

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT BUSHENYI
HCT-05-CR-CSC-49-2005

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

JESCA KANYENGYERE :::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. JUSTICE P.K. MUGAMBA

JUDGMENT

Jesca Kanyengyere is indicted for murder, contrary to Sections 188 and 189 of the Penal Code Act. Four witnesses testified for the prosecution. Irene Tukashaba was PW1, Wilberforce Katwesigye was PW2, Biryomumisho Dan was PW3 while Twabitungire Naboth testified as PW4. Medical evidence in the post-mortem report was agreed and admitted. Police Form 48B is Exhibit P.1.

In her defence accused gave a statement on oath. She denied involvement in the offence and did not call any witnesses on her behalf.

The prosecution case in summary is that on the night of 24th/25th February 2004 accused who was a wife to the deceased entered their bedroom with a panga and proceeded to inflict fatal injuries on the deceased who lay in bed. Accused immediately fled the scene but was arrested several days later. In consequence this charge was preferred against her.

It is the duty of the prosecution to prove the case against an accused person beyond reasonable doubt. A conviction in a charge of murder will be secured if the prosecution proves that the deceased person died, that the killing of the deceased was unlawfully caused, that there was malice aforethought and that accused participated in the alleged crime.

Concerning the death of the deceased, PW1, PW2, PW3, PW4 as well as the accused herself testified that Muhirwoha Moses died. Agreed medical evidence shows a post-mortem examination was carried out on the body of Muhirwoha Moses. This ingredient has been proved by the prosecution beyond reasonable doubt.

The law presumes the killing of any human being to be unlawful except where it is accidentally caused or where it is excusable by law. According to medical evidence the death of the deceased followed haemorrhagic shock and severe anaemia resulting from deep cuts on the right side of the neck, right carotid artery and internal and external jugular vessels. I find no evidence to rebut the presumption that the killing was unlawful. This ingredient also has been proved beyond reasonable doubt.

Malice aforethought is the intention to bring about the death of a human being even if the person who is ultimately killed is not the one who was intended to be killed. Evidence of malice aforethought may be direct or circumstantial. There is no direct evidence or record of a grudge which could have led to the killing of the deceased. It is however possible to infer malice aforethought from the type of weapon used, the vulnerability of the part of the anatomy on which the injuries are inflicted, the number of wounds inflicted as well as the conduct of the assailant or assailants before and after the attack. Agreed medical evidence shows that the deceased's body bore deep lacerations. PW1 testified that she saw the deceased being cut with a panga. PW1 was able to see this with the aid of a tadooba light as she stood in the doorway to the deceased's bedroom. There is need to corroborate her evidence on this by some other evidence however since that is evidence of a child of tender years. Besides the medical evidence already alluded to there is the respective evidence of PW2, PW3 and PW4. They all stated that they found a blood stained panga inside the bedroom. Though the panga was mentioned in evidence and produced before Court it was never preferred as an exhibit. I do not find this affecto evidence of the panga being found at the scene since detailed reference was made to it. See: Uganda Vs. Katusabe [1988-1990] HCB 59. Again in their respective testimonies PW2, PW3 and PW4 stated that there were several cuts on the head of the deceased. Indeed the post-mortem report shows that the deceased had multiple deep lacerations on the right side of the neck and face and that the cuts impacted on vital blood vessels. Such injuries could have the resulting effect and that is the

demise of the deceased and this assailant could have foreseen. No doubt who ever attacked the deceased abandoned him to his misery hoping the deceased would ultimately die given the serious wounds inflicted. The prosecution has proved beyond reasonable doubt that there was malice aforethought.

With regard to accused's participation in the offence there is the evidence of her daughter PW1 who stated that she saw accused carry a panga into the bedroom where the deceased, PW1's father, slept. PW1 in her evidence stated that she was able to see accused cut the deceased. It was her testimony she had earlier been sitting in the sitting room which adjoined the bedroom but had later moved to the doorway where she witnessed what took place in the bedroom. PW1 testified that there was light from a lighted tadooba which accused carried. However the evidence of PW1 is that of a child of tender years and requires corroboration in every material particular if a conviction is to be founded on it. No one else saw accused cut the deceased. PW1 testified that accused fled soon after she cut the deceased.

The rest of the prosecution evidence is what transpired on the occasion the deceased died is corroborated. PW2, PW3 and PW4 arrived at the deceased's house and found accused had fled. It is the evidence of PW2 that he came to learn of the incident at the deceased's house not from the accused, like accused stated in her evidence, but from PW1. Furthermore PW2 said he did not hear any alarm raised despite the fact that his house is close to that of the deceased. I shall note also that there is no evidence of accused reporting the terrific death of her husband to anybody.

Accused in her defence stated that she had returned from the house of her mother-in-law at about 10.00p.m. It was her evidence she had gone to her mother-in-law's house in order to be assisted to administer an injection to her body. It was her testimony that when she left her house on the mission her husband was away from the house presumably to have a drink. Upon her return accused had gone to the kitchen to look for matches to light a tadooba.

According to her while she was still in the kitchen she heard what sounded like a groan coming from the main house. She had entered the house and found the deceased already injured. The children including PW1 were asleep in that bedroom. Accused had cried out and as a result PW1

had woken. It was the evidence of accused she had gone out and reported the incident to PW2. According to her PW2 had in turn told Muhumuza. Accused said that she heard PW2 and Muhumuza agree that they would kill her. She said that because it was dark that two men were not aware she had heard them. She added that after she heard what they had said, she decided to return to her house where she collected her baby and fled the locality. She proceeded to the home of her sister at Kabwohe where she was arrested days later after her sister learnt she was being looked for.

I have considered the evidence of the prosecution which comprises the testimony of PW1 and the circumstantial evidence alongside the defence. The evidence of PW1 as already noted requires corroboration. Circumstantial evidence must be **harmoniously** examined because evidence of that kind may be fabricated on the accused person. It is therefore necessary before drawing the inference of the guilt of the accused from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. See **Simon Musoke Vs. R. [1958] EA 715**. I have considered the fact that accused was married to the deceased and that she had an early opportunity to report what transpired at the house as would normally be expected of her. She did not. There is no evidence she raised an alarm either. She did not remain at the scene but instead chose to flee which I do not find a sign of innocence. In her flight she left her children in the house. She went far from the village and never reported even after several days. She was not truthful when she said she told PW2 what had happened at the house, whereas both PW1 and PW2 testified it was PW1 who reported. I am satisfied all this circumstantial evidence corroborating the testimony of PW1 and disproves accused's assertion that she did not participate in killing the deceased. She did.

The prosecution has proved beyond reasonable doubt that accused participated in the killing of the deceased.

The gentlemen assessors in their joint opinion advised me to find accused guilty and convict as charged. For the reasons I have given in the course of this judgment I agree with the opinion. I find accused guilty of murder and convict her accordingly.

P.K. Mugamba

Judge

8th Febraury 2007