

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL SESSION CASE NO. 145 OF 2013

UGANDA V ANGURA LOKOSOWA ALIAS NATODOKELAI

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person in this case is charged with murder c/s 188 of the Penal Code Act. It is alleged that the accused person and other still at large on 15th May 2011 murdered Lomuso Abraham.

Prosecution was led by Mr. Amalo RSA Moroto while Mr. Tiyo appeared for the accused person on state brief. Assessors were Arap Daniel and Adupah Dinah.

Prosecution had a duty to prove beyond reasonable doubt that the death was caused with malice aforethought. This means Intentionally Causing death or not caring if acts or omissions will lead to the death of the deceased.

The burden of proof is on the prosecution to prove its case beyond reasonable doubt.

Proof of death, whether there was malice aforethought and participation of the accused person

These aspects of the case will be handled together for convenience.

In the absence of a post mortem report, prosecution relied on evidence of witnesses to prove that death occurred. PW1 Amyadaka Madelina widow of the

deceased testified that she knew the deceased person whom she often saw in town. On 15.5.2011, at 1 p.m, the accused person requested for money from her husband the deceased but no money was given to him. Later in the evening at about 8 p.m, the family was about to enter the house, when a group of people arrived. That the group including the accused person successfully broke down the door, first pulled her then left her and went for her husband whom they dragged from the house. That the accused person then shot the deceased in the chest and stomach. That the deceased after being shot, grabbed a cap and gun from the accused person as he bled. According to the witness, she was very close to the door when this happened. She testified that she was able to see as there was moonlight by which she could pick up a coin from the ground. It was after grabbing the cap and gun that the deceased collapsed.

She then phoned her brothers in law Adyakanyanga and Siloyi who arrived at the scene and the deceased was taken to Matany hospital for an operation. Earlier on, the witness had said her husband died before the brothers arrived. However, on a closer scrutiny of her testimony, the deceased was alive by the time he was taken to hospital.

PW1 further testified that at Kaabong hospital, the accused person was brought in with a pierced left side of the abdomen. According to the witness, the deceased had pierced the accused person during the attack.

In cross examination, the witness testified that she was inside the house at the time of the attack. In re-examination, her evidence is that she witnessed the deceased stab her husband.

I understood that the this witness is person with no education and therefore she narrated the sequence of events in a somewhat disjointed manner but overall, I was able to make deduce what she was saying.

With regard to whether the deceased died at the scene or in hospital, the fact that he was taken to hospital means he was still alive as will be seen from the evidence of other witnesses.

The evidence of PW2 Konyang Jackson is that the deceased was his brother. On 15.5.2011, at about midnight, he was informed by his brother Adyakanyago that Lomuso had been shot by the enemy. He proceeded to the scene where he spoke to the deceased who said the enemy Dodoi had shot him. According to the witness, the deceased also said he had pierced one of them twice in the face and stomach. The witness testified that the intestines of the deceased were out and he had been shot in the chest and hand.

The witness was among those who took the deceased to Kaabong hospital in a car.

On arrival at Kaabong hospital, as he looked around for doctors, the accused person came into the hospital with a cloth on his head and stomach. PW2 testified that on seeing the accused person whose bed was next to the bed of the deceased, the deceased immediately identified him as the attacker and that he had pierced him.

PW2 clarified that the beds were at the reception part of the hospital, presumably the casualty room.

According to PW2, on the next day at 10 a.m, they were advised to take the deceased to Matany hospital for an operation where he was taken but he died at 5 p.m.

The accused person was arrested from the hospital.

PW2 Konyang corroborated PW1 Amyadang in as much as both attest to the fact that the deceased was taken to hospital which means he was alive. He also corroborates PW1 when he confirms that he saw accused person that same night of the attack arrive at the hospital while injured. PW1 had testified that the deceased stabbed the accused person whom she identified as part of the attacking group.

That PW1 testified that the deceased was taken to Maatany hospital and then later said Kaabong hospital is a minor discrepancy that does not affect her credibility.

What is a fact is that the deceased was shot on 15.5. 2011 at night, taken to Kaabong hospital where accused was also brought in for treatment of injuries, and on the next day 16.5.2011 the deceased was taken to Mataany hospital for operation where he died at 5 p.m.

The defence suggested during cross examination of PW2 that PW1 was not in hospital and yet she too had said she saw the accused when he arrived at the hospital. PW2 testified that when the deceased identified the accused as his attacker from the hospital PW1 had not arrived. This doesn't mean she did not go to hospital . She could have gone there later in the night or the next day.

In her words' the accused was brought to Kaabong hospital while I was still there'.

What is material is that the two witnesses confirm the accused arrived at Kaabong hospital while injured. The logical inference is that the injuries were inflicted by the deceased as confirmed in his dying declaration to PW2 Konyang and as testified by PW1 Amyadany during the attack.

The testimony of PW3 Lokwang Morriss is that he knew the accused whom he at times deployed as parish security officer. That on 15.5.2011, at about 6.30 p.m, he sent the accused person on an assignment. On the next day, he was informed by Konyang Jackson, LC1 chairman that accused person was in hospital and that Konyang's uncle had been shot. The witness went to the hospital where he spoke with deceased who told him the accused person had shot him.

This witness was told both accused person and deceased were in hospital but he claims he spoke to the wife of the accused person who told him the accused person was in hiding. Whereupon, the witness informed police.

PW3's evidence confirms that the deceased named the accused person as his attacker. The rest of the evidence is of little or no value and I disregard it.

The evidence for the prosecution is in three parts. The eye witness account of PW1 Amyadany whom I believed; the identification of the accused by the deceased as his attacker while he was still alive in the presence of PW2 Konyang ; the injuries inflicted on the accused person by the deceased and confirmed by the deceased when he saw the accused in the same hospital that night of the attack.

Strictly speaking, the identification by the deceased as his attacker is a dying declaration that is admissible because the deceased died a day after making that declaration. The declaration, as pointed out earlier, is corroborated by other independent evidence of PW1 Amyadang and the injuries suffered by the accused person. PExh. 2, a medical examination of persons accused of serious crime admitted by consent of both counsel, confirms the accused had stab wounds on the back, legs and hand.

Accused made a sworn statement in which he places himself at the scene of crime, he claims to have been abducted by the enemy who wanted him to show them animals whereupon he took the group to the home of deceased, they pushed him into the house of deceased and that's when deceased knifed him. He also claims the enemy knifed him.

I disbelieve the accused person's account of events.

It was suggested by defense counsel during the submissions that the accused person was compelled by a group of people to take them to the home of the deceased. While compulsion is a defense in criminal law, I find it difficult to believe that he was under compulsion to take criminals to the home of the deceased who had a few calves, a donkey, in his custody, according to PW2 Koryang.

From the foregoing, I find that the prosecution proved beyond reasonable doubt that death of Lomuso occurred in May 2011; that it was caused by the accused person recklessly without caring if he died, and that it is the accused person that shot him.

I am in agreement with the two assessors that the accused person is guilty as charged.

He is accordingly convicted of murder c/s 188 of the penal code Act.

DATED AT MOROTO THIS 2ND DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO