

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL SESSION CASE NO. 183 OF 2013

UGANDA V KUYOO PAUL

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person is charged with murder c/s 188 of the Penal Code Act. It is alleged that the accused person on 30.4.2013 at Kapitawo village in Amudat district, murdered Chepreto Anna Nate.

Prosecution was led by Mr. Amalo Zerald RSA Moroto while Mr. Tiyo Jonathan appeared for the accused person on state brief.

Assessors were Abul Paul and Odeke Richard.

The prosecution had a duty to prove beyond reasonable doubt that the accused persons unlawfully caused the death of the deceased Chepreto Anna with malice aforethought.

The key ingredients of murder is:

Causing death with malice aforethought. This means Intentionally Causing death or not caring if acts or omissions will lead to the death of the deceased.

Proof of death

That the deceased died is not in dispute. Pexh. 1 a post mortem report was admitted by consent of both counsel. The report shows that the deceased suffered bruises on the back of the neck and back and the neck was freely flexible.

Proof of malice aforethought and participation by the accused person

Prosecution relied on two prosecution witnesses. The key witness was PW2 John Karman LC1 chairman of Kapitawoi. His evidence is that the accused person is his immediate neighbor whose house is about 10 meters from the house of the witness and a barbed wire fence separates them. On 30.4.2013, he spent the day at home. At about 5 p.m, the accused person fought with his wife in their enclosure (courtyard) in the presence of the witness. He saw the accused person wrestle her down and continued beating her with big sticks. He hit her on the back of the neck, head and back while she was on the ground. He then pulled her inside the house. At this point, the witness ran to their house. He peeped inside the house and saw the accused person twist the head of the deceased to one side in an act of strangulation. He sent a boy to call police who responded and the accused person was arrested from the scene.

According to the witness, the deceased was already dead by the time police arrived. He also made an alarm that was answered by several people who included Lodoko a councilor.

The witness identified two sticks as the ones used by the accused person to beat the deceased.

In cross examination, the witness was firm that the door of the house of the accused was open and that's how he saw the accused persons strangle the deceased while seated on her back. With regard to the initial fight in the

courtyard, the witness said he first heard noise and on turning towards the direction of the noise, he saw the accused person and deceased fighting.

He prevented the escape of the accused person by locking him inside the house (scene of crime, until police arrived.

The witness further testified that the couple often fought and it was the accused who was usually the one beating the deceased person who was small in build.

It was suggested by the defense case that the witness was friendly to the deceased to whom he said she was a good person but that he never sat to drink alcohol with her.

PW1 Omonyil Daniel corroborates PW2 Karman in as far as it is him who called the police to the scene. His saloon is located some 20 meters from the house of the accused person.

PW1 was in his saloon at about 5 p.m on 30.4.2013 when he saw many people gathered and they were saying 'someone has killed someone'. It was when he called the police.

In his sworn statement the accused person denies killing the deceased and states that he had gone to burn charcoal and on his return he found the deceased dead. He stated that he did not see PW1 Karman at the scene.

This is a case that depends on a single identifying witness and his credibility.

I listened carefully to the PW2 Karman and the accused person's sworn statement. Karman was the area LC 1 Chairman and although he said he was 67 years old, he appeared much older as he walked with the aid of a walking stick.

He gave his testimony with conviction and honesty. As an LC 1 Chairman, he is a person in authority and that explains why he took the initiative to move to the house of the accused person to witness what was happening. From the medical evidence, the neck of the deceased was flexible. This corroborates Karman's testimony that he saw the accused person twist the neck in an act of strangulation. The post mortem revealed that the body had bruises on the back, head and neck which is further corroborated by the testimony of Karman that the accused person beat the deceased with two sticks on the back, head and back of the neck.

The two sticks were exhibited in court for identification purposes only except that the person who recovered them or kept them in the police store was not called to give evidence. Under these circumstances, their evidential value is limited. In any case, Karman testified that the accused person used sticks to beat the deceased, a fact corroborated by the bruises described in the post mortem report.

Having believed the testimony of PW2 Karman that the accused person violently assaulted the deceased who was his wife and then twisted her neck as he sat on her back, the state has proved beyond reasonable doubt that the accused did not care if the deceased died and therefore the killing was with malice aforethought.

I am in agreement with Mr. Odeke Richard, who gave the assessor's opinion that the accused person is guilty.

I am satisfied that the state has proved beyond reasonable doubt that the accused person with malice aforethought caused the death of the deceased. He is accordingly convicted as charged.

DATED AT MOROTO THIS 2ND DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO