

*Hon Justice
T.M. Tumwono
J.S.C*

UGANDA PROSECUTOR

VERSUS

ADOME JOHN ROBERT ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGAU.

J U D G M E N T

The accused is indicted for murder, contrary to sections 183 and 184 of the Penal Code Act. It is alleged that Adome John Robert on or about the 2nd day of January, 1993 at Abolot village, Acowa Sub-County in the Soroti District murdered one Ojur Michael.

In his preliminary inquiries, PW1 gathered information that one Icumar and his family had long standing grudges with the family of one Acia. The said Icumar is the father of the deceased Ojur Michael and Acia was the father of the accused

On 1.1.93 at night alone in his house, some unknown person(s) attacked by cutting him on the body several times. According to DW2, in the morning of 2.1.93 Acia was in a critical condition but was yet able to talk. However he never revealed to DW2 who actually attacked him. He was taken for treatment but died as a result of the injuries inflicted on him.

On suspicion based on that old standing grudge, the family of the accused suspected the family of the said Augustine Icumar to have attacked and killed Acia the father of the accused. In the following morning after the incident, the accused set out to look for Icumar and his family as suspects. He did not find any of them at their respective homes. However, he managed to see the deceased Ojur's footmarks leading to the bush. He followed that track until he found the deceased hiding in the bush. He ordered the deceased not to run away and he arrested him.

On their way back to the accused's father's home, it is alleged that Ojur escaped and started running away. The accused who was armed with spike (spear) for fishing chased and stabbed the deceased on the chest and the abdomen altogether eight penetrating wounds. He collapsed as a result but the accused took that the deceased had refused to walk back to the scene and speared him once more to finish him off. Evidence of PW1 and PW5 who visited the scene found that the hands of the deceased were tied with a rope on his back and with the same rope, he was tied on a tree to give an impression that the deceased had committed suicide.

Evidence of PW1, PW2, PW3 and PW4 is that after the incident the accused gave himself up to Katakwi Police Station. PW4 said the accused was escorted by two of his relatives including Ojune Charles and surrendered himself to the witness for having killed Ojur Michael. On that information PW4 arrested and detained the accused on a charge of murder. He was then later transferred to Soroti Police Station where after visiting the scene of murder, PW1 and PW3 found him detained.

The doctor, PW5 who went to the scene to carry postmortem on 7.1.93 found both hands of the deceased tied with a rope backwards and again tied on a tree. The body was identified to him by one Imalingat as that of Ojur Michael. He had no shirt on and the body was beginning to decompose. There were multiple penetrating wounds on the front of the chest and the abdomen all counted eight. The wounds were inflicted by use of sharp object like spikes (kind of spear for fishing). Cause of death was traumatic shock due to multiple organ damage. Medical report is Exhibit P1. PW1 also confirmed the above injuries.

In his confession statement recorded by PW2 on 11.1.93, the accused clearly admitted having killed Ojur Michael on the ground that on the night of 1.1.93 his father was attacked and hacked with a hoe. In the morning of 2.1.93 he said his father Lawrence Acia informed them that he was attacked by Ojur, Icumar and Ocilaje. The father died before reaching the hospital.

The accused then decided to look for Ojur whose home was near theirs. He followed his track and found him in the bush. He arrested him and as he wanted to take him before R.C. officials, he said Ojur ran away. He chased Ojur for about 3 miles and as he had a spear he speared him on the back. He then tied the deceased who collapsed on the way. As he was annoyed because of his father's death, the accused said he finished the deceased by giving him another blow as he refused to move. However, the accused retracted and repudiated that confession statement on the ground that it was obtained as a result of torture on him. Trial within a trial took place and the court ruled that the accused made a voluntary confession statement to PW2 without any torture, harassment, intimidation or promise whatsoever.

In his defence the accused denied killing Ojur Michael as alleged. He repudiated the confession statement he made on 11.1.93 and also denied the signature thereon. He testified that on the night of 1.1.93 some unknown person(s) hacked his father Acia with a hoe in the house and a long stick for a spear without the metal was also found at the scene. He did not know who killed his father who had severe and several cut wounds on the body. He found his father dead but leaning on the bed.

He was emphatic that there was no grudge between his family and the family of the deceased. He said as neighbours they enjoyed good relationship. Therefore the defence is a total denial of the case now before the court and also pleaded an alibi.

In the present case, the prosecution must prove beyond reasonable doubt that Ojur Michael was murdered on 2.1.93; that his death was caused with malice aforethought and that the accused now before the court actually murdered the deceased.

The defence concedes that according to the medical report, Ojur Michael actually died. In addition, evidence of PW1, PW2 relates to the fact that Ojur died. In fact the Police investigating Officer - PW1 and the doctor who carried postmortem, PW5 actually visited the scene of murder at Abolot village in Acowa Sub-County and confirmed his death.

The wounds described by the doctor in his opinion were inflicted by use of a sharp object and the injuries were on the vulnerable parts of the body namely the chest and the abdomen which showed that there was an intention of causing death or grievous harm to the deceased. On that evidence the defence also concedes that the prosecution has proved beyond reasonable doubt that the death of Ojur Michael was caused with malice aforethought.

