

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA**

**HCT-05-CR-SC-0207-2003**

**UGANDA .....PROSECUTOR**

**VS**

**KAMUKAMA GEOFFREY .....ACCUSED**

**BEFORE: THE HON. MR. JUSTICE P K MUGAMBA**

**JUDGMENT**

Kamukama Geoffrey is charged with murder, contrary to sections 188 and 189 of the Penal Code Act. The prosecution called four witnesses to prove its case. Besigye Mary Kiriatorisi was PW1, Achleo Tinkamanyire was PW2, Cyril Barigye Robert was PW3 while Mujuni Archangel D/IP was PW4. Evidence in the postmortem report was agreed and Police Form 48 B is Exhibit P.1.

In his defence accused gave an unsworn statement. He called no witnesses.

Briefly the prosecution case is that at about 7.00 p m. on 26th December 2002 the accused, who was husband to the deceased, had a fight with the deceased at their home. He used a bottle to assault her. Later the deceased was admitted to Kagongo Hospital with injuries on her head. She died at the hospital next morning. When the body was examined there were cuts on the scalp and left arm. The spleen was ruptured. The cause of death was severe haemorrhage leading to low functioning of vital organs such as brain, heart and liver. Later accused was arrested and charged with the offence.

The prosecution has a duty to prove all the ingredients of the offence beyond reasonable doubt. See **Sekitoleko vs Uganda** [1967] EA 531. Where the charge is murder the following ingredients must be proved:

i. that the person is dead,

- ii. that the killing was unlawful,
- iii. that there was malice aforethought, and
- iv. that accused participated in the offence.

It was the evidence of PW1 and PW2 that Kishemereire Gaudensia died. Medical evidence which was admitted agrees with the fact. Even the defence does not dispute the fact of the death of the deceased. I am satisfied the prosecution has proved this ingredient beyond reasonable doubt. The law presumes that the killing of any human being is unlawful except where it results from an accident or is excusable by law. See *Gusambizi Wesonga vs R (1948)* 15 EACA 63. The defence could rebut the presumption by adducing evidence which shows the killing was not unlawful. I do not find such evidence on record. I am satisfied the prosecution has proved this ingredient beyond reasonable doubt.

PW1 testified that she witnessed the fight in part. The deceased was being assaulted with a wholesome bottle of beer. It was sealed and PW1 saw no injuries on the deceased then. The bottle broke when it was thrown at PW 1 when she went to intervene in the fight. PW1 did not state what the fight was over. It is PW1's testimony that when she returned, after the deceased sent for her to come and nurse her, she saw injuries in the deceased's head. No evidence was led to show how the injuries had come about.

The extra judicial statement of accused was admitted in evidence. In it accused stated that the deceased had met accused in the company of another woman. The deceased carried a bottle with which she wanted to assault accused. Accused had then pushed the deceased and she fell as a result. Later the deceased had got off the ground and left the spot.

From the evidence above it is not clear how the deceased sustained the injuries that led to her death. In the circumstances it is not possible to ascribe malice aforethought to accused. This ingredient has not been proved beyond reasonable doubt.

PW1 testified that he saw accused whom she knew very well assaulting the deceased with a bottle of beer at about 7.00 p.m. on 26th December 2002. Accused's extra judicial statement

which was recorded by PW4 shows that at about 7.00 p.m. on 26th December 2002 accused and deceased were together and there was a bottle involved. Though the extra judicial statement is repudiated, it is corroborated by the evidence of PW1.

In his defence accused stated that he never met the deceased at the time alleged. When an accused person sets up an alibi as his defence he does not bear the responsibility to prove it. The prosecution has a duty to disprove the alibi by adducing evidence which places the accused person squarely at the scene of crime. See **Uganda vs. George Kasya** [1988 — 90] HCB 48.

There is evidence by PW3 showing that accused had fled the area after the fight on the material night. This evidence is supported by that of PW2. The conduct of the accused of running away after fighting with the deceased was not conduct of an innocent person. He ran away because he felt guilty after assaulting the deceased.

I am satisfied the prosecution has disproved the alibi by the testimony of PW1 supported by the extra judicial statement as well as the conduct of the accused when he ran away.

This ingredient has been proved by the prosecution beyond reasonable doubt.

In their joint opinion the assessors advised me to find accused not guilty of the charge and to acquit him. While I agree with the opinion that he be acquitted of the charge which I proceed to do, I find accused did assault the deceased. Accused is therefore convicted of the charge of common assault, contrary to section 235 of the Penal Code Act.

P K Mugamba

Judge

23<sup>rd</sup> June 2006

23<sup>rd</sup> June 2006

Accused in court

Mr. Dhabangi for accused person

Mr. Onencan State Attorney

Mr. Rutazaana court clerk

Court

Judgment read in open court.

P K Mugamba

Judge

**SENTENCE**

Convict is a person who has spent 3 1/2 years on remand. He has served more than the statutory sentence of 1 year. He is released now.

P K Mugamba

Judge