

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CRIMINAL SESSION CASE NO. 19 OF 1993.

UGANDAPROSECUTOR

VERSUS

A1: JOHN ABIANG)
A2: OJENATUM S/O AKOBO)
A3: JOHN MOSES ODEE) ACCUSED
A4: PHILIP EPAJA)
A5: JULIUS OBUTO)

No case

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

R U L I N G:

In the first count, all the five accused persons are indicted for murder contrary to sections 183 and 184 of the Penal Code Act.

In the particulars of offence, it is alleged that John Abiang, Ojenatum s/o Akobo, John Moses Odee, Phillip Epaja and Julius Obuto and others still at large on or about the 18th day of April, 1991 at Kamenu village in the Soroti District murdered Silver Ingabat.

In the second count, the accused persons are charged with murder contrary to sections 183 and 184 of the Penal Code Act. It is alleged that on the 18th day of April, 1991 at Kamenu village in the Soroti District the 5 accused persons and others still at large murdered Eugenio Akubu.

In her testimony, Pw1 stated that the late Eugenio Akubu was her husband and the late Silver Ingabat was the younger brother of Eugenio Akubu. On 18.4.91 at around 9 p.m. she was in her house sleeping when some people came and forced her door open. The attackers were speaking in Akaramoja language ordering her to produce cattle and money. When she said that there were no cattle and also that she did not have money, she was seriously beaten up and forced to be out on the compound. She did not have light in the house at the material time and the assailants were very many and were armed with sticks, pangas, axes and spears.

In the same attack, her son John Imerit and Silver Ingabat were also forced from their respective houses to come out into the compound. All of them were tortured simultaneously while the assailants were demanding for cattle and money. She was also asked the whereabouts of her husband.

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On that night, her husband was in the house of her co-wife at a distance of about 150 paces from her home. The attackers took about an hour on her compound while torturing them and there was moonlight.

In the end, they were moved to the home of her co-wife where again the attackers forced the door open and pulled her husband out. He too was beaten up and the ordeal took about 2 hours.

Before they were made to run a distance of about 2½ miles, she managed to recognise and identify the 5 accused persons together with 2 other persons still at large namely: an L.D.U. Ikudet and one Oilar. She was able to recognise them by the help of moonlight. She also claims that A1 and A2 are her village-mates, A3 is a nephew, A4 is an in-law and A5 is a nephew to her late husband.

As the beatings continued and they were being chased, both Silver Ingabat and Eugenio Akubu became weaker and weaker. Before both of them collapsed dead, she saw the attackers cut them with pangas and axes and they were also speared and heavily beaten with sticks.

At a distance of about 120 paces away from the home of her co-wife, in the direction of a swamp, both Silver Ingabat and Eugenio Akubu collapsed and died instantly. However, her son John Imerit and herself were still made to run for some distance away from the corpses while still under torture. Eventually they were released but warned sternly not to reveal what had happened and who had done it.

The following morning, the witness reported the matter to one Thomas Ariko and relatives of the deceased persons who then brought the dead bodies back home. The same report was made to Katakwi Police who later authorised them to bury the dead.

Evidence of PW2 is that the late Eugenio Akubu was an R.C.1 Chairman. In the morning of 19.4.91 he received a report that Eugenio Akubu and his brother Silver Ingabat were killed and that their people in the home were badly tortured. In his capacity as the Vice-Chairman R.C1 he visited the home and confirmed that Silver Ingabat and Eugenio Akubu were actually killed. PW1, John Imerit and others who survived informed the witness that it was Karamojong who killed the deceased persons.

Thereafter, he made a report to R.C3 Chairman of the area who ordered him to gather all the village people including the mourners which he did. After the meeting, the matter was reported to Katakwi Police Post. Later the witness learnt that the 5 accused persons and One Okeloto and Okuru who are still at large were arrested in connection with the case now before court. /3

In the light of that evidence, the learned defence counsel submitted that a prima facie case was not established to warrant the accused persons to stand on their defence. The learned Counsel submitted that the prosecution evidence was so contradictory and so much discredited that no reasonable tribunal would convict even in the absence of defence. He pointed out that in cross-examination PW1 admitted that in fact her late husband, Eugenio Akubu was with her, in the house when the attackers came and that the late Akubu escaped the attack and ran to the home of her co-wife. It is submitted that that piece of evidence cannot be attributed to lack of memory due to lapse of time but a typical lie because she had already told court that at the material time of attack, her husband was in the house of her co-wife.

The prosecution side, however, maintains that the inconsistency in question was minor and was caused by lack of memory due to lapse of time since the incident took place on 18.4.91. It should be ignored as it does not go into the roots of the case as to destroy it which the court does not agree with for the reason hereunder.

It is in evidence that before the incident, PW1 had known the accused persons very well. Through moonlight she was able to identify the accused persons and also for the reason that the ordeal took a long time, an hour while still on her compound and 2 hours on the compound of her co-wife. She also claimed to have told the Police and the relatives of the deceased persons the names of her assailants. But the area Vice-Chairman R.Cl, PW2 informed court that the following morning after the fateful night, i.e. 19.4.91, PW1 among others who survived told him that it was the Karamojong who actually killed the deceased persons.

In my humble view that is a major contradiction which goes deep into the roots of the case and thereby destroying it. Bhatt V. R.(1957) EACA 114. In addition, PW1 testified that when she was attacked on the night in question, she was highly terrified, there was no light in the house and the beatings were so continuous that there was no breathing moment. In the circumstances, identification was very difficult and hampered although she claimed there was moonlight. Conditions were very difficult and unfavourable in the circumstances and in my well considered view, in the absence of direct or circumstantial evidence as in the instant case, though PW1 might have been honest, but there is a possibility that she must have been mistaken: Abdalla Bin Wendo & Anor. V. R. (1953) 20 EACA 166.

In the premises, court concedes to the defence submission that the prosecution has not established a prima facie case to warrant the 5 accused to be put on their defence under section 71 (1) of the Trial on Indictment Decree.

Accordingly, all the 5 accused persons are acquitted and set free unless lawfully being held for some other crime.


STEVEN GEORGE ENGWAU

J U D G E

24.3.94.

24.3.94: The 5 accused persons before court.

Mr. Kakembo for all the accused persons present.

Ms. Nandawula for the State present.

Ruling delivered in open court.


STEVEN GEORGE ENGWAU

J U D G E

24.3.94.

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