

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LIRA
HCT-10-CR-CSC-0090-2021

UGANDA ::: PROSECUTOR

VS

OKUJA YUBENTINO :::ACCUSED

BEFORE: HON JUSTICE DUNCAN GASWAGA


JUDGMENT

- [1] The accused has been indicted for the offence of murder c/s 188 and 189 of the Penal Code Act. The particulars allege that **Okuja Yubentino** and others still at large on the 24/09/2014 at Abongo-Iworo village in Alebtong District unlawfully murdered Alele Precila. The accused denied the offence and the prosecution led evidence from four witnesses. After the closure of the prosecution case, the accused was invited to put up a defence and he elected to give his evidence on oath. No witness was called to his aid.
- [2] The brief facts of this case are that on the 24th day of September 2014 at about 01:00pm, one Oyattaa Geoffrey and Ogwang Jimmy came to the home of the accused person. Accused came out of the house and they started discussing something to do with selling them a python. The accused then moved behind the house and continued the conversation with the two gentlemen, advising them that they should come with a metallic box in which to carry the python. The men were also seen handing over money to the accused. Later in the night, the complainant



went to sleep with the deceased baby who was only 9 months while the rest of the children went to sleep in another house. The accused had left his home immediately following the departure of the two guests. He did not return. The complainant, also wife to accused and mother to deceased PW1, then woke up at around midnight to check for the baby who was now missing. The complainant made an alarm and also alerted the area L.C.I and they searched for the child in vain. That the complainant immediately suspected the accused person who had many times reportedly disputed the paternity of the deceased. The deceased's body was later discovered on 29/09/2014, buried in a swamp. The police was called and PW4 drew a sketch plan for the scene. A post mortem was conducted and it was found that the deceased had died due to strangulation. The accused was arrested and he denied participation in the crime.

- [3] In criminal cases, the burden of proof rests solely with the prosecution to prove the guilt of the accused person beyond reasonable doubt and this burden does not shift save for a few exceptions this case not being one of them. See .Woolmington vs. DPP (1935)AC 462, 481 & 482. This position has also been quoted with approval by our Courts in a number of cases; See Paulo Omala vs. Uganda criminal Appeal No. 6 of 1977 Reported Vol 1 1978 Judgment of the Court of Appeal for Uganda May/August 1978 and Okale V R 1965 EA Page 555. According to the case of Uganda Vs Bosco Okello alias Anyanya [1992-1993] HCB 68, "beyond reasonable doubt" means that the evidence adduced must carry a reasonable degree of probability of the accused's guilt leaving only a very remote possibility in his favour. I shall now evaluate the evidence adduced in its totality against the ingredients that comprise the offence of murder.

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[4] It is therefore incumbent upon the prosecution to prove the following ingredients;


- (i) **death of the victim, Alele Precila;**
- (ii) **that it was caused unlawfully;**
- (iii) **that it was caused with malice aforethought, and**
- (iv) **that the accused person participated in the said crime**

[5] It is beyond contention that all the first three ingredients were not contested and therefore proved to the required legal standard. It was confirmed in PF48 (the post mortem report) tendered in evidence that Alele Precila is indeed dead. As regards the second ingredient that the deceased's death was caused unlawfully because the same was not allowed under the law. According to PF48, it was found that the cause of death was asphyxia due to strangulation. That the eyes were protruding and there was a clear separation between the cervical bones. All the parts of the body targeted indeed speak to malice aforethought because strangulation causes blockage of the air ways and leads to death. The court is therefore left with only the task of determining the participation of the accused in the crime.

[6] PW1 **Akao Beatrice** also the mother of the deceased testified that after the accused's engagement with the visitors that came home inquiring about the sale of the python, the accused left the home and never returned. That later in the night PW1 woke up and couldn't see the baby she had slept with on the same bed. They searched for the deceased and couldn't find her. The child disappeared for four days. That on the 29/09/14, PW3 while herding cattle found the child's body buried in the grazing land and informed PW1 who went and identified the child from the clothes she had been wearing. That PW3 called the police. The body was removed. It was rotting. She further stated that she had not been living well with her husband because of the co-wife and that the husband

(accused) would always quarrel and say that he was not the father of the deceased.

- [7] **PW2** testified that on 24/09/2014 he saw the accused with three other men in a conversation about the sale of a python. That when the accused noticed that the conversation was being followed, he moved behind the house where the conversation was concluded and the men gave money to the accused. That the accused asked them to come with a box in which to carry the python. Further, that PW2 noticed that the accused and the men he was talking to kept pointing at the doors of the houses where the children resided.
- [8] **PW3** the L.C.1 chairman testified that PW1 went to his home on 24/09/2014 at 4:00am crying and she told him that the accused had stolen her child from the house. That in the morning they searched for the child in the surrounding areas in vain and also searched for the accused. That the accused was later found returning home and when asked he insisted that he did not know what had happened to the child. The accused was then arrested by police. PW3 further stated that there was nothing that could make him know that the accused had indeed killed the deceased.
- [9] On his part **PW4** testified that on 24/09/2014 a report of a missing child was made at Alebtong police station. The file was allocated to him as investigating officer. PW4 took oral testimony from PW1, the mother of deceased. That later on 29/09/2014 it was reported that the deceased had been discovered buried in a swamp. PW4 and a medical officer from Alebtong health centre III proceeded to the scene of crime where PW4 as the scene of crime officer drew a sketch plan of the scene of crime which was exhibited in court as **PE3**. He also took photographs of the body. A post-mortem report (PE1) was then made. That from preliminary investigations PW4 established that the accused was having two wives

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and he was suspecting PW1 of having extra marital affairs and as such disputing the paternity of the deceased and that he had promised to kill the deceased because of having a brown skin colour different from other children.

- [10] The accused denied having committed the offence and testified that on the 24/09/2014 he spent the night at the home of his second wife. That he had left the home of PW1 at 5pm. According to the accused he thinks his wife knows what happened to the deceased since he did not kill his daughter. He later on informed the court that he had found out about the murder of the deceased at 6:00am in the morning. When asked who had informed him, he stated that it was his wife but later stated that it was the chairman who informed him while he was still at hospital.
- [11] As can be deduced from the evidence on the record, there was no eye witness to the accused committing the crime. However, the accused is highly suspected to have committed the crime. There being no direct evidence, what is left is circumstantial evidence.
- [12] Circumstantial evidence is about the cumulative effect of the totality of the evidence and therefore the different pieces of evidence should not be looked at in isolation of each other. It therefore leaves the court with various pieces of evidence which on their own or individually cannot stand to offer a basis for an inference of guilt. The court of Appeal in **Dhatemwa alias Waibi Criminal Appeal No.23/1977** stated that; *"it is true to say that circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which is capable of proving facts in issue accurately. It is no derogation of evidence to say that it is circumstantial."* In **R Vs Kipkering Arap Koske and Anor (1949) 16 EACA 135** court held that; *"in order to justify, on circumstantial evidence, the inference of guilt, the exculpatory facts must be incompatible with the*



innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt."

- [13] I have had the opportunity to diligently re-evaluate all the evidence adduced by the prosecution as well as defence. I found that all the prosecution witnesses carefully put to court the events surrounding the death of the deceased but none of the witnesses placed the accused at the scene of crime at the material time or connected him to the murder herein in any way. PW1 stated that the accused was not seen at home for four days until the body of the child was recovered four days later and that the accused did not even attend the burial of the deceased. The accused on the other hand insisted that he found out about the death of the child the following morning when he had been arrested. It could therefore be deduced from these accounts that the accused failed to attend the deceased's burial because he was already in police custody. And indeed during cross examination, all the prosecution witnesses confirmed that they did not see the accused killing the deceased.
- [14] None of the pieces of evidence adduced tends to suggest that the accused participated in this murder in any way, whether directly or indirectly. No inference of guilt therefore can be based on such facts or evidence. Although one can easily be tempted to think that the men who visited accused's home to buy a python may have actually come to receive instructions to murder the deceased and also see how the scene (home) exactly looked like especially the house where the deceased was sleeping, still no incriminating evidence was adduced to link the said men and or even most importantly the accused in the dock to the said murder.
- [15] As earlier mentioned, at best, the evidence presented indicates a high suspicion that the accused may have committed or participated in the crime in question. It is noteworthy, that even after the accused presented an alibi, there seemed to be no efforts on the part of the investigating

*SSC*⁶

team to indeed confirm if the accused had spent the night at the house of his second wife. His alibi cannot therefore be questioned or rejected. Generally, the evidence connecting the accused person to the crime is non-existent on the record although the suspicion of his involvement is very high. In criminal law and practice, a suspicion, however high it may be can never result into a conviction. On the whole, it is now clear that the prosecution has failed to prove that the accused person indeed participated in the crime.

- [16] The gentleman and lady Assessor have advised me to find the accused guilty and convict him accordingly because all the ingredients have been proved beyond reasonable doubt. However, for the reasons I have already given herein above I respectfully differ with their opinion. The third ingredient of participation of the accused has not been proved to the required legal standard. The pieces of circumstantial evidence to wit; threats by accused to kill the deceased because he doubted paternity, the visit by strangers who came to purchase a snake on the fateful day and the disappearance of the accused from his home on the day in question e.t.c. as listed by the assessors, when put together cannot form a concrete foundation on which an inference of guilt could be formed. For instance there is no evidence to prove that the snake purchase deal was a sham. Merely pointing at the various doors in the compound while discussing how the python would be carried in the metallic box is not sufficient evidence, though suspicious. This circumstantial evidence i.e. these pieces of evidence are too weak and insufficient to prove a criminal case to a standard beyond reasonable doubt. This is a case with very high suspicion of the accused having participated in this crime but with very little incriminating evidence or none at all connecting him or the strange visitors to the crime herein.

[17] Accordingly, I find that the prosecution has failed to prove all the ingredients of this case beyond reasonable doubt and hereby dismiss the charges against him. He is acquitted.

**Judgment read and signed in open court at Lira this 16th day of
December 2021.**



**Duncan Gaswaga
JUDGE**