proper charge ought to have been charged would have been unlawful possession of ammunitions not murder or robbery. The evidence of PW1 had been discredited in cross-examination it was clear that at the commission of the offences she never identified any of the attackers. She didn't know them.

Accordingly I find that the prosecution had failed to establish a prima facie case against the accused to require him be put on his defence. I find him not guilty and he is acquitted on both counts under the provisions of S.71 (1) of the T.I.D as having no case to answer.

The accused should be released and set free unless if he is being held on other lawful charges.

Right of Appeal explained.

F. MWONDHA

JUDGE

3/4/2003