

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARU

**HCT-05-CR.CO.0046-2001**

UGANDA .....PROSECUTION

-VS-

BERUTSYA STEVEN .....ACCUSED

BEFORE THE HON. JUSTICE P. K. MUGAMBA

**JUDGMENT**

The accused is indicted for murder contrary to sections 183 and 184 of the Penal Code Act. Six witnesses testified on behalf of the prosecution. In addition there was medical evidence admitted under S64 of the T.I.D. The witnesses were Caleb Rukundo (PWI), Abaasa David Mwijukye (PW2), Kateera Christopher (PW3), Katushabe Annet (PW4), No. 25736 D/Cpl. Turyamureeba (PW5) and Mzee Abaho Masaba Horace (PW6). Accused made a statement on oath and called no witness.

Briefly the prosecution case is that on the night of 15<sup>th</sup>/16th April 1999 the deceased asked for a lift on accused's motorcycle. Accused declined to give the lift whereupon the deceased insisted on being given a lift. Thereafter each of the two threatened to beat up the other. Before long a struggle ensued and accused picked up a piece of firewood he used to hit deceased once on the head wounding him fatally. Accused was later arrested, after he had left the locality, and was charged accordingly. He denies the offence.

In order for the prosecution to secure a Conviction in a case of murder it must prove all the four ingredients of the offence beyond reasonable doubt. The four ingredients are:

- (a) that the deceased is dead;
- (b) that his death was unlawful;
- (c) that the person who caused the deceased's death did so with malice aforethought; and

(d) that it was the accused who caused the deceased's death.

I proceed to discuss the above ingredients in relation to the available evidence.

The first ingredient is to have the death of the deceased established. All the prosecution witnesses testified that the deceased did die. There is also the admitted evidence contained in exhibit P1 which shows the deceased died. I hold that the prosecution has proved this ingredient beyond reasonable doubt.

Concerning the second ingredient, the law presumes every killing of a person to be unlawful except where such killing came about in circumstances which show that it was accidental or that it occurred in the process of self defence, defence of another, defence of property or in execution of a lawful sentence.

See R v Gusambizi s/o Wesonga (1948) 15 EACA 65.

The deceased was hit with a piece of firewood on the head according to prosecution evidence. Since the exceptions given in the Gusambizi case do not apply in the instant case I am inclined to hold that the prosecution has succeeded in proving that the killing of the deceased was unlawful.

The third ingredient relates to malice aforethought. This is described in section 186 of the Penal Code Act. Following the case of R v Tubere s/o Ochen (1945) 12 EACA 63 court takes the following factors into account before establishing malice aforethought

- (a) the nature of weapon used in causing death;
- (b) the number of injuries inflicted upon the victim;
- (c) the part of the body where such injury was inflicted; and
- (d) the conduct of the killer before and after the death.

According to prosecution evidence deceased was hit once on the head with a piece of firewood which happened to be lying nearby. There had been an argument concerning a lift on a motorcycle and a physical struggle had ensued, It was deceased who had demanded that accused give him a lift or else give him keys to the motorcycle. The Court of Appeal in Joel Okabo - vs- Uganda [1987] HCB. 10 held that the defence of provocation where it is available on the evidence and circumstances of the case should be taken into account. Consequently, I find that

the prosecution has not proved beyond reasonable doubt that there was malice aforethought in the instant case.

The final ingredient concerns accused's responsibility in committing the offence. PW4 testified that she was sleeping in her room when she recognized the voices of accused and deceased quarrelling over a lift on a motorcycle. When she opened her door deceased lay on the ground with blood coming from his head. She had earlier seen deceased and accused together. PW6 testified that accused had a quarrel over accused's motorcycle. He testified that afterwards the two fought for the key and accused picked a piece of firewood and hit deceased on the head with it.

In his defence accused set up an alibi. An accused who sets up an alibi in his defence does not bear the responsibility to prove it. The prosecution must disprove and destroy the alibi by adducing evidence which places the accused squarely at the scene of crime.

See *Uganda - vs- Phostin Kyobwengye [1988-1990] HCB. 49.*

Accused stated that while it is true there was physical struggle between him and the deceased he did not hit the deceased as alleged because in the course of the fight between him and the deceased PW2 and PW6 intervened and separated him and the deceased. While deceased was still being held accused had got a chance and escaped. I have clearly noted that PW6 testified that accused picked a piece of firewood and hit deceased with it on the head. This contradicts accused's statement. On his part PW2 testified that he was not witness to any fight between deceased and accused. I can't help but note that the testimonies of the two witnesses leave the testimony of the accused lacking in credibility. Consequently, I find that the prosecution has proved beyond reasonable doubt that accused was the person who caused the death of the deceased by hitting him on the head with a piece of firewood.

In their joint opinion the two assessors advised me to convict accused of manslaughter. For the reasons I have given above I agree with that opinion. Accused is found guilty of manslaughter contrary to section 182 of the Penal Code Act and convicted accordingly.

P. K. Mugamba  
Judge

20th August 2002

Mr. Murumba State Attorney

Mr. Dhabangi for the accused person

Accused in court

Ms Tushemereirwe court clerk/interpreter

Court: Judgment delivered

P. K. Mugamba  
Judge

**Allocutus**

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**State Attorney:**

The convict is a first offender. He had no previous record. However manslaughter is a serious offence and maximum sentence is life imprisonment. Life of a human being is God given and a person should not be easily deprived of it. There should be a serious punishment. I pray for a stiff sentence.

**Mr. Dhabangi:**

The accused person is 31 years old. He is married and has 3 children. He requests court to consider the circumstances under which the offence was committed. The highly provocation manner in which deceased bullied him. He deserved a lenient sentence. Accused has been on remand for 3 years.

**Convict:**

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I have been on remand for 3 years and I have learnt a lot. I have been infected with tuberculosis. I will need treatment. My wife has left home and the children are being looked after by my father and mother who are elderly. I am the only person who was educated. I wish to go and look after my children.

**Sentence**

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The offence with which you are convicted is manslaughter which carries a sentence of life imprisonment as the ultimate. I have heard what both your counsel and the State Attorney have told court especially regarding the circumstances of your home. I consider also the circumstances under which the offence came to be committed by you, just like I consider the 3 years you have already spent on remand. Taking everything into account a sentence of 8 years imprisonment is appropriate in the circumstances.

You are so sentenced.

P. K. Mugamba

Judge

20th August 2002

**Court:**

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You have a right to appeal this decision in the Court of Appeal if you are not satisfied.

P. K. Mugamba

Judge

20th August 2002