

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
HCT-05-CK-SC-0052 OF 2004

UGANDA ::: PROSECUTOR

VERSUS

A1 TUMUHIMIBISE JOVOLIA)

A2 MUHAREZA GODON)

A3 MPAKANI JULIUS) ::::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

The three accused at the bar are indicted for the murder of TURYATEMBA VENANSIO. It is alleged that the three during the month of February 2003 at Bweisha cell, Kabale District murdered Turyatempa Venansio.

The state examined two witnesses. PW1 Kashaki Vincent is the biological father of Turyatempa Venansio now deceased.

He testified that his son Turyatamba was killed in the month of February 2003. Accused No.I was his wife, while A2 and A3 are his nephews. The home of his some now deceased was about a mile away from his home. During the month of February 2003 he lost sight of his son. He asked his son's wife now A1 about deceased and was told that he had gone to Rweshema for work. He got concerned and started investigating. His investigations revealed that his son was not at Rweshema as alleged by his wife now A1. In April 2003 the body of his son was found in a pit latrine rotten. The pit latrine had not been used and was open. The body was still recognizable and he recognized it as that of his son. It had no head. He identified it by the clothes. Deceased had not been on good terms with his wife now A1. By the time the body was found A1 had disappeared from home. The son of the deceased appeared in court but failed to talk despite all the care that was taken to get a word from him.

DIP. Gumusimiriza was at the material time stationed at Kabale. On 9/4/2003 A1 was taken to his office by a Junior Officer for purposes of recording a charge and caution statement. A1 gave her statement after being duly cautioned and he reduced the statement in writing in exhibit P1. Later he made a translation of that statement in exhibit P2.

In her defence on oath A1 testified that her late husband left home on 10/2/2003 for Rweshama for work. He left by bus. Since that time she has not seen him again alive or dead. She was arrested on 3/4/2003 in Kabale town she swore.

Both A2 and A3 denied any involvement in the murder of the deceased. On the above evidence the state asks for a conviction while defence counsel submits that there is no evidence implicating any of his clients.

Both assessors advised me to find all the accused persons not guilty and to acquit them.

I must confess that this case has caused me much anxiety. There is no doubt a man who was called TURİYATEMBA VENANSIO the son of KASHAKI and husband to A1 is dead. Indeed he is dead and buried. There is no doubt that he died of an act that was unlawful. His body was found headless. The question is : who did that hideous act? Prosecution say that deceased died at the hands of the accused at the car. The accused persons at the bar in no uncertain terms say they did not. It is for the prosecution to prove a case against each of the accused persons beyond reasonable doubt.

In this case the only evidence that tends to connect both A2 and A3 is the extra judicial statement that A1 made to police. After a trial within a trial I held that this statement had been voluntarily recorded and I admitted it in evidence. It is however clear that this statement is exculpatory in nature. It is trite law to say that a statement is not a confession unless it is sufficient by itself to justify the conviction of the person making it of the offence with which he is tried. ANYANGU & ORS. V.R. (1968) E.A. 239. It is equally trite that such a statement is only evidence against the maker of it. ANYANGU & ORS V. REPUBLIC (Supra). The application of these principles to the facts of this case brings me to the conclusion that the state has failed to prove a case against both A2 and A3. They are accordingly found not guilty and acquitted.

This then brings me to A1. The evidence against her is purely circumstantial. The law is clear. In a case depending exclusively upon circumstantial evidence, the court must, before deciding upon a conviction, find that the exculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other hypothesis than that of guilt of the accused: Simoni Musoke v. R. (1958) E.A. 715. The learned authors of TAYLOR ON EVIDENCE 11th Edn. At page 74 put the law more succinctly when they state:

“The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt.”

With this statement of the law in mind I approach the facts of this case.

I accept the evidence of PW1 that when he asked this accused the whereabouts of his son, accused told him that he had gone to Rweshama for work. This as it turned out was a complete and naked lie.

The truth of the matter is that at that time her husband within a pit latrine being fed on by maggots. This pit latrine was in the compound where deceased lived with his wife now the accused. I accept the evidence of PW1 again that both deceased and the accused were not on good terms. I accept his evidence further that by the time the body was recovered in the pit latrine this accused had fled her home.

Evidence that accused lied when asked about the whereabouts of her husband is admissible to show consciousness of guilt. In court she repeated the same lie. Elsewhere it has been held that although lies and evasions are not conclusive evidence of the guilt of the accused, they may taken with other proved facts holster the case for the prosecution.

But all that said I must say that this was a case that was badly handled both by the investigators and the prosecution. It was said that accused reported herself to police. Strangely enough the officer to whom she allegedly reported was not called as a witness. This could have eliminated accused's claim that she was merely arrested, thus exposing her as a confirmed liar.

It would appear there was no post mortem examination of the body of the deceased and if it was done no doctor was called to say that he conducted such examination. The Doctor's evidence could have thrown light as to the time the deceased was killed. Was it before or after PW1 had asked accused about his son. All these questions remain unanswered. It cannot therefore be said that the "circumstance" are "such as produce moral certainty, to the exclusion of every reasonable doubt."

I regret to see a criminal escaping justice but my duty is to administer the law any my sentiments are irrelevant. This accused too is found not guilty and acquitted.

J.B.A. Katutsi

JUDGE

27/10/2004

Court as before.

Judgment read.

J.B.A. Katutsi

JUDGE

27/10/2004