

IN THE SUPREME COURT OF UGANDA  
AT MENGO

CORAM: (ODER, TSEKOOKO, KAROKORA, MULENGA, KANYEIHAMBA, JJSC)

CRIMINAL APPEAL NO. 35 OF 2000

BETWEEN

OJANGOLE JOHN MICHEAL ..... APPELLANT

VERSUS

UGANDA ..... RESPONDENT

*(Appeal from the judgment of  
the Court of Appeal at Kampala  
before Kato, Engwau and  
Kitumba, JJA dated 27<sup>th</sup> July  
2000 in Criminal Appeal No.  
137/1999)*

JUDGMENT OF THE COURT.

Ojangole John Michael, the appellant, together with one Emadinga Silver were tried by the High Court at Soroti on an indictment containing two counts. In the first count the two were indicted for the murder of Ojilong Constant, the deceased. In the second count the two were indicted for capital robbery C/ss 272 and 273(2) of the Penal Code.

The prosecutor called four witnesses including a medical doctor who carried out the postmortem examination. The other three witnesses namely A. Ikedit (PW2) the wife of the deceased, Okiria (PW3) a brother of the deceased and Odeke J (PW\$) testified as eye witnesses. At the conclusion of the prosecution case the learned trial Judge

acquitted the appellant's co-accused. The appellant's co-accused. The appellant then gave an unsworn statement in his defence wherein he raised the defence of alibi to the effect that on the night of the murder and robbery he was not at the scene but was at his duty station, Bugema Army Barracks in Mbale District.

The learned trial Judge believed the evidence of the prosecution on the two counts and found that the prosecution had disproved the alibi raised by the appellant. The learned Judge found the appellant guilty of murder but acquitted the appellant on the count of capital robbery. However, the Judge found the appellant guilty of simple robbery and convicted him accordingly.

The appellant appealed to the Court of Appeal, which dismissed the appeal. The appellant has now appealed to this court on two grounds.

In the first ground the complaint is that the Court of Appeal erred in accepting the finding of the trial Judge on the issue of identification of the appellant. The complaint in the second ground is that the Court of Appeal erred in upholding the decision of the High Court to the effect that the prosecution had destroyed the defence of alibi raised by the appellant.

Mr. Tumwesigye, Counsel for the appellant argued the two grounds together. The effect of this arguments is that the offences were committed in circumstances which were not conducive to proper and unmistakable identification of the

attackers. He cited Abudal Nabulele & Ors vs. Uganda (1979) HCB 77 in support of his arguments.

Counsel argued that the Court of Appeal was wrong in holding that there was overwhelming evidence against the appellant. Counsel attempted to allude to some inconsistencies in prosecution evidence of PW3. He also referred to Okethi Okale vs Republic (1965) EA 555.

Mr. Michael Wamasebu, Principal State Attorney, on behalf of the State respondent supported the decisions of the two courts below and prayed that the appeal should be dismissed.

He relied on S.331(1) of the residing of the Criminal Procedure Code Act and decision of this court in Siraji Sajjabi vs Uganda Criminal Appeal No. 31 of 1989. We have read the record of the proceedings before us we have considered the judgments of the two courts below and the arguments of both Counsels.

In the instant appeal we are faced with the issue of whether the appellant was correctly identified at the scene of crime by the three prosecution witnesses. We note that the trial Judge believed the three eye witnesses who knew the appellant well. The Court of Appeal accepted the findings of the trial Judge on the identification. We have not been persuaded that the Court of Appeal erred in upholding the findings and decision of the trial Judge.

We think that there was ample evidence to support the conviction of the appellant on both counts. The Court of

Appeal directed itself properly on the evidence and on the law accordingly. We find no merit in both grounds of appeal which must fail. In the result this appeal is dismissed.

Delivered at Mengo this 23<sup>rd</sup> day of March, 2001.

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A.O.H. ODER,  
JUSTICE OF THE SUPREME COURT

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J.W.N. TSEKOOKO,  
JUSTICE OF THE SUPREME COURT.

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A.N. KAROKORA,  
JUSTICE OF THE SUPREME COURT

.....  
J.N. MULENGA,  
JUSTICE OF THE SUPREME COURT.

.....  
G.W. KANYEIHAMBA,  
JUSTICE OF THE SUPREME COURT.