

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL SESSION CASE NO.651 OF 2019

UGANDA

PROSECUTOR

VERSUS

SSEMWOGERERE RONALD

ACCUSED

BEFORE HON: JUSTICE ISAAC MUWATA

JUDGEMENT

The accused person is charged with aggravated robbery contrary to section 285 and 286(2) of the Penal Code Act.

The prosecution alleges that on the 25th November, 2018 at Kigoogwa in Wakiso District, the accused person and others at large robbed Kijjambu Dissan of his motorcycle registration number UEE 859F and immediately before or after the time of the said robbery hit him on the head using a log of wood thereby causing him grievous bodily harm.

From the onset, the prosecution is required to prove its case beyond reasonable doubt and any doubt must be resolved in favor of the accused person. In the case of aggravated robbery as is the case here, the prosecution must prove the following ingredients

- 1. That theft occurred.**
- 2. That there was use of actual violence at, before, or after the theft or that the accused caused grievous harm to the victim.**
- 3. That the accused participated in the commission of the offence.**

The prosecution adduced the evidence of six witnesses while the accused gave evidence on his own behalf.

That theft occurred

Theft occurs when a person fraudulently and with intent to deprive the owner of a thing capable of being stolen takes that thing from the owner without a claim of right. See: Section 254 (1) of the Penal Code Act.

The offence of theft is sufficiently proved upon proof of the fraudulent taking or conversion of any item that is capable of being stolen.

PW2, Kijjambu Dissan told court that he owned motorcycle Reg.UEE 859F. Proof of his ownership was tendered in by way of a receipt. He also testified while at Kiyembe, he was attacked, beaten and later his motorcycle was taken. The said motorcycle was later recovered in Wobulenzi and exhibited in court through an exhibit slip tendered in by PW6. I find this evidence sufficient to prove the element of theft

That there was use of actual violence at, before, or after the theft or that the accused caused grievous harm to the victim

To prove that grievous harm was occasioned on the victim, the prosecution relied on the evidence of PW1 Dr. Olingo Michael who examined the victim on PF3 and characterized the injuries sustained by him as grievous harm. Similarly, PW2 the victim also testified that he was hit on the head and he became unconscious. The same was also corroborated by PW3 who told court that he found the victim bleeding. I therefore find that this ingredient was also proved beyond reasonable doubt.

That the accused person participated in the commission of the alleged offence.

In determining the issue of participation, the court must examine all evidence closely, bearing in mind the established general rule that an accused person does not have to prove his innocence. And that by putting forward a defense like alibi or any other, an accused does not thereby assume the burden of proving the defense except in a few exceptional cases provided for by law. It is up to the prosecution to disprove the defense of the accused person by adducing evidence that shows that, despite the defense, the offence was committed and was committed by the accused person. **See: Sekitoleko Vs Uganda [1967] EA 531,**

To prove participation, the prosecution relied on the evidence of PW2 the victim who identified the accused. PW2 told court that the accused person was known to him as a boda boda rider at Kigoogwa. He stated that he identified the accused as the person who used a stick to beat him till he lost his consciousness. He told court that he was able to identify the accused having known him before.

PW2 stated that the incident happened at about 8:00pm. This calls into question whether the conditions were favorable for identification. The established principles with regard to identification were laid down in the case of **Abdallah Nabulere & Anor Vs Uganda Criminal Appeal No. 9 of 1978**, where it was stated that the court must examine closely the circumstances in which the identification came to be made, particularly, the length of time the accused was under observation, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence.

PW2 told court that he knew the accused and properly identified him before even the incident occurred. He was therefore familiar with him. The fact that the victim properly observed him prior to the incident and when he was hit with a stick destroys the accused assertion in his alibi that he was home at the time the incident occurred.

While an accused bears no burden to prove his alibi, it is now a well-established principle of law that a person who sets up the defence bears the burden to account for so much of their time when the offence is said to have occurred, so as to render it impossible for him to have committed it. It also requires that for the defence of alibi to be believed, it should be disclosed at the earliest possible opportunity.

The evidence of proper identification in my considered view dispels the alibi raised by the accused. The victim was familiar with the accused as they had been together prior to the incident, and was known to him as a fellow *boda- boda* rider. There was no evidence of a grudge between the accused and the victim to suggest any malice towards the accused.

He was thus properly identified as part of the assailants who beat him up and specifically that he was holding a stick. While it is not clear who took the motorcycle, the circumstances of how the victim was attacked, beaten and later left unconscious point to the guilt of the accused. The facts are incompatible with innocence of the accused person, and incapable of explanation upon any other hypothesis than that of his guilt.

In determining this I have borne it in mind that the law requires the trial court to carefully scrutinize evidence of a single identifying witness and only convict if satisfied that it is free from any possibility of error or mistake. Such evidence of a single witness regarding identification must be tested with the greatest care and the court can on safely convict if it is satisfied that the conditions prevailing at the time of the attack favored a correct identification. In the instant case, the accused was properly identified and placed at the crime scene as an active participant and not just a mere spectator. See: **Abdallah Nabulere & Anor Vs Uganda Criminal Appeal No. 9 of 1978,**

I therefore find that the prosecution proved beyond reasonable doubt that accused participated in the commission of the said offence. I find him guilty as charged and is accordingly convicted of the offence of aggravated robbery.

I so find

JUDGE.

17/01/2024