

Hon. Justice Sekoko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN

AT JINJA

CRIMINAL SESSION CASE NO.24 OF 1993

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR  
V E R S U S

ABDALA BABI :::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: THE HON. JUSTICE MR. C.M. KATO

J U D G M E N T  
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The accused in this case is one Abdala Babi. He stands indicted for murder contrary to the Provisions of section 183 of the Penal Code Act. The indictment alleges that on 16/2/91 he murdered Jamula Namugombe while at Bukasero village in the district of Iganga. The accused pleaded not guilty to the indictment.

It is trite law that the burden of proving the guilt of an accused person beyond reasonable doubt in all criminal cases, with exception of few statutory cases, lies upon prosecution: Woolmington v D.P.F. (1935) AC 462 and Okathi Okale v Republic (1965) EA 555 at page 559. It is also an established principle of our law that an accused should be convicted on the strength of the evidence as adduced by prosecution but not on weakness of his defence: R v Israili Epuku s/g Achietu (1934) I EACA 166 at page 167. Where an accused is indicted for murder as is the case in the present case, prosecution is enjoined to prove, inter alia, that a human being was killed, that the killing was unlawful and that the killer had malice afterthought as defined in section 186 of the Penal Code Act and that the accused did directly or indirectly take part in the killing.

There is no dispute over the fact that a human being by the names of Jamula Namugombe is dead. This fact has been established by the evidence of Dr. Kanigwa (PWII) which was admitted under section 64 of T.I.D. PWIII Lovinsa and her husband Samwiri Tibita (PWIV) also confirmed that the lady died. The accused himself who was the husband of the deceased admitted that his wife in fact is dead. Prosecution has therefore proved beyond reasonable doubt that a human being died.

There is, however a dispute as to whether the death of the deceased was unlawful or lawful. It is the case for prosecution that she died as a result of strangulation but the defence is quite adamant that the deceased took away her own life by committing suicide. It is the law that in all cases of homicide unless accidentally caused death of a human being is said to be unlawful: R v Gusambizi Wesonga (1948) 15 EACA 65.

In his evidence the doctor who carried out the post-mortem examination on the body of the deceased stated that the cause of death was due to strangulation. According to the evidence of Lovinsa Tibita (PWIII) when she entered the house she found things scattered in the house which means there was some kind of struggle in the house before the deceased met her death. In her evidence Lovinsa further testified that the body of the deceased was found in a sitting position; this piece of evidence was however seriously attacked by Mr. Mutyabule in view of the statement of this witness which she made to the police EXDI in which the witness stated that the body was found beneath the bed. When under cross-examination Lovinsa insisted that she had told the policeman who recorded her statement that she found the body in a sitting position not under the bed and that there was a serious problem of language between her and the policeman, I feel her explanation is quite genuine because when that policeman appeared in court to testify on behalf of defence he displayed real lack of command of the luganda language which they were using as a means of communication with Lovinsa;

it has to be mentioned here that neither Lovinsa nor Sgt Valentino Obbo who recorded her statement was a Muganda so the possibility of Obbo having recorded the wrong words cannot be ruled out. I am of a firm opinion that what Lovinsa told the court as to the position of the dead body is the correct position and not what she is alleged to have told the police. Considering Lovinsa's evidence and that of the doctor it is not true to say that the deceased committed suicide as it is being alleged by the accused. The deceased must have been strangled by somebody so her death was unlawfully caused as it was not accidental or due to natural causes.

The next point which comes up for consideration by this court is who killed the deceased Jamula Namugombe? According to the prosecution it is the accused Abdala Babi who killed her but according to the accused the deceased killed herself by committing suicide.

It must be pointed out here that the whole prosecution case in relation to accused's connection with this case is based on circumstantial evidence in a sense that nobody saw the accused strangling the deceased. The authorities on circumstantial evidence are not very few, they include such cases as: Shabudin Merali and another v Uganda (1963) EA 647 at page 650, Simon Musoke v R (1958) EA 715, Teper v R (1952) AC 480 at page 489 and Tumuheirwe v Uganda (1967) EA 328 at page 331. In all these cases the law governing this sort of evidence was clearly spelt out in the case of Musoke v R (Supra) for example it was clearly pointed out that in a case depending exclusively upon conviction of an accused person, find that on circumstantial evidence, the court must, before deciding on the inculpatory facts are incompatible with the innocence of the accused and and incapable of any explanation upon any other reasonable hypothesis than that of guilt. In Tumuheirwe's case (Supra) quoting the case of Teper (Supra) it was observed that circumstantial evidence should be narrowly examined as this type of evidence may be easily fabricated.

In the present case prosecution case hinges on the evidence of one witness called Lovinsa Tibita to whom the accused is alleged to have confessed that he had killed his wife. According to the evidence of this lady who testified on behalf of prosecution as PWIII, when she was at her home on 16/2/91 the accused who is related to her husband approached her and when she asked him as to whether he had returned from the burial of his child the accused simply answered that he had returned but he had killed his wife. When Lovinsa expressed her surprise by saying "Eh?" the accused started running away. She raised an alarm which was answered by villagers. They proceeded to accused's house which they found locked from outside. The door was broken open and inside the house was the dead body of accused's wife. The body had a rope around its neck together with a piece of cloth. The neck was swollen. Another piece of circumstantial evidence tendered by prosecution was from Samwiri Tibita (PWIV) who informed the court that the accused did not attend the burial of his wife.

