

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**CRIMINAL SESSION CASE NO. 27 OF 2012**

**UGANDA V SOWEDI ABDUL Alias OBONGI LAWRENCE**

**JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO**

The accused person is charged with murder c/s 188 & 189 of the penal code Act. It is alleged that the accused person and others still at large on 20<sup>th</sup> June 2011 at Lwala village in Kaberamaido district with malice aforethought murdered Wabwire Isma Abdu.

Prosecution was led by Mr. Noah Kunya Senior State Attorney while the accused person was represented by Mr. Ogire on state brief.

Assessors were Ocole Joshua and Amoding Florence.

Prosecution had a duty to prove its case beyond reasonable doubt.

Prosecution had duty to prove the following ingredients.

That the accused persons with malice aforethought caused the death of the deceased.

Malice aforethought is proved when there is evidence of intention to cause death; or knowledge that the act or omission will cause death accompanied with indifference whether death occurs.

**Proof of death**

Proof of death, prosecution relied on Pexh. 1 , a post mortem report that confirms death of Wabwire Isma Abdu . The body was examined by Dr. Balengera of Kaberamaido Health Centre on 28.6. 2011. It was identified by Musisi Bruhan Sowedi.

**Whether the death was caused with malice aforethought and participation of accused person.**

Prosecution relied on evidence of PW1 Muloni Abubakar, PW2 AIP Ekaju, and PW3 Det.Sgt Esebu Edward.

The evidence of PW1 Muloni shows that the deceased was his paternal cousin brother. That on 20.6.2011, he was driving at night a fuso lorry along with the deceased at about 1 a.m between Kaberamaido and Kalak when he came across a roadblock. According to the witness, a log had blocked the road halfway. He sighted this obstacle with the aid of head lamps of the vehicle. As a result, he slowed down but didn't see anyone, so he increased speed and put on full lights. Shortly thereafter, he saw the accused person and another person emerge from the side of the road and stand in front of the vehicle and stop the witness. According to the witness, he ignored the accused person who then immediately ordered his partner to 'kill', at which point the witness and deceased were shot at with the bullets hitting the deceased in the heart. The witness testified that he continued driving until he got to Kaberamaido police station. Two other person they were travelling with were injured and were taken to Kaberamaido hospital while the deceased's body remained at the police station.

In cross examination, the defence attempted to make out that the witness could not have identified the accused person that night but the witness was firm that he registered in his memory the face of the accused person . The defence also tendered DEXh. 1, the police statement of the witness in he which describes the second man he saw as wearing a blue and white stripped trousers similar to police uniform. Yet in his evidence in court he described the

trousers as those similar to army uniform. These discrepancies can be explained by the lapse of time since the incident and they in no way affect the credibility of the witness.

In his examination in chief, the witness described the accused person as wearing a white vest while the person he was with wore army trousers. He also testified that he sighted the accused person at a distance of about 30 meters away by the side of the road, on the driver's side, as he sped away.

The other evidence relied on is a retracted charge and caution statement, Pexh. 4. PW2 AIP Ekaju recorded the charge and caution from the accused person on 18.8.2011.

A trial within a trial was conducted after the accused alleged it was obtained by duress. In my ruling, I found there was no evidence the accused was assaulted by the police officer hence the statement was subsequently admitted as evidence.

**The Supreme court in Bwire Wycliffe & anor v Uganda , Criminal Appeal 12 of 2003** restated the position that a court may accept a retracted charge and caution and act on it but with caution. Corroboration is not a legal requirement if the court is 'satisfied after considering the all material points and surrounding circumstances that the confession cannot but be true'.

The statement describes in detail events that he says happened on 26.6.2011. In the statement he admits that him and Elweu collected a gun, and then placed a log on the road between Okapel and Kaberamaido in the company of one Elweu. When a vehicle passed, they shot at it and heard one person cry. He also admits to hiding the gun at Amileny , in the bush.

Although the accused person in the statement refers to 26.6.2011 as the day of the ambush on a vehicle, this was a deliberate effort to be diversionary. That he refers to a date different to the date of 20.6.2011 when the ambush took place doesn't adversely affect the prosecution case in light of the credible evidence of PW1 Muloni.

The prosecution also relied on evidence of PW3 Det. Sgt. Esebu Edward who testified that on 16<sup>th</sup> August 2011, the accused person was brought to the regional office where the witness was stationed and asked to accompany the Rapid Response Unit and the accused person to recover a gun. The accused person led the police team to Amileny swamp where he pulled out a shotgun with a black handgrip. He marked it ESBA31. The witness was also handed cartridges by IP Asmo O/C Kaberamaido.

The witness took the gun and cartridges to the Government Analytical Laboratory to ascertain if the gun discharged the cartridges and the results were inconclusive according to Pexh. 8. With regard to the gun, Pexh. 6, the report found that it had discharged ammunition.

The accused person made a sworn statement in which he denied the offence and raised an alibi.

In light of the evidence of PW3 Det. Sgt. Esebu which I find credible, I am satisfied that the recovery of the gun with the help of the accused person, which gun had discharged live ammunition coupled with the charge and caution statement that he hid the gun in Amileny and that he had shot at a person in a moving vehicle are facts consistent with the guilt of the accused person.

The evidence of PW3 adds up with the evidence of PW1 Muloni, the single identifying witness who placed the accused at the scene of crime on 20.6.2011 in the night along Kaberamaido –Kalak road.

The callous manner in which the accused person ordered his partner in crime to kill manifests a deliberate intention to kill while the random shooting manifests a lack of concern whether the deceased or any occupant in the moving vehicle died.

I am in agreement with the two assessors that the accused person is guilty of the offence charged. I accordingly find that the accused person with malice aforethought caused the death of Wabwire Isma Abdu and i convict him of murder as charged.

**DATED AT SOROTI THIS 3<sup>RD</sup> DAY OF JULY 2014.**

**HON. LADY JUSTICE H. WOLAYO**