

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CRIMINAL SESSION CASE NO. 158 OF 1994

UGANDA ..... PROSECUTOR

VERSUS

JOSEPH ELADU ..... ACCUSED

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

R U L I N G:

The accused was charged with murder contrary to sections 183 and 184 of the Penal Code Act. It was alleged that Joseph Eladu on or about the 17th day of July, 1993 at Acuna village, Tubur sub-county in Soroti District murdered one Lazaro Edopu.

The wife of the deceased, PW1, testified that on 17.7.93 at around 10 p.m., the deceased in the company of a visitor left for the village home, one mile away from Acuna Railway Station. One hour later, the visitor returned and informed her that the deceased had fallen into the hands of wrong elements. PW1 and neighbours could not do much at that time.

The following morning, 18.7.93, very many people accompanied her in tracing the deceased. The body was found lying by the roadside smashed completely. For three days, the Police did not visit the scene, so the body was buried without any postmortem examination.

PW1 suspected the accused because of long standing land dispute between the deceased and the accused. She also asserted that on two different occasions, the accused quarreled with the deceased while threatening that something would happen to him (deceased) in the near future.

On 20.9.93 at around 1.05 p.m., the accused appeared before the Police investigating officer, PW2 for the purpose of recording charge and caution statement. Both the accused and PW2 are Iteso by tribe and they communicated to each other in Ateso language. PW2 said he explained the charge of murder to the accused and thereafter cautioned him not to say anything unless he wished but whatever he elected to say would be written down and be presented at his trial.

When PW2 informed court that the accused admitted committing the offence of murder because the deceased had bewitched his wife, the learned defence counsel objected to the said confession being admitted in evidence against the accused. The defence Counsel hastened to allege that the said confession was obtained as a result of torture, the accused did not make it freely and voluntarily.

*Hon Justice  
T.W.N. Tselwoko  
J.S.C*

JUDGES CHAMBERS  
MBALE  
P.O. BOX 41,  
MBALE, UGANDA

THE REPUBLIC OF UGANDA



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In trial within a trial, it was conceded by the learned State Attorney that the accused did not understand the charge of murder before his charge and caution statement was recorded. As a result, the confession turned out to be inadmissible in evidence against the accused.

As the prosecution case relied solely on the confession, the learned State Attorney wasted no time in offering no further evidence. At that juncture, the defence Counsel quickly submitted that the prosecution had failed to establish a prima facie case warranting the accused to make his defence as stated in R.T. Bhatt vs. R. (1957) EA 332.

It is defence contention that whereas PW1 has established the death of her deceased husband, the prosecution has failed to prove that death was caused with malice aforethought and that it was the accused and no one else who actually caused it. It is the duty of the prosecution to prove all the necessary ingredients of an offence beyond reasonable doubt, it was argued.

It is submitted that evidence of PW1 is nothing but mere speculation based on land dispute and quarrels between the accused and the deceased. There is no direct evidence implicating the accused with the charge of murder now before the court. Moreover the accused and the area R.C.1 official helped in reporting the death of the deceased to the authority to the knowledge of PW1. Neither the accused nor the deceased had actually reported the said land dispute to the authority for settlement. PW1 did not identify who actually killed her husband.

In light of the above submissions, the learned State Attorney declined to make any reply. In the premises, court finds that the prosecution has proved that Lazaro Edopu actually died on 17.7.93. However, the prosecution has not established that his death was unlawfully caused with malice aforethought nor is it proved that it was actually the accused who caused his death.

Consequently, I'm inclined to agree with the defence submission that the prosecution has failed to establish a prima facie case against the accused warranting him to make his defence. The accused is accordingly acquitted under section 71 (1) Trial on Indictment Decree and forthwith set free unless lawfully being held for some other crimes.

STEVEN GEORGE ENGWAW

J U D G E

6.9.94.

JUDGES CHAMBERS  
MBALE  
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Court:

Accused before the court.

Mr. Oyoit for accused on State brief.

Ms Khisa for the State.

Mr. Opio Emmy interpreter in Ateso language.

Ruling delivered in open court.

STEVEN GEORGE INGMAN

J U D G E

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6.9.94.

SGE/eg