The remaining contentious issue is on who actually murdered Michael Ojur. Defence argument is that whoever killed the deceased is not revealed in evidence before court. The only evidence implicating the accused is the confession he made on 11.1.93 but that confession was retracted and repudiated which requires corroboration. Evidence that the accused reported himself to Katakwi Police Station in the company of his brother Ojune Charles who informed PW4 that the accused had murdered the deceased was nothing but hearsay which is inadmissible in evidence and also does not amount to corroborative evidence.

The prosecution on the other hand relies on the confession statement made by the accused. Although the accused retracted and repudiated the confession he had made, but on reading it, it is so detailed narrating the events as they took place which events PW2 recorded did not know except the accused himself. It is argued that the confession is true of the events which took place.

After murdering the deceased the accused reported himself to PW4 at Katakwi Police Station on 4.1.93, two days after the incident, and was detained there before being transferred to Soroti Police Station.

In the confession the motive for killing the deceased was based on the long standing grudge between the family of Icumar the father of the deceased and the family of Acia the father of the accused.

Evidence is that the father of the accused was attacked on the night of 1.1.93 and the family of Icumar was suspected. As a result the accused revenged the death of his father. It is contended that Ojur's death was not caused in the heat of passion to amount to the defence of provocation as alleged by the defence. That killing was premeditated and if the deceased tried to escape as alleged by the defence, the force used by the accused on him was too excessive in the circumstances, especially by stabbing even when the deceased was tied, it is argued.

It is to be noted that there is a distinction in principle between a retracted confession and one which is repudiated. In the former case the trial court looks for corroboration as a matter of practice if not of law to assist it in determining which of the two stories told by the accused is likely to be the truth. In the latter case once the Court is satisfied that the accused did in fact make the statement it is a reasonable inference to draw in the absence of contrary indications that it has been denied because of its truth: Gathugu & Anor. Vs. R (1953) 20 EACA 294.

In Tuwamoi Vs. Uganda (1967) EA 84, it was held inter alia that a trial court should accept with caution a confession which has been retracted or repudiated or both retracted and repudiated and must be fully satisfied that in all the circumstances of the case that the confession is true.

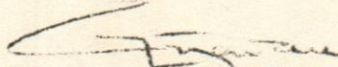
It was further held among other things in: Uganda Vs. John Nkusi & Anor. (1976) HCB 81 that when an accused person denies or retracts his statement at the trial and it is the only evidence against him, then the court must decide whether the accused has correctly related what happened or whether the statement establishes his guilt with that degree of certainty required in a criminal case.

In the present case, evidence is that two days after the incident the accused surrendered himself to Katakwi Police Station that he had killed Ojur Michael, the victim in this case and as a result PW4 arrested and detained him.

Medical evidence of the doctor, PW5 who carried postmortem examination on the body of the deceased Ojur on 6.1.93, four days after the incident, is that he found both hands tied on the back with a rope and it was tied on a tree. He had no shirt on and the body was beginning to decompose. There were multiple penetrating wounds on the front of the chest and the abdomen all counted eight in number. In his opinion the wounds were inflicted by use of a sharp object like a spear or spikes. The cause of death was traumatic shock due to multiple organ damage. Medical report is Exhibit P2. PW1 who also visited the scene confirmed the injuries on the deceased.

In my humble view, the above evidence of PW1, PW4 and PW5 is ample corroboration of the confession statement made by the accused. In case I am wrong so to hold, the accused in his confession statement thoroughly and correctly related what happened which PW2 who recorded it could not know except the accused himself. The statement establishes his guilt with that degree of certainty required in a criminal case. The confession of the accused was the kind that can be relied upon without corroboration. In other words, this Court is satisfied that the accused did in fact make the statement voluntarily and the only reasonable inference to draw in the absence of contrary indications as it in this case, is that it has been denied because of its truth.

The end result is that the accused actually murdered Michael Ojur and in the premises, he is guilty and hereof convicted of murder, contrary to sections 183 and 184 of the Penal Code Act as charged.


STEVEN GEORGE ENGWAU

JUDGE

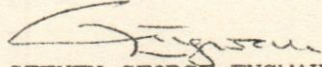
11.11.94: The accused is before the court.

Mr. Kakembo for the accused on private brief - present.

Ms Betty Nandawula, Senior State Attorney for the State - present.

Etulle Gaudence interpreter in Ateso language.

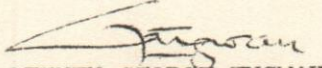
Judgment delivered in open court.


STEVEN GEORGE ENGWAU

JUDGE

11.11.94.

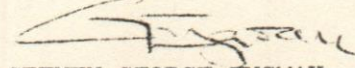
SENTENCE: In a charge of murder where the accused is found guilty and convicted, there is only one punishment provided by the law in force. Accordingly, the accused Adome John Robert shall suffer death in a manner as by law prescribed.


STEVEN GEORGE ENGWAU

JUDGE

11.11.94.

COURT: R/A against conviction and sentence to the Supreme Court explained to the accused.


STEVEN GEORGE ENGWAU

JUDGE