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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL SESSION CASE NO. 78/94

UGANDA ..... PROS

VERSUS

TIDHOMU LEO ..... ACCUSED

BEFORE: THE HONOURABLE JUSTICE C. M. KATO

J U D G M E N T

The accused person Leo Tidhumu is indicted for the murder of his father Difasi Kisira c/s 183 of the Penal Code Act. In the Indictment it is being alleged that on 28/8/93 at Walugaba village in the district of Iganga the accused murdered Kisira Difasi. The accused pleaded not guilty to the indictment.

It is a cardinal principle of our law that it is the duty of the prosecution to prove beyond reasonable doubt the guilt of an accused person, the accused has no duty of proving his innocence: Woolington v. DPP (1935)CA 462 and Okathi Okale v. Republic (1965) EA 555 at page 559. It is also part of our law that an accused person should never be convicted on the weakness of his defence but his conviction should be based on the strength of the case as proved against him by prosecution: R.v. Israil Epuku s/o Achietu (1934)1 EACA 166 at page 167. In a murder case like the present one prosecution is enjoined or required to prove, inter alia, that a human being was killed, that the killing was unlawful, that it was the accused who killed the deceased or participated in the killing and that the deceased's death was caused with malice aforethought.

Starting with the first ingredient first, I would say that the death of Difasi Kisira is not being seriously disputed. All the witnesses who testified before this court including Dr. Etukaiti conclusively say that Difasi Kisira is dead, he died at Iganga hospital on 28/8/1993.

Regarding the issue of whether or not the deceased was unlawfully killed, prosecution produced the evidence of Dr. Etukaiti who said in his evidence and report that the deceased died of brain damage which had been caused by the injury on his head. The doctor's finding was that the deceased had a deep cut wound on the

right part of his head, another deep wound also was on his lips and the deceased was bleeding through the nostrils. According to him the wounds were caused by a stick or sharp object. In the case of: Gusambizi s/o Wesonga v. R. (1948)15 EACA 65, it was said that in all homicide cases death is said to be unlawful unless it is authorised by law or accidentally caused. In the present case there is nothing suggesting that the death of Kisira was accidental or was authorised by law. It is my finding that his death was unlawfully caused.


The next matter to be considered is whether or not the accused was connected with the deceased's death. The evidence from prosecution side tending to connect the accused with deceased's death is purely circumstantial in a sense that there was no witness who testified here as ever having seen the accused beating the deceased. In the cases of: R. v. Simon Musoke (1958)EA 715 and R. v. Teper (1952) ALL ER 447 or (1952)AC 480, it was stated that circumstantial evidence should only be used to obtain a conviction if there is no any other co-existing evidence tending to destroy or weaken the prosecution case. In the present case prosecution has relied on the evidence of the conduct of the accused which is that although his father was sharing the same compound with him, the accused remained in his house when all other people assembled to see what was happening to the deceased.

Another piece of evidence relied upon by the prosecution is the confession which the accused made to William Luyiro (PW8) to the effect that he had fought with his father and had injured him.

At the trial the accused was not sure as to whether or not he ever made that confession. Considering the statement which he made in court and the contents of the statement he made to the policeman, I am satisfied that the accused in fact did make a statement to the policeman and that statement was voluntary. I reject his statement that he made the statement after he had been beaten, I also reject his contention that when his father was assaulted he was away in his garden and that when he returned from the garden those present stopped him from seeing his father. It is my opinion that the accused's conduct coupled with his admission to PW8 clearly shows that he took part in assaulting his father. In other words prosecution has produced circumstantial evidence which has not been weakened or destroyed by some co-existing facts.

That takes me to the issue of whether or not the accused had malice aforethought when he attacked his father. In the case of: Lokoya v. Uganda (1968)EA 332 at page 334, it was stressed that an accused person should not be convicted of murder without malice aforethought. The learned counsel for the state Mr. Okwanga conceded that prosecution had failed to establish malice aforethought. As stated earlier there was no witness who saw the manner in which the deceased was assaulted by the accused. In the absence of such evidence this court is entitled to go by what the accused stated in his admission that he was provoked by his father who wanted to sell the accused's land and as a result of that refusal by accused a fight broke out between the accused and the deceased, in the process of which the accused hit the deceased twice with a stick which caused the deceased's death. I accept accused's confession as correct that he was provoked by the deceased and he hit him as a result of that provocation. I find that prosecution has not proved the existence of malice aforethought on the part of the accused.

In all these circumstances and in full agreement with the opinion of the gentlemen assessors I find the accused not guilty of murder and I do acquit him of that offence but find him guilty of manslaughter and I do convict him of that offence under sec. 182 of the Penal Code Act and sec. 86 of T.I.D.

  
C.M. KATO

JUDGE

22/12/1994

The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research. The second part of the report is a detailed description of the methodology used in the study. This includes a description of the data sources, the sampling method, and the statistical methods used to analyze the data. The third part of the report is a presentation of the results of the study. This includes a description of the findings and a discussion of their implications. The final part of the report is a conclusion and a list of references.

The results of the study show that there is a significant relationship between the variables studied. This relationship is consistent across all of the groups studied. The findings of this study have important implications for the field of study. Further research is needed to explore the underlying mechanisms of this relationship.