THE REPUBLIC OF UGANDA

THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO, D.C.J., ODOKI, J.S.C., TSEKOOKO, J.S.C.)

CRIMINAL APPEAL NO.14 OF 1995

BETWEEN

KWERIMBA VINCENT :: APPELLANT

AND

UGANDA::RESPONDENT

(Appeal from the judgment of the High court of Uganda

at Mukono (J.B. Berko, J) dated 19th May; 1995)

In Criminal Session Case No.86 Of 1994)

JUDGMENT OF THE COURT

The appellant Kwerimba Vincent was tried in the High Court on an indictment for capital robbery contrary to Sections 272 & 273(2) of the Penal Code Act. Upon his conviction he was duly sentenced to death. Hence this appeal.

The allegation laid against the appellant states that on 26th December, 1992 at about 3.00 a.m. the appellant and other persons at Vuunza village, Masaka District robbed Lusiya Namirembe of household property and cut her with a panga.

The facts adduced for the prosecution and accepted by the learned trial Judge are simple. Lusiya Namirembe (P.W.I), the victim of the robbery, lived in her house with her grand-daughter called Nanyonjo at Vuunza village in Kitanda sub-County, Masaka. She was a traditional birth attendant and herbalist.

The appellant lived with his mother in their own house in another village called Kaseberwa, which appears to be neighboring to Vuunza village.

On the said 26th December, 1992 at 3.00 a.m., P.W.I heard a knock at her door. A person informed her that he had a patient. P.W.I got up, lit a tadoba (simple lamp) and placed it on a table in the sitting room. When she opened the door the knocker raised up a panga, stated he had no sick person but demanded for money from P.W.I. P.W.I grabbed the intruder, struggled with him and after pushing him out, she apparently closed the door. P.W.I called Nanyonjo to her assistance. One of the attackers had remained outside at this stage. As Nanyonjo was trying to hide property inside the house, the intruders hit the door from outside. In the process the intruders cut P.W.I between the thumb and index finger of her right hand. The door broke, fell into the house and put out light from the tadoba. One of the intruders entered inside the house again then lighted the same tadoba and asked P.W.I and Nanyonjo to kneel down and say their last prayers. He demanded for money and radio cassette or else he would kill the two. He also claimed that it was a one Makumbi who had commissioned the intruder to kill P.W.I because P.W.I had underpaid Makumbi for his kibanja, among other reasons. The intruder thereafter pushed P.W.I who fell near her axe in the house. When the intruder raised a panga to cut Nanyonjo, P.W.I picked the axe with which she cut the intruder twice at the back of the right shoulder. The intruder was the appellant. The cutting forced the appellant to run out of the house. P.W.I chased him but when she realised there was a second person outside, she hid herself. From her hiding place, she observed the appellant and his confederate light a grass torch which enabled P.W.I to recognize the appellant and her confederate as they carried away her radio cassette, a pair of sheets and other properties.

At 5.00 a.m. Nanyonjo reported the incident to Ibrahim Katumba (P.W.2) the R.C.I Chairman of Vuunza Village. P.W.2 visited the scene where P.W.I named the appellant as her attacker. P.W.2 in the company of Katongole (P.W.3), an R.C.I official of Kasembwera, visited the home of the appellant at 6.30 a.m. They found the appellant inside his house, which was still closed. They called appellant out and arrested him. He had fresh blood on his right shoulder. Upon being interrogated the appellant made some admissions and alleged that one “Makumbi put the appellant in trouble”. Eventually the appellant was made to get from the ceiling of his house a radio cassette, and other properties, which were claimed by P.W.I as her property, which had been robbed at night. A panga bearing fresh blood was also seen there. P.W.2 and P.W.3 eventually handed the appellant to police who charged the appellant with the offence of robbery.

During his trial the appellant put up an alibi as his defence to the effect that he was at his home at the time of robbery and denied the charge. He claimed that the injury on his shoulder was inflicted by the people who arrested him on suspicion of the same offence.

The learned trial Judge accepted and believed the evidence of the prosecution and rejected the defence evidence. In the result he convicted the appellant.

The three grounds of appeal filed and argued by Mr. Namutale, learned Counsel for the appellant, state that:

1. The learned trial Judge erred in law and in fact in holding that the appellant was positively identified by the complainant.

2. The learned trial Judge erred in law and fact in holding that the accused's alibi was false.

3. The learned trial Judge erred in law and fact in that he failed to adequately evaluate and scrutinise the evidence thereby coming to the wrong conclusions on the facts before him.

In reality the only point argued before us by Mr. Namutale is that there was insufficient light to afford positive identification of the attackers.

In opposition, Mr. Ogwal-Olwa, the Principal State Attorney, submitted in effect that there was sufficient light first from the tadoba and secondly from the lighted grasstorch which enabled P.W.I to identify the appellant whom P.W.I knew well. The Principal State Attorney referred to other evidence, which corroborates P.W.I's evidence.

The learned trial Judge stated quite correctly in our view that the only contentious issue in the case was whether or not the appellant was properly identified. The Judge referred to the guiding principles in cases of this type laid down by this court and its predecessors in such cases as ***Roria v. Uganda (1967) E.A. 358; Fabiano Olukundo v. Uganda,*** Court of Appeal Criminal Appeal No. *24* of 1977 (Unreported) and ***Nabulere v.*** *Uganda* (1979) H.C.B. 77. The learned Judge then evaluated the evidence for both sides in some detail before he accepted the prosecution case and rejected the alibi of the appellant.

In our view there was overwhelming evidence against the appellant. We have already summarised the evidence in this judgment.

P.W.I knew the appellant well. Although the attack upon P.W.I occurred very late in the night (3.00 a.m.) there is no evidence that P.W.I was awakened from very deep sleep. She appears to have been quite alert in spite of her age (68 years). She woke up when there was a knock on the door. She reacted very fast and firmly when she detected danger. There was ample light from the tadoba at the beginning of the attack and in later stages of the attack. There was also light from the lighted grass torch. Despite her age she fought back and inflicted wounds, on the right shoulder of the appellant before he ran out of the house.

Within a space of three hours of the attack and after P.W.I's information, P.W.2 and P.W.3 traced the appellant in his house. The appellant accepts he was traced at his home early. The appellant agrees that he sustained an injury on his shoulder but claims that one of his arresters pierced his same shoulder with a coffee tree stick. This claim is clearly an invented story intended to cover up the incriminating injury inflicted by P.W.I which injury fully corroborated P.W.I's evidence about the identity of the appellant as the robber who attacked P.W.I. There is no evidence whatsoever to support the appellant's claim that P.W.I's properties found by P.W.2 and P.W.3 in the appellant's home, hardly 3 hours after robbery, were merely planted on the appellant at Butenga Police Post.

According to the appellant's evidence neither P.W.I, P.W.2, P.W.3 nor the police owe the appellant any grudge. So how could they all conspire to plant stolen property on the

appellant? Clearly this is a figment of his imagination.

In all these circumstances we agree with the learned Principal State Attorney that the learned trial Judge was fully justified in convicting the appellant.

In the result we see no merit in this appeal, which must be and is hereby dismissed

Delivered at Mengo this 18th day of November, 1995

S.T. MANYINDO
DEPUTY CHIEF JUSTICE

B.J. ODOKI
JUSTICE OF THE SUPREME COURT

J.W.N. TSEKOOKO
JUSTICE OF THE SUPREME COURT