THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-SC-0067-2001

UGANDA ……..……..PROSECUTION

-VS-

RWAKANENGYERE GEORGE ……...ACUSSED

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

Rwakanegyere George, the accused, is indicted for aggravated robbery contrary to sections 272 and 273(2) of the Penal Code Act. The prosecution called the evidence of two witnesses in support of its case. The witnesses were Muhumuza Andrew (PW1) and Nuwamanya George (PW2). The accused in his defence gave a statement on oath and called no witness.

Briefly the prosecution case is that on the night of 20th May 2000 the accused person together with another person still at large went to the house of late Flavia Mbabazi where she was together with PW1. They ordered PW1 to lie face down and accused tore the sleeve of PWI's jacket using a knife. Accused's companion followed late Mbabazi into her bedroom and injured her on the face, probably using a knife. The attackers were in the house for about 10 minutes before they left with late Mbabazi's television set and cash Shs.60,000/. Accused was later arrested and charged with the offence of aggravated robbery.

In his defence the accused set up an alibi.

The prosecution bears the burden of proving all the ingredients of the offence beyond reasonable doubt. If there is any doubt or gap in the prosecution case it should be resolved in favour of the accused persons.

See ***Woolmington - vs- DPP*** *[1935] AC 462.*

In a case of aggravated robbery the prosecution must prove:

(a) that there was theft;
(b) that the theft was accompanied by violence or threat of violence;
(c) that a deadly weapon was used during the robbery;
(d) that the accused person was responsible.

I proceed to discuss the above ingredients in light of the available evidence.

It was the testimony of PW1 that a television set was stolen on the occasion. This report is confirmed by PW2. I find that the defence does not contest this evidence. It is my finding that the prosecution has successfully proved this ingredient beyond reasonable doubt.

Regarding the second ingredient, it is the testimony of PWI that on the occasion theft took place he was forced to lie down. When he tried to resist accused used a knife to tear his coat sleeve. In ***Owori and Another - vs- Uganda*** *[1975] HCB. 223* where the complainant was held by force and slapped this court held that violence had been used to obtain money and was sufficient violence to support the charge of robbery. I am satisfied that in the instant case the prosecution has succeeded in proving that there was violence.

Concerning the third ingredient, there is the evidence of PW1 that accused and his companion were armed with knives on the night in question. I take into account the fact that only PW 1 is available to testify to what transpired during the night, Flavia Mbabazi having sadly expired. I warn myself just like I did the assessors about the danger of basing a conviction on the uncorroborated evidence of a single witness though it is quite possible to convict on it if satisfied about its truthfulness.

See ***Chila & Anor - vs- R*** *[1967] EA 722.*

Nevertheless I take into account the fact that it was late in the night (or is it early morning?) and that PW 1 had been drinking before the arrival of the intruders. I note also that the occasion must have frightened the witness so that his ability to observe exactly what the intruders were armed with was affected.

See ***Uganda - v- Richard Baguma*** *[1988-1990] HCB. 74.*

I have to observe that it is unfortunate the torn jacket was not allowed to serve as an exhibit in this case. Consequently I do not find that the prosecution has proved beyond reasonable doubt that a deadly weapon was used on the occasion.

The last ingredient to be proved is the identity of the accused person. PW1 is the sole witness who stated that he saw him on the night in issue. Although a fact may subject to certain well known exceptions be proved by the testimony of a single witness, that rule does not lessen the need for testing with the greatest care the evidence of a single witness regarding identification especially where conditions following such identification were difficult.

See ***Munnu - vs- Uganda*** *[1988-1990] HCB. 1* and
Nabulere - vs- Uganda *[1977] HCB.2.*

It is possible PW 1 was mistaken concerning the identity of the accused person and there would be need to corroborate his evidence. I find that accused has set up an alibi. He stated in his defence that he was at Kanyaryeru in his home village at the time of the alleged offence. It is not his duty to prove his alibi but rather that of the prosecution to disprove and destroy it by placing him squarely at the scene of crime.

See ***Uganda - vs- Phostin Kyobwengye*** *[1988-19901 HCB.49.*

Here again I find the prosecution has not proved this ingredient beyond reasonable doubt.

In their joint opinion the gentlemen assessors advise me to convict the accused person as charged. For the reasons I have given in the course of this judgment I find I do not agree with that opinion. I find the accused not guilty and acquit him.

P.K. Mugamba
Judge
21st August 2002

21st August 2002

Mr. Murumba State Attorney

Mr. Magoba for accused person

Accused in court

Ms Tushemereirwe court clerk/interpreter

Court: Judgment read in court.

P.K. Mugamba

Judge