

UGANDA / JUDGMENT

Baganda v Uganda (Criminal Appeal No. 01 Of 2016) [2017] UGHCCRD 46 (23 March 2017)

[2017] UGHCCRD 46

COURT

HC: Criminal Division (Uganda)

BEFORE

Ojok, J

CASE / FILE NUMBER

Criminal Appeal No. 01 Of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CRIMINAL APPEAL NO. 01 OF 2016

(Arising from Criminal Case No. FPT – OO – CR – CO – 220 of 2015)

BAGANDA BERNARD..... APPELLANT

VERSUS

UGANDA..... RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Judgment

This is an appeal against the decision of Byamugisha Derrick Magistrate Grade one at Kyegegwa delivered on 4/4/2016.

Background

The Appellant was charged with causing grievous harm contrary to **Section 219** of the Penal Code Act and was convicted and sentenced to 2 years imprisonment and compensation of UGX 1,500,000/= to the Complainant for the medical expenses incurred.

The Appellant being dissatisfied with the conviction and sentence lodged the instant appeal whose grounds are;

1. That the learned trial Magistrate erred in law and in fact when he failed to evaluate properly the evidence about the use of the iron bar and the entire evidence on Court record and arrived at a wrong decision.
2. That the learned trial Magistrate misdirected himself when he only gave a custodial sentence to the Appellant without giving an option of a fine.
3. That the sentence was harsh and excessive in the circumstances.

Counsel Ahabwe James appeared for the Appellant and Resident Senior State Attorney Adam Wasswa for the Respondent. By consent both parties agreed to file written submissions.

Ground 1 is discussed separately and Grounds 2 and 3 jointly.

It is the duty of the first Appellate Court to re-evaluate the evidence on record by subjecting it to a fresh and exhaustive scrutiny in order to form an opinion on the correctness of the decision of the lower Court. (See: *Begumisa versus Tibega*, Supreme Court Civil Appeal No. 17 of 2002).

Resolution of Grounds:

Ground 1: That the learned trial Magistrate erred in law and in fact when he failed to evaluate properly the evidence about the use of the iron bar and the entire evidence on Court record and arrived at a wrong decision.

In the instant case the Appellant was alleged to have assaulted the Complainant with an iron bar which occasioned grievous harm to him.

The prosecution had a duty to prove ingredients of grievous harm found in **Section 2** of the penal code. Grievous harm is defined therein as

“Any harm which amounts to a maim, or dangerous harm, or seriously or permanently injures health or likely to injure health. It extends to permanent disfigurement, or permanent injury to any external or internal organ or sense.”

Counsel for the Appellant submitted that the testimonies of all the defence witnesses indicated that it was the Complainant that was holding the iron bar and the Complainant himself impliedly confirmed to Court when he stated that he picked the iron bar that was used by the Appellant.

Further that the Complaint did contradict himself when he told Court he was beaten unconscious with an iron bar and could not recognise people because he face was covered with blood but then was able to identify the assailants as being 8 in number. And how was he also able to pick the iron bar yet he was unconscious?

Secondly that the Complainant stated that it was PW3 who reported the matter where as PW3 told Court that he is the one that took the Complainant to Hospital. PW3 could also not confirm to Court where he was at 9:30 am that fateful day. The same witness went on to tell Court that he did not know where he was on 4/5/2015 but on cross examination maintained that on 5/5/2015 he was with the Complainant when he was assaulted. That, this evidence is inconsistent and full of falsehoods.

Thirdly, that PW4 who received the iron bar from PW3 could not tell how this iron bar was recovered by PW3. That there was no chain of evidence as to how the iron bar was recovered, who kept it before and who gave it to PW4. That in the circumstances this exhibit should not have been admitted because one cannot tell whether it was interfered with or it was the actual one used in the commission of the crime. (See: **Muzeyi versus Uganda, (1971) E. A 225**)

Counsel for the Appellant went on to submit that this iron bar did belong to the Complainant and was never used by the Appellant to hit the Complainant and the Appellant did not assault the Complainant.

Counsel for the Appellant also noted that the evidence of PW2 was fabricated and full of lies. That this witness told Court that he did examine the Complainant on 5/5/2015 when the alleged assault did take place. That the Complainant then later brought PF3 later and he examined him but does not state the date PF3 was later brought to him.

Counsel for the Appellant further submitted that it was the testimony of the Appellant that by the time he went to report to police the malicious damage of his banana plantation and sugarcane, he found the Complainant at Police and with no injuries. That it is when the Appellant went to Police that he was arrested.

It was also submitted for the Appellant that the evidence that was stated by the Appellant as having found the Complainant fleeing the scene of crime was not challenged.

Counsel for the Appellant prayed that the inconsistencies and the evidence regarding the iron bar be put into consideration and the decision of the trial Magistrate be found to have been wrong and the Appellant be acquitted.

Counsel for the Respondent on the other hand submitted that it was the evidence of PW1 that after he had been hit by the iron bar it fell down and he picked it up and later became unconscious after starting to bleed. That PW1 before becoming unconscious had already identified his assailants because these are persons that had been beating him. Thus, there was no contradiction.

Counsel for the Respondent also submitted that the gist of the prosecution case was the assault to the Complainant and this was proved by the prosecution witnesses and thus if the iron was admitted in evidence or not was immaterial and did not go to the root of the prosecution case.

In my opinion, I find no contradiction in the prosecution witnesses' evidence and if any, they are minor and do not go to the root of the case. The prosecution to me ably proved their case beyond reasonable doubt. In regard to the iron bar, it was the evidence of PW4 that she did receive it from the PW3 who was at the scene of the crime as per his testimony, I do not see the basis of Counsel for the Appellant's argument that the chain of evidence was broken and thus the exhibit was not to have been received in Court. The exhibit was tendered in Court by the witness that received and I do not see anything that is procedurally wrong with that with all due respect.

Thus, the learned trial Magistrate did not err in law and in fact because he evaluated properly the evidence about the use of the iron bar and the entire evidence on Court record and arrived at a right decision.

This ground therefore fails.

Grounds 2 and 3:

2. **That the learned trial Magistrate misdirected himself when he only gave a custodial sentence to the Appellant without giving an option of a fine.**
3. **That the sentence was harsh and excessive in the circumstances.**

Counsel for the Appellant submitted that the trial Magistrate erred when he sentenced the Appellant to a custodial sentence as opposed to a fine as per **Section 178 (2)** of the Magistrates Courts Act and the Sentencing Guidelines of 2013. That if the trial Magistrate could order for compensation of UGX 1,500,000/= then he could as well have fined the Appellant as an option for sentencing.

Further, that the compensation was not borne out of evidence and thus the trial Magistrate could not award the same to the Complainant. (See: **Section 197 of the Magistrates Courts Act.**)

Furthermore, that the trial Magistrate having ordered the Appellant to pay compensation to the Complainant should not have sentenced him to two years imprisonment which in the circumstances was too harsh.

Counsel prayed that the sentence be reduced or the Appellant be ordered to pay a fine.

Counsel for the Respondent on the other hand reiterated that indeed the section as cited by Counsel for the Appellant did not make it mandatory to impose a fine as an option for sentencing the convict.

Counsel for the Respondent went on to submit that the sentence as passed was not illegal and neither was it shown to be harsh or manifestly excessive to warrant interfering with.

It is my considered opinion that it is the discretion of the Judicial Officer to pass either a custodial sentence for as long as it is legal or a fine. In the instant case the offence the Appellant was charged with does carry 7 years as the maximum penalty however, the Appellant was sentenced to 2 years imprisonment. In regard to compensation, it is common knowledge that when one incurs injuries and visits hospital they do incur expenses as in the instant case and with the

nature of injury that was occasioned. Even though the Complainant did not furnish proof of the medical expenses incurred, he did in his evidence state that he indulged medical personnel to get treatment. I find the sentence and compensation as passed by the trial Magistrate as fair and not harsh and the trial Magistrate rightly exercised his discretion and judgment in passing the same.

This ground also fails.

I therefore uphold the lower Court's decision and this appeal is dismissed.

Right of appeal is explained.

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OYUKO. ANTHONY OJOK

JUDGE

23/03/2017

Judgment read and delivered in open Court in the presence of;

1. Counsel James Ahabwe for the Appellant.
2. James – Court Clerk
3. The Appellant.

In the absence of the State Attorney and the Respondent.

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OYUKO. ANTHONY OJOK

JUDGE

23/03/2017

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