On his part the accused stated in his unsworn statement that he did not kill his wife and that he could not remember if at all he ever told Lovinsa that he had killed his wife because on finding his wife having committed suicide he became frightened and confused so he could not remember what happened later.

I found Lovinsa to be a truthful witness she was well composed and quite steady when giving her evidence in-chief and when under the lengthy cross-examination. I accept her story that the accused told her that he had killed his wife to be truthful. She had no reason to tell lies against the accused with whom she had no grudge, she truthfully denied a suggestion by the defence counsel that she had testified against the accused because he had refused to love her. I have found it extremely difficult to believe the accused's story that he did not kill his wife for a number of reasons. In the first place the accused did not deny or admit having told Lovinsa that he had killed his wife because he was confused at the time, it is reasonable to conclude from that statement that Lovinsa who was not confused then must be remembering properly what was said to her.

In the second place the accused's subsequent conduct does not tally with the conduct of an innocent person. He says he found his wife committing suicide and he untied the rope but the rope was found around the neck of his wife, if his story is true then why did he not remove the rope from her neck. The accused also says that he decided to run away for fear of the villagers who might have beaten him, this story would only have been credible if he had run and reported himself to the nearest authority like the RCI chairman, police or a local chief, but he never did so. His failure to attend the burrial of his wife is yet another example of guilty mind. The conduct of the accused after the death of his wife clearly corroborates Lovinsa's story that the accused told her that he had killed his wife, as pointed out earlier, the accused has not retracted that confession in his statement before the court. This case must be clearly distinguished from the cases of: Yohannis s/o Udinde and Martin s/o Udinde v R (1955) 22 EACA 514 and Magadasi Lalasia v R (1936) 3 EACA 106 in two respects: first in those two cases the confession was retracted which is not the case in the present case and secondly in the present case the person to whom the confession was made has been truthful in her testimony unlike in the two quoted cases. In all these circumstances I find that prosecution has by circumstantial evidence established beyond reasonable doubt that the accused did in fact strangle the deceased to death, Mr. Mutyabule's argument that the circumstantial evidence has been weakened in view of the second theory as to the cause of death by suicide cannot be sustained for reasons already given.

That leads me to the issue of malice aforethought. By provisions of section 183 of the Penal Code Act no satisfactory conviction may be sustained in the absence of proof that the deceased was killed with malice aforethought. (See also: Lokoya v Uganda (1968) EA 332 at page 334)


In deciding the presence or absence of malice aforethought the court is usually assisted by some factors which include such matters as the nature of weapon used in causing death, the part of the body where the injury or injuries were inflicted, the number of injuries and the conduct of the accused before or after the death: Tubere s/o Ochien v R (1945) 12 EACA 63.. In the present case, although it is known that the deceased died as a result of strangulation, the exact circumstances under which she met her death are not clearly known. It is very rare to come across cases where murderers strangle their victims with ropes especially where such victims are their wives. Before the deceased met her death there must have been a fight between her and the accused, this view is supported by the evidence of Lonvinsa who testified that things in the house were scattered. This sort of evidence is indicative of the possibility of the accused having fought in self-defence in the process of which he used force and methods which were out of proportion and killed his wife. The doctor who examined the accused on 6/3/91 found him with 4 healing wounds at the back and he found him with an infected wound on the knee. Although the accused said he had been assaulted by those who arrested him and Mulyazabu (PW) also said he saw an askari caning the accused, still the possibility of his having sustained some of the wounds while struggling with the deceased cannot be totally ruled out.

Since, as I said earlier, the real circumstances which led to the death of the deceased are unknown, the accused could possibly have killed her when under provocation of some sort. The provocation put up by the accused in court that he found his wife with a man cannot however be accepted as truthful for several reasons. The first reason is that on that day the deceased and her husband had just returned from burying their child so it would have been quite unthinkable for that lady who was still in distress to engage herself in love affairs with another man; if the accused had found the deceased with no quarrel or some kind of settlement, and finally another man he could not have spent with her so peacefully with

since the accused had promised to report the matter to the parents in the morning how is it that he never did so. The story that the accused found his wife with a man is rejected but that does not mean there was no other incidents which could have provoked the accused to the point of killing his own wife.

Considering all the circumstances of this case it would be quite unsafe to say that prosecution has proved beyond reasonable doubt that the accused killed the deceased with malice aforethought as the possibility of the accused having acted in self defence or while under provocation has not been totally ruled out.

The position being what it is I find the accused not guilty of murder and I do acquit him of that offence but I do find him guilty of manslaughter contrary to section 182 of the Penal Code Act and I do convict him of that offence accordingly. In coming to this conclusion I have found great comfort in the decision of the privy council in the case of : R v Shampal Singh s/o Pritam Singh (1962) EA 13. I have not followed the opinions of the two gentlemen assessors because they did not seem to have properly directed their minds to the available evidence and my summing up on points of law as they seem to have prepared their opinions even before my summing up! Assessor Mamuto had advised me to acquit the accused all together while assessor Kirongo advised me to convict the accused as charged.

  
G.M. KATO  
J U D G E

17/5/93.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information gathered is both reliable and comprehensive.

The third part of the document focuses on the results of the analysis. It shows that there is a clear trend in the data, which suggests that the current strategy is effective. However, there are some areas where improvement is needed, particularly in the way resources are allocated.

Finally, the document concludes with a series of recommendations for future action. These include implementing new software tools to streamline the data collection process and providing additional training for the staff involved in the analysis.