

In a much older decision in **RVSIMS (1946) 1KBS**, it was held that the burden of proof entirely falls on the prosecution to adduce evidence to prove beyond reasonable doubt that the offence was not only committed but was committed by the Accused person.

In the instant case, the state must prove that Kobusingye Barbara is dead, her death was caused unlawfully and with malice aforethought and finally that the Accused person is responsible or participated in causing the death. I will examine the prosecution and defence evidence together on each essential ingredient of the offence before reaching any verdict.

PW9, Dr. Moses Byaruhanga, a Pathologist carried a post mortem examination of a body identified to him as that of Kobusingye Barbara on 8th September 2015. He made a report admitted as prosecution Exhibit P.E.9). He established that she had been manually strangled to death. The neck had extensive contusion of muscles. He observed haemorrhage in the posterior aspect of the tongue. He observed scratch marks of the interior and lateral necksides measuring 0.5cm to 4cm long on the face of it, a great deal of force was put in the strangulation of the deceased.

Under Cross Examination he stated "**---- Even if the attacker did not have nails, pressure alone of the fingers would still cause the neck injuries observed**":

DW7 – D/Cpl, Joseph Ngabirano gave impressive observation as a scene of crime Officer. On 7th September 2015 he found the deceased's body on her bed. He took several photographs admitted as P.Exh. No. P8 (1-22). He observed multiple injuries around the neck. The neck was very loose, consistent with strangulation effects. The sitting room was well arranged, no evidence of break-in or struggle in the room.

PW1 – J. B. Kanakulya, the deceased's landlord confirmed that Kobusingye Barbara is dead. She died in her room around 7th September 2015.

Death in homicide cases can be proved by medical evidence, i.e post mortem report or oral evidence of those who saw the dead body and/or participated in the burial. Therefore, the evidence of PW9, PW7 and PW1 above proved beyond reasonable doubt that the deceased named in the indictment is actually dead and died around 7th September 2015.

Regarding the second element of the offence of murder, the presumption in law is that every homicide is unlawful unless it is accidentally caused or it is for some reason justified. See decisions:- by Justice Augustine Kania in Uganda Versus Eguma Charles – Criminal Session Case No. 034 of 2007 at Arua by Justice J. W. Kwesiga in Uganda Versus Bahirayo Enos – Criminal Session Case No. 071 of 2010 where both Judges of the High Court followed on this point R. Versus Busambizi S/o Wesonga (1948) 15 EACA 65.

Article 22 of the Constitution of the Republic of Uganda protects right to life. No person has a right to deprive another of his/her life. Strangulation of a person to death is unlawful. I have examined the circumstances surrounding the killing of the deceased. The prosecution evidence shows that whoever caused her death found her in her residence on her bed. There was no evidence of a struggle or a fight. According to the evidence of PW7 D/Cpl Joseph Ngabirano, the house was very well arranged and therefore, this ruled out a possibility of a fight to suggest self defence. The charge and caution statement admitted as P.EZ constitutes good circumstantial evidence. This evidence depicts the attacker as the Accused who squeezed her neck in anger. There is no doubt, this death was unlawfully caused.

Before dealing with the issue of whether or not there was malice aforethought, I will deal with whether the Accused person participated?

In his defence, the Accused person gave evidence not on oath and called no witness to support his defence.

He told court that the deceased was his girl friend and that he rented for her the house in which she was found dead. He was the last person in the house of the deceased the day before her death. He was in possession of the only keys that locked the house from outside most probably after the deceased had collapsed.

He was evasive each time that Eleanoh asked him why Barbara was not picking her calls and when she requested him to open for her (Eleanoh) for purposes of collecting the keys she left in Barbara's house.

Finally, the examination of the charge and caution gives details of why and how the Accused strangled the deceased. I am satisfied the chain of evidence properly puts the accused person at the scene and points to his guilt.

I have considered the fact that none of the witnesses saw the accused person commit the offence and that he has denied the confession in the charge and caution statement. This does not render its contents useless. The Eastern African Court of Appeal settled the applicable principle of Law in these words: **"a trial court should accept any confession which has been retracted or repudiated with caution and must, before founding a conviction on such a confession be fully satisfied in all the circumstances of the case that the confession is true. The same standard of proof in required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the court. But corroboration is not necessary in Law and the court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true";**

In view of the above Statutory Provisions, malice aforethought is the state of mind or mental disposition of the Accused person at the time he

- (a) **An intention to cause the death of any person.**
- (b) **Knowledge that the act or omission causing death will probably cause the death of some person -----"**

of the following circumstances.

Section 191 of the Penal Code Act provides:- **" Malice aforethought shall be deemed to be established by evidence providing either**

Section 188 of the Penal Code Act provides:- "Any person who of malice aforethought causes the death of another person by an

unlawful act or omission commits murder"

murder there must be proof of malice aforethought.

Having found that Walakira Lawrence unlawfully caused death of Kobusingye Babra at Kiwafu, Entebbe for the death to amount to

participated in causing the unlawful death.

I am satisfied beyond reasonable doubt that the Accused person

circumstantial evidence that supports the other independent evidence of presence at the scene when she died and his presumed participation.

The Accused person's charge and caution statement is so detailed that its contents could only be from the Accused person. This renders the statement to be true. Even if it was to be said otherwise, it forms good circumstantial evidence that supports the other independent evidence of presence at the scene when she died and his presumed participation.

The accused person, a part from deceased, was the only person who had keys to the house. The deceased's set of keys was found lying on the table inside the house and the reasonable inference is that he locked the house after he had strangled the deceased.

The accused person's conduct of avoiding giving keys to Eleanoh who ordinarily freely entered the house, his reluctance to go and open the house until Eleanoh threatened to break the padlock to access the house showed that the accused person had something to cover up.

S.192 provides that homicide committed in such heat of passion caused by sudden provocation before there is time for his passion to cool amounts to manslaughter. I have evaluated the circumstances of how he ended up holding her neck, releasing her neck after a minute and I find that he released the neck when he recovered from the heat of passion but damage had been done. Provocative circumstances vary from case to case and therefore, provocation will depend on facts and circumstances of each case.

The circumstances of the Accused person's lover (deceased's) involvement with other men, calling her in the night while with him in bed and considering that she was so under his financial care and rudely answered him, though unreasonable, amounted to provocative moment. Section 193 of the Penal Code defines provocation to include any wrongful act or insult of such a nature as likely to deprive him of the power of self-control leading to commit an assault.

This extract from the charge and caution statement reveals the truth of how Barbara met her death which was in agreement with the Pathologists' findings. Therefore, he caused death by strangulation of his victim's neck. This part of the admission also depicts that he over-reacted, lost his temper and held her neck in a heat of passion of the anger which rules out intention to kill despite that he acted unlawfully.

Following a suspect telephone call from another man, he stated:- "----- I lost my temper and found myself holding her by the neck to a point where she could not make any movement. ---I held her in the neck for about a minute and when I released my hand from her neck, she was breathing heavily. She started shedding tears ----. I left her on the bed, closed the door and went to my place";

(!!!)

- Mr. Tuhairwe Julius (SSA) for the state.
- Mr. Ivan Sekyonda holding brief for Mr. Orone Solomon for Accused.
- Ms. Gorret Boogere – Court Clerk.

In the presence of:-

30/05/2018

Judge

J. W. Kwesiga

Dated this **30th** day of **May 2018**.

The Accused person is hereby convicted of Manslaughter Contrary to Section 187 and 190 of the Penal Code Act.

My finding in the instant case is that death resulted from an unlawful act done by the accused person without malice aforethought and I do find the accused person guilty of Manslaughter Contrary to Sections 187 and 190 of the Penal Code. I do not take the Assessor's advice to find him guilty of Murder because they omitted examining the provocative circumstances revealed in the charge and caution statements whose contents I found correct.