

In order to successfully prosecute a case of murder the prosecution must prove beyond reasonable doubt the following ingredients of the offence:

- (a) that the deceased was killed;
- (b) that the killing was unlawful;
- (c) that the killing was with malice aforethought; and
- (d) that it was the accused who committed the offence.

The defence did not contest the first three ingredients above. What was contested was the identity of the killer of the deceased.

The prosecution did prove the first ingredient beyond reasonable doubt. A medical certificate of death was tendered in evidence as exhibit PW1. The certificate showed a female called Nakate had died at Mityana Hospital on 11th July 1998. P.W.1 the father of the girl also testified that his daughter Nakate had died on 11th July 1998.

The second ingredient is of whether the killing was unlawful. It is presumed that where a person is killed his or her death is murder unless such death was brought about in circumstances which show that it was accidental, that it occurred in the process of self defence, defence of another, defence of property or in execution of a lawful sentence. Any other killing is unlawful. The case of Rex vs. Gusambizi s/o Wesonga (1948) 15 EACA 65 refers. Since the death of the deceased did not fall under the categories mentioned it was unlawful.

The third ingredient is that of malice aforethought. The law defines malice aforethought as an intention to kill or knowledge that the act or omission causing death will probably cause the death of some person. Section 186 of the Penal Code Act is articulate on this. Malice aforethought is also patent from the following:

- (i) the nature of weapon used in causing death
- (ii) the number of injuries inflicted on victim

- (iii) the part of the body where such injury was inflicted
- (iv) the conduct of the killer before and after death.

The case of Rex vs. Tubere s/o Ochen (1945) 12 EACA 63 is of relevance here.

I am satisfied that given the facts of the case at hand, when related to the pre-requisites for malice aforethought, the killing was done with malice aforethought.

It now remains to determine whether it was the accused who killed the deceased. The prosecution adduced the evidence of PW1, PW2, PW3 and PW4 all of whom stated that on separate occasions the deceased told them that it was the accused who had inflicted cut wounds on her. Section 30(a) of the Evidence Act allows for statements such as one made by the deceased to be relevant. The witnesses were consistent. However, I have warned myself as indeed I warned the gentlemen assessors of the danger of convicting on evidence from a single source, namely Nakate, the deceased. She could have been mistaken. The prosecution did not give satisfactory evidence concerning the conditions for identification. As it was night there is no evidence whether any light was available in the room or how the deceased came to perceive that it was accused who had cut her with a panga. Prosecution evidence did not rule out the possibility of another person or other persons coming into the room and cutting the deceased. It would have been helpful if that aspect of evidence had been highlighted by the prosecution. What is required is some other evidence to corroborate Nakate's allegation. So far as the prosecution evidence admits that other evidence is that accused and deceased lived together and indeed were in the same room at the time in issue. This is circumstantial evidence. In Simoni Musoke VR [1958] EA 715 it was held by the Court of Appeal for Eastern Africa that in a case depending exclusively upon circumstantial evidence court must find before deciding upon a conviction that the inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. Court went on to quote the case of Teper vs. R (2) [1952] A.C. 480 at page 489 which stated:

“It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference”.

As I have expressed above the possibility of another person or persons being the ones who cut the deceased with a panga has not been completely ruled out by the state case.

I must also own that in cases of murder motive is not essential. Section 9 (3) of the Penal Code is clear on this. However where motive exists it serves to strengthen the prosecution case against the accused. Conversely, absence of motive is favorable to the accused because a normal person would not kill another person for no reason. Refer to the case of Bitwire vs. Uganda [1987] HCB 11. In the instant case there was no apparent motive.

All in all, I find that the prosecution has failed to prove beyond reasonable doubt that it was accused who cut the deceased with a panga and caused her eventual death. As such the prosecution case against the accused founders.

I have heard the opinion of the gentlemen assessors. They advise me to acquit the accused and I agree with them. Accordingly I acquit the accused.

Paul K Mugamba

AG. JUDGE

29/03/